

NOV 21 2014

INDIANA STATE  
CIVIL RIGHTS COMMISSION

**STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION**

MELISSA FINIGAN,

Complainant,

vs.

LES BROTHERS RESTAURANT & PANCAKE

HOUSE,

Respondent.

) Docket No.: EMse12111598

) EEOC NO.: 470-2012-02620

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On October 15, 2014, Administrative Law Judge ("ALJ") Noell F. Allen for the Indiana Civil Rights Commission ("ICRC") entered her Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

**INDIANA CIVIL RIGHTS COMMISSION**



COMMISSIONER



COMMISSIONER



COMMISSIONER



COMMISSIONER

Dated this 21<sup>st</sup> day of November 2014.

Served by Certified Mail on the following:

Melissa Finigan  
409 East 29<sup>th</sup> Avenue  
Lake Station, IN 46405  
9214 8901 0661 5400 0044 2341 77

Les Brothers Restaurant & Pancake House  
2708 Highway Avenue  
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Larry G. Evans  
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Johnson, Rappa & Ivancevich, LLC  
Attn: Michael J. Rappa  
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and to be personally served on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

OCT 15 2014

INDIANA STATE  
CIVIL RIGHTS COMMISSION

**STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION**

MELISSA FINIGAN,

Complainant,

vs.

LES BROTHERS RESTAURANT & PANCAKE

HOUSE, and HARRY LES,

Respondents.

) Docket No.: EMse12111598

) EEOC NO.: 470-2012-02620

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

On October 1, 2014, the undersigned Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) entered her NOTICE OF PROPOSED ORDER OF DISMISSAL (“Notice”). There has been no response to that Notice from the Complainant, Melissa Finigan, or otherwise.

Having carefully considered the foregoing and being duly advised in the premises, the undersigned ALJ hereby proposed the ICRC enter the following Findings of Fact, Conclusions of Law and Order.

**FINDINGS OF FACT**

1. This case involves a complaint of discrimination filed by Ms. Finigan against the Respondent, Les Brothers Restaurant & Pancake House and Harry Les (“Respondents”) alleging Respondents discriminated against Ms. Finigan on the basis of sex and sexual harassment. (Complaint of Discrimination, July 2012).
2. The ICRC’s Deputy Director found probable cause to believe an unlawful discrimination practice has occurred. (Notice of Finding, November 2013).
3. The ALJ proposes to dismiss this matter on the following grounds:
  - a. On August 12, 2014, the Respondents prepared a Notice for the deposition of the Complainant on August 27, 2014.

- b. The Complainant did not appear for the deposition, by counsel or otherwise.
  - c. On September 11, 2014, counsel for the Complainant moved to withdraw his appearance because of his inability to communicate with his client. The ALJ granted such motion.
  - d. On September 30, 2014, the ALJ conducted what was supposed to be a Final Pre-Hearing Conference; however, the Complainant did not appear. The ALJ made an attempt to contact the Complainant on telephone number (219) 973-3428 to no avail.
  - e. The ALJ informed the parties on previous orders that “[a] party who fails to attend or participate in a Pre-Hearing Conference, Hearing, or other later stage of the proceeding may be held in default or the matter may be dismissed.”
4. The Indiana Administrative Code sets out duties of the Complainant. “Each complainant has the duty to diligently prosecute his or her case before the commission. Such duties include, without limitation, the following obligations: (a) [to] promptly notify the commission of any changes in address or telephone number.” 910 IAC 1-16-1(a)
  5. The regulation further provides that “failure by a complainant to fulfill his or her duty to diligently prosecute a complaint may result in issuance of a finding that complainant did not proceed and a dismissal of the complaint with prejudice...” 910 IAC 1-16-1(b)
  6. Ms. Finigan has failed to update the ICRC with a current telephone number.
  7. Ms. Finigan has failed to prosecute her case before the commission.
  8. The Notice advised Ms. Finigan she may file a written motion requesting that the proposed order of dismissal not be imposed and stating the grounds upon which it relies within seven (7) days after service and that if no such written motion was filed, the ALJ MUST enter the proposed dismissal order. IC 4-21.5-3-24(b), (c).
  9. Ms. Finigan did not file a written motion requesting that the proposed order of dismissal not be imposed.
  10. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over the parties and subject matter.

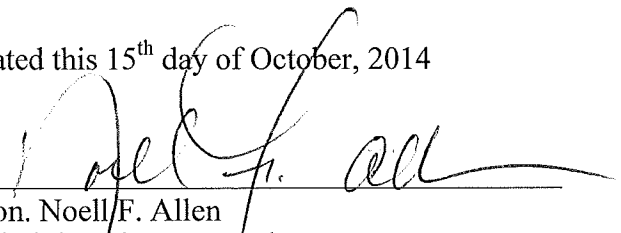
2. Dismissal is appropriate under IC 4-21.5-3-24 because Ms. Finigan failed to file a written motion requesting that the proposed order of dismissal not be imposed.
3. Dismissal is also appropriate under 910 IAC 1-16-1 because the Complainant failed to fulfill her duty to diligently prosecute her claim.
4. Administrative review of this proposed decision may be obtained by parties who are not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within fifteen (15) days of after service of this proposed decision. IC 4-21.5-3-29(d).
5. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

**ORDER**

Based upon the foregoing findings of fact and conclusions of law, it is hereby ordered that:

1. Melissa Finigan's Complaint is **DISMISSED**, with prejudice.

Dated this 15<sup>th</sup> day of October, 2014

  
\_\_\_\_\_  
Hon. Noell F. Allen  
Administrative Law Judge  
Indiana Civil Rights Commission

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and to be personally served on the following attorney of record:

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