

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

FILE DATED

JAN 27 2006

HELEN L. MILLER, and MICHAEL
R. MILLER;

Indiana State Civil Rights Commission

Complainants,

vs.

DOCKET NO. Hofs04110609
HUD NO. 05-05-0141-8

ELKHART MOBILE HOME PARK,
RICHARD WALKER, and JEFF
MAKIMAA;

Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On November 14, 2005, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his 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

29 January 2006
Dated: ~~16 December 2005~~ 1/30

To be served by first class mail on the following parties and attorney of record:

Helen L. Miller and Michael R. Miller
29770 Cardinal Lane
Elkhart, IN 46516

Elkhart Mobile Home Park
c/o Manager
29200 County Road 20
Elkhart, IN 46517

Richard Walker
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YODER, AINLAY, ULMER & BUCKINGHAM, LLP

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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

Attorney for Complainants Helen L. Miller and Michael R. Miller

Indiana Government Center North

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Indianapolis, IN 46204-2255

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HELEN L. MILLER, and MICHAEL
R. MILLER;

Complainants,

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DOCKET NO. Hofs04110609
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ELKHART MOBILE HOME PARK,
RICHARD WALKER, and JEFF
MAKIMAA;

Respondents.

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

On July 21, 2005, Respondents Elkhart Mobile Home Park ("the Park") and Richard Walker ("Walker") filed their Notice Of Election ("NOTICE"). On November 9, 2005, Complainants, Helen L. Miller ("Helen") and Michael R. Miller ("Michael") (collectively "Complainants"), filed Complainants' Motion To Cancel Initial Pre-Hearing Conference ("MOTION").

Having carefully considered the foregoing and being duly advised in the premises the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Helen initiated this proceeding on November 10, 2004 by filing a complaint alleging that the Park and Walker had denied her a housing opportunity because of familial status

in violation of the Indiana Fair Housing Act, IC 22-9.5-1 ("the IFHA"). HOUSING DISCRIMINATION COMPLAINT (November 10, 2004). This complaint was later amended to, among other things, add Michael as a complainant. AMENDMENT TO COMPLAINT OF DISCRIMINATION (May 23, 2005).

2. On June 23, 2005, the ICRC's Director issued a Notice Of Finding, finding reasonable cause to believe that a violation of the IFHA had occurred. NOTICE OF FINDING (June 23, 2005).

3. On July 21, 2005, the Park and Walker filed their Notice Of Election to have this case decided in a state court. NOTICE.

4. On August 19, 2005, the ICRC, pursuant to statute, filed a civil action in the Elkhart Superior Court. MOTION, ¶2.

5. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. Under the IFHA, a complainant, a respondent, or an aggrieved person may elect to have the claims asserted in a reasonable cause finding decided in a civil action. IC 22-9.5-6-12(a).

2. Such an election must be made within 20 days after receipt by the electing party of the reasonable cause finding. IC 22-9.5-6-12(b).

3. The ICRC's filing of a civil action suggests that the election in the NOTICE was filed in a timely manner.

4. Housing Rule 7.9(a) of the ICRC provides, in material part, as follows:

If the ... respondent ... makes a timely election to have the claims asserted in the charge asserted in a civil action under IC 22-9.5-6-12, the administrative law judge shall dismiss the proceeding.
910 IAC 2-7-9(a).

5. This complaint must be dismissed under 910 IAC 2-7-9(a).

6. Administrative review of this proposed decision may be obtained by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).
7. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Complainants' Motion To Cancel Initial Pre-Hearing Conference is **GRANTED**.
2. The Initial Pre-Hearing Conference is **CANCELLED**.
3. Complainants' complaint, as amended, is **DISMISSED**, with prejudice.

Dated: 14 November 2005



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 14th day of November, 2005 on the following parties and attorneys of record:

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29770 Cardinal Lane
Elkhart, IN 46516

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and to be personally served this 14th day of November, 2005 on the following:

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Indiana Civil Rights Commission

Attorney for Complainants Helen L. Miller and Michael R. Miller

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