



FILED:
April 11,
2022

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Chad Lombardo, Complainant, V. Avon Wedding and Event Barn, James Dragon, & Darinda Dragon, Respondents.	Administrative Cause No.: ICRC-1120-001262 Underlying Agency Action No.: HOha20010001 05-20-7777-8
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Subject to the Ultimate Authority of the Indiana Civil Rights Commission

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

JURISDICTION AND PROCEDURAL HISTORY

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. On November 12, 2020, the ICRC, after conducting a neutral investigation, made a reasonable cause and probable cause finding on Mr. Lombardo's January 1, 2020 complaint that alleged Respondents violated the Indiana Fair Housing Act ("IFHA") and the Indiana Civil Rights Law ("ICRL") by discriminating against him in the protected areas of housing and real estate on the basis of disability. 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.

On March 29, 2022, the undersigned Administrative Law Judge ("ALJ") for the Office of Administrative Law Proceedings issued a Notice of Proposed Default Order, to which a response was not filed. Accordingly, the undersigned ALJ hereby enters the following Default Order based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In the March 15, 2022 Order on Motion for Status Conference ("Notice"), the undersigned ALJ scheduled a telephonic prehearing conference for March 28, 2022 at 9:00 AM EST ("Prehearing Conference"). The Prehearing Conference was scheduled at Complainant's

request, which was made in Complainant's March 7, 2022 Motion to File for Status Conference.

2. The undersigned ALJ stayed on the conference line for fifteen (15) minutes; however, Complainant did not join the Prehearing Conference in person or by counsel.
3. Respondents were present at the Prehearing Conference by counsel.
4. The Notice included the following advisory to the Parties: "A party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed. IND. CODE § 4-21.5-3-18(d)(8)."
5. The undersigned ALJ did not receive a motion to continue the Prehearing Conference from Complainant, and the undersigned ALJ has not received any information that would indicate that service of the Notice was not perfected on Complainant.
6. In the January 12, 2022 Order on Motion to Intervene, Motion to Withdraw Charge, & Case Management Order ("Order"), the undersigned ALJ set a January 31, 2022 deadline for Complainant to respond to the discovery that Respondent served on Complainant in August of 2021.
7. As represented by Respondents during the Prehearing Conference, Complainant did not meet the January 31, 2022 deadline ("missed deadline").
8. Sixty (60) days have passed since the missed deadline.
9. The undersigned ALJ did not receive a motion to continue the missed deadline, and the undersigned ALJ has not received any information that would indicate that service of the Order was not perfected on Complainant. Although Complainant filed Complainant's Motion to File for Status Conference on March 7, 2022, in which Complainant referenced issues with discovery, Complainant's motion was filed over a month after the missed deadline and does not appear to include a request that the missed deadline be continued.
10. On March 29, 2022, the undersigned ALJ issued a Notice of Proposed Default Order that included an advisory on the seven (7) day deadline for filing a response and the consequences of failing to file a response. No response was filed.
11. Although Complainant filed "Aggrieved Person's Response to Respondents' First Admission Requests" on April 4, 2022, the filing does not constitute a response to the Notice of Proposed Default Order. The filing makes no reference to the Notice of Proposed Default Order and does not attempt to provide a reason for Complainant's failure to attend the Prehearing Conference or promptly respond to Respondents' discovery requests. It is also unclear from the filing whether the filing responds to all of Respondent's outstanding discovery requests to Complainant.
12. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. Under Indiana Code 4-21.5-3-24, a Party may be defaulted when a Party fails to:
 - a. "...attend or participate in a prehearing conference, hearing, or other stage of the proceeding." IND. CODE § 4-21.5-3-24(a)(3).
 - b. "...take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action." IND. CODE § 4-21.5-3-24(a)(4).
2. Complainant failed to attend a properly noticed prehearing conference in this matter.
3. Complainant failed to respond to discovery requests within sixty (60) days of the deadline for filing a response. Discovery is a vital stage in preparing for a hearing on the merits, and it is designed to be self-executing, with minimal oversight by the adjudicator. *Pitts v. Johnson Cty. Dep't of Pub. Welfare*, 491 N.E.2d 1013, 1014-1015 (Ind. Ct. App. 1986).
4. Accordingly, the defaulting of Complainant is appropriate pursuant to Indiana Code 4-21.5-3-24.
5. The undersigned ALJ issued a Notice of Proposed Default Order as required by Indiana Code 4-21.5-3-24; however, Complainant did not file any response to it. IND. CODE § 4-21.5-3-24(b).
6. The filing of other motions, like Complainant's April 4, 2022 filing, does not alter the requirement to respond to the Notice of Proposed Default Order. See generally, *Breitweiser v. Indiana Off. of Env't Adjudication*, 810 N.E.2d 699 (Ind. 2004)
7. Accordingly, the undersigned ALJ hereby issues this Default Order and dismisses the Complaint and related Charge. IND. CODE § 4-21.5-3-24.
8. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. An Order of Default is issued against Complainant.
2. The Complaint and Charge in this matter are dismissed, with prejudice.

SO ORDERED: April 11, 2022



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

APPEAL RIGHTS AND ULTIMATE AUTHORITY REVIEW

You are hereby notified of your right to administrative review. If a Party to this action wishes to have the ultimate authority administratively review this Recommended Order, the Party requesting review must not be in default and must file written objections that:

- 1) Identify the basis of the objection with reasonable particularity; and,
- 2) Are filed with the Docket Clerk of the Indiana Civil Rights Commission on or before the 15th day after the date this Recommended Order was issued.

Requests to overturn an order of default must be directed at the Chair of the Indiana Civil Rights Commission. 910 IAC 1-6-3.

Filings may be served on the Indiana Civil Rights Commission's Chair and Docket Clerk by mail or in person at 100 North Senate Ave., Room N300, Indianapolis, IN 46204, by email at docketclerk@icrc.in.gov, or by fax at (317) 232-6580. A Party shall serve copies of any filed item on all Parties. Questions can be directed to (317) 232-2600.

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.

Avon Wedding and Event Barn & James and Darinda Dragon: served in care of appearing attorneys

Chad Lombardo*: protector142535@protonmail.com; P.O. Box 34444, Indianapolis, IN 46234

Amalia J. Gemeias & Matthew J. Jankowski*: 9801 Connecticut Dr., Crown Point, IN 46307

Gregory Steuerwald and Graham Youngs*: 106 North Washington Street, PO Box 503, Danville, IN 46122-0503

Chair Slash*: 100 North Senate Ave., Room N300, Indianapolis, IN 46204

**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

The below information is for the Ultimate Authority's use only. Circle, check, or fill in the blanks below.

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 20, 2022, the Indiana Civil Rights Commission decided, by the majority vote of 6 out of the 6 Commissioners present to:

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

SO ORDERED this 20th day of May, 2022.

Chair Adrienne L. Stash: x Adrienne L. Stash

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.