



FILED:
April 5, 2023

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Gregory L. Wilson, Sr., in his official capacity
as Executive Director of the Indiana Civil
Rights Commission and Ginger Leinhos obo
M.L.,

Complainants,

V.

Midtown Realty, LLC, Mitchell Fisher, Hui
Lee, S&L Enterprises I, LLC, Acacia Creek
Community Association, Lenora Hatfield,
and L.I.F.E. Inc.,

Respondent.

Administrative Cause No.: ICRC-2303-000901

Underlying Agency Action No.:

HOha22090558

05-22-7026-8

Subject to the Ultimate Authority of the Indiana Civil Rights Commission

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

*Pursuant to IC 4-21.5 this Recommended Order is not final and shall be presented to the
ultimate authority for issuance of a final order.*

JURISDICTION

The Commission of the Indiana Civil Rights Commission ("ICRC") has subject matter jurisdiction over housing and real estate discrimination complaints based on disability that are filed under the Indiana Fair Housing Act ("IFHA") and the Indiana Civil Rights Law ("ICRL"). IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-6; IND. CODE § 22-9.5-4-1; IND. CODE § 22-9.5-5. When a finding of cause is made under the IFHA and ICRL, pursuant to the Commission's June 19, 2020 Finding of Necessity, the Office of Administrative Law Proceedings ("OALP") shall appoint an Administrative Law Judge ("ALJ") to preside over the matter and to conduct a hearing. IND. CODE § 22-9-1-6; IND. CODE § 22-9.5-6-14; IND. CODE § 4-15-10.5-12; IND. CODE § 4-15-10.5-13.

ISSUE

Is Respondent S&L Enterprises I, LLC's Notice of Election ("Notice") successful in moving this matter out of the administrative forum?

FINDINGS OF FACT

1. On March 29, 2023, the ICRC, after conducting a neutral investigation, made a reasonable cause and probable cause finding on Ginger Leinhos's September 27, 2022 complaint that alleged Respondent S&L Enterprises I, LLC ("Respondent") violated the Indiana Fair Housing Act ("IFHA") and the Indiana Civil Rights Law ("ICRL") by terminating Ms. Leinhos's son's tenancy on the basis of his disability.
2. Respondent received the March 29, 2023 Notice of Finding and Issuance of Charge on March 29, 2023.
3. The Notice was filed on April 5, 2023 by Respondent.
4. The Notice was served on the following: Ginger Leinhos (aggrieved person), the ICRC Staff Attorney of Record, the ICRC Docket Clerk, and the undersigned ALJ.
5. By the date the Notice was filed, a hearing had not yet begun in this matter.
6. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

Election under the Indiana Fair Housing Act

1. "A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in a finding of reasonable cause decided in a civil action. . ." IND. CODE § 22-9.5-6-12. According to the Notice of Finding and Issuance of Charge, "reasonable cause" was found; therefore, an opportunity to elect out of the administrative forum existed under the IFHA with respect to the "reasonable cause" claim.
2. "The notice of the election must be filed with the docket clerk of the ICRC and serviced on the director, the respondent, and the aggrieved persons on whose behalf the complaint was filed." 910 IAC 2-6-6(h)(2). The Notice was appropriately served.
3. If a complete and timely election is made, then "...the administrative law judge shall dismiss the administrative proceeding." 910 IAC 2-7-9(a).
4. An election by a Respondent must be made under the IFHA within "...twenty (20) days after the date of receipt by the electing person..." IND. CODE § 22-9.5-6-12(b). Respondent's deadline for filing the Notice was September 26, 2022. The Notice was timely filed.
5. Accordingly, Respondent's IFHA Notice is effective such that the ICRC shall dismiss the IFHA claim pending in the administrative forum.

Election under the Indiana Civil Rights Law

6. Indiana Code 22-9-1-16 allows parties to "...elect to have the claims that are the basis for a finding of probable cause decided in a civil action..." IND. CODE § 22-9-1-16(a). According to the Notice of Finding and Issuance of Charge, "probable cause" was found; therefore, an

opportunity to elect out of the administrative forum existed under the ICRL with respect to the "probable cause" claim.

7. In order to make such an election, "...both the respondent and the complainant must agree in writing to have the claims decided in a court of law." IND. CODE § 22-9-1-16(a); 910 IAC 1-3-6. The Parties are not in agreement as to the election.
8. The election must be made on the form provided to the Parties by the ICRC and must be served on all Parties. IND. CODE § 22-9-1-16(a); 910 IAC 1-5-1(b). The Notice was not made on ICRC's form.
9. An election is considered untimely if the election is made after a hearing on the merits of the complaint has begun. IND. CODE § 22-9-1-16(b). The Notice was timely filed.
10. "If all parties have filed a timely election to proceed in circuit or superior court, the commission shall dismiss the case, without prejudice. Such dismissal shall be sufficient to exhaust all administrative remedies in the case." 910 IAC 1-3-6.
11. Accordingly, the Notice is not effective and the ICRC shall not dismiss the ICRL claim pending in the administrative forum.
12. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such, and this Order's Statement of Jurisdiction is incorporated into these Conclusions of Law.

DECISION

1. The Notice is GRANTED in part and DENIED in part.
2. The Notice is not effective in moving the Complaint of Discrimination under the ICRL out of the administrative forum. The deadlines set in the March 30, 2023 Initial Prehearing Conference Order apply to the ICRL claim.
3. The Complaint of Discrimination under the IFHA against Respondent S&L Enterprises I, LLC should be DISMISSED, with prejudice. 910 IAC 2-7-9(a). This will result in a bifurcation of these proceedings and will be addressed at the prehearing conference with the parties to determine their intent before a final dismissal is issued.

This order becomes the final order disposing of the proceedings immediately upon affirmation under Indiana Code 4-21.5-3-29. IND. CODE § 4-21.5-3-27(a).

ADMINISTRATIVE REVIEW

Administrative review of this Recommended Order may be obtained by Parties not in default by the filing of a writing identifying with reasonable particularity each basis of each objection within fifteen (15) days after service of this decision. IND. CODE § 4-21.5-3-29(d). Subject to Indiana Code 4-21.5-3-1, the filing of a document in proceedings before the Indiana Civil Rights Commission can be completed by mail, personal service, fax, or electronic mail to:

Docket Clerk
c/o Indiana Civil Rights Commission
100 North Senate Avenue, N300
Indianapolis, IN 46204
Fax: 317-232-6580
Email: docketclerk@icrc.in.gov

A party shall serve copies of any filed item on all parties. IND. CODE § 4-21.5-3-17(c).

SO ORDERED: April 5, 2023



Hon. LaKesha Triggs, Administrative Law Judge
Indiana Office of Administrative Law Proceedings
100 North Senate Ave., Room N802
Indianapolis, IN 46204
(317) 234-6689

Distribution List:

The following distribution list includes the names and mailing addresses of all known Parties and other persons to whom notice is being given. IC 4-21.5-3-18.

Gregory Wilson*: 100 North Senate Ave., Room N300, Indianapolis, IN 46204

Harlan Vondersaar*: 100 North Senate Ave., Room N300, Indianapolis, IN 46204

Ginger Leinhos: 2917 Nordholme Avenue, Fort Wayne, IN 46802

Midtown Realty, LLC c/o Mitchell Fisher, COO*: 727 Fulton Street, Fort Wayne, IN 46802
9214 8901 0661 5400 0186 3014 54

Midtown Realty LLC c/o Hui Lee, R.A.: 6255 Carrollton Ave., Ste. 30330, Fort Wayne, IN 46230

Acacia Creek Community Association, Inc. c/o Lenora Hatfield, R.A.*: 7928 Welland Court, Fort Wayne, IN 46835

L.I.F.E. Inc.: 42002 Flagstaff Cove, Fort Wayne, IN 46815

9214 8901 0661 5400 0186 3018 36

S&L Enterprises I, LLC*: 2115 Forest Glade, Fort Wayne, IN 46851

Charles J. Maiers*: 8440 Allison Pointe Blvd., Ste. 350, Indianapolis, IN 46250

Docket Clerk: Indiana Civil Rights Commission 100 North Senate Ave., Room N300 Indianapolis, IN 46204, docketclerk@icrc.in.gov

**served in care of appearing attorney through ALP system at the email address on file with the Indiana Roll of Attorneys – all other service by mail.*

ULTIMATE AUTHORITY'S FINAL ORDER

The below information is for the Ultimate Authority's use only. Circle, check, or fill in the blanks below. A Final Order has not been issued until all of the below information is filled out and re-served on the Parties.

Timely objections were/were not filed to the above Recommended Order. Timely briefs on objections (if any) were/were not filed. An oral argument on objections (if any) was/was not held.

On May 25, 2023, the Indiana Civil Rights Commission decided, by the majority vote of 5 out of the 5 Commissioners present to:

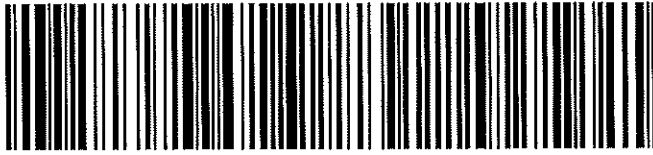
1. Affirm the above Recommended Order
2. Remand the above Recommended Order as further detailed in ICRC Attachment A.
3. Affirm the above Recommended Order with modifications as further detailed in ICRC Attachment A.

SO ORDERED this 25th day of May, 2023.

Chair Adrienne H. Slash : x Adrienne H. Slash

Unless the ICRC remanded this matter to the ALJ, then **THIS IS A FINAL ORDER**. A Party to a dispute filed under IC 22-9 and/or IC 22-9.5 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IC 22-9-8-1; IC 22-9.5-11-1.

MICHAEL C. LOSTUTTER
INDIANA CIVIL RIGHTS COMMISSIO
100 N SENATE AVE RM N300
INDIANAPOLIS, IN 46204-2208



9214 8901 0661 5400 0186 3014 54

RETURN RECEIPT (ELECTRONIC)

HOha22090558
GINGER LEINHOS
2917 NORDHOLME AVE
FORT WAYNE, IN 46805-2947

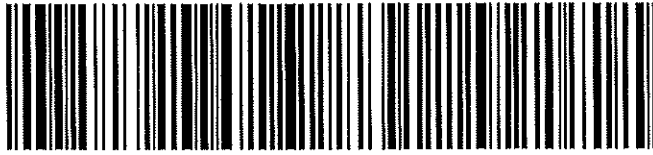
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Zone 2

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MICHAEL C. LOSTUTTER
INDIANA CIVIL RIGHTS COMMISSIO
100 N SENATE AVE RM N300
INDIANAPOLIS, IN 46204-2208



9214 8901 0661 5400 0186 3018 36

RETURN RECEIPT (ELECTRONIC)

HOha22090558

L.I.F.E. INC.
42002 FLAGSTAFF COVE
FORT WAYNE, IN 46815

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Zone 2

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6"X9" ENVELOPE
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