

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. HOra04050253
HUD NO. 05-04-0785-8

KIMBERLY CHAMBERS,
Complainant,

VS.

DEC 15

**ROBERT BECICH, MILDRED
BECICH, and JACK CRAYNE;**
Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 21, 2006, 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"). On September 5, 2006, Complainant, Kimberly Chambers ("Chambers"), filed Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. On September 7, 2006, Respondents – Robert Becich, Mildred Becich ("Mildred"), and Jack Crayne (collectively "Respondents") – filed Respondents' Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. On October 13, 2006, Respondents filed their Brief In Support Of Objections Of Respondents To Proposed Findings Of Fact, Conclusions (sic) Of Law, And Order. On November 3, 2006, Chambers filed her Brief In Support Of Complainant's Objections.

Commissioner Barry Baynard presided over oral argument on the parties' Objections on November 17, 2006. Other Commissioners present were Tehiji Crenshaw, Charles Gidney, and Steven A. Ramos. Commissioners absent were Alpha Blackburn (the Chairperson), David C. Carter (the Vice-Chairperson), and John E. Garcia. . Respondents were represented by counsel, Todd M. Conover, Esq. of the Hammond firm

of McHIE & McHIE. Chambers was represented by counsel, Frederick S. Bremer, Esq., ICRC Staff Attorney. Arguments of counsel were heard, statements were made by Mildred and Michael Becich, questions were asked by members of the ICRC, and the cause was taken under advisement.


Having carefully considered the foregoing and being duly advised in the premises, the ICRC finds and rules as follows.

1. Chambers has not met the burden of an objecting party to demonstrate an error that affected the result.
2. Respondents have not met the burden of an objecting party to demonstrate an error that affected the result.

IT IS, THEREFORE, ORDERED

1. Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.
2. Respondents' Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.
3. The ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the second proposed decision, a copy of which is attached hereto and incorporated by reference

INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

Dated: 15 December 2006

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

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Whiting, IN 46394

Mildred Becich
c/o Michael Becich
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Jack Crayne
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McHIE & McHIE
BY: Todd M. Conover, Esq.
Attorney for Respondents
53 Muenich Court
Hammond, IN 46320

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

Frederick S. Bremer, Esq.; Staff Counsel
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vs.

ROBERT BECICH, MILDRED
BECICH, and JACK CRAYNE;
Respondents;

FILE DATED

AUG 21 2006

Indiana State Civil Rights Commission

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

A Hearing was held before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on October 3, 2005 in Crown Point, Indiana. Complainant, Kimberly Chambers ("Chambers"), was present and was represented by counsel, Frederick S. Bremer, Esq.; Staff Attorney with the ICRC. Respondents Mildred Becich ("Mrs. Becich") and Jack Crayne ("Crayne") were present and were represented by counsel, Todd M. Conover, Esq. of the Hammond firm of McHIE & McHIE, who also represented Respondent Robert Becich ("Mr. Becich"), who had died before the Hearing.

After opening statements were made, Chambers testified on his own behalf, and also called Kim Dixon ("Dixon"), Armand Dixon ("Armond"), Kimberly Simmons, and Guillermina Guerrero. Chambers then rested her case. Respondents called Marguerite Lieber, Richard Garcia, Crayne, Mrs. Becich, and Michael Becich

("Michael"). Chambers elected not to testify in rebuttal.¹ The parties waived oral closing arguments. The ALJ took the cause under advisement and ordered the parties to file what they suggested that the ALJ enter as proposed findings of fact, conclusions of law, and order on or before January 2, 2006 and that briefs could be filed by the same date. This deadline was eventually extended to February 3, 2006.

On January 31, 2006, Respondent's filed Defendant's (*sic*) Proposed Findings Of Fact And Conclusions Of Law.² On February 3, 2006, Chambers filed her Tender Of Findings Of Fact, Conclusions Of Law And Order As Proposed By Complainant and Complainant's Post-Trial (*sic*) Brief.

Having carefully considered the evidence and the arguments of counsel, and being duly advised in the premises, the ALJ proposes that ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The issues to be resolved in this case are whether Chambers was denied the opportunity to rent a dwelling by one or more of the respondents because of race and, if so, what relief should be awarded. SECOND PRE-HEARING ORDER ¶1 (September 21, 2005).

2. Mr. Becich was, before his death in 2005, a White adult who owned an apartment building located at 1448 Calumet in Hammond, Indiana. Mr. Becich owned and leased, at least, the 6 units in the building that is at issue in this case. Mrs. Becich, his wife, co-owned the property and accepted applications, received

¹ There were numerous references to exhibits at the Hearing. None were offered into evidence and none are part of the evidence.

² Also on January 31, 2006, Respondents filed Defendant's (*sic*) Witness And Exhibit List, attaching a large stack of documents. This fails to make those documents evidence. There are no documents in evidence in this case.

rent payments, and issued receipts. Crayne is an adult male who lived in one of the units and sometimes assisted Mr. Becich by showing apartments or mowing the grass, receiving rent reductions in return.

3. Chambers is an adult African American who contacted Mr. Becich in March of 2004 about her interest in renting an apartment located at 1448 Calumet Avenue in Hammond, Indiana (although having a Whiting post office address)..

4. Chambers first reached Mr. Becich by telephone, having learned of the availability through an advertisement. Ultimately, she and Mr. Becich arranged to meet each other at the apartment building the next evening, March 15, 2004.

5. Although Chambers kept the appointment, arriving with the required deposit and some section 8 papers, Bacich was not there. Chambers arrived with Dixon and Armond..³

6. Chambers waited awhile to make sure that Mr. Becich was not merely late. The Chambers party then went to a nearby restaurant and placed a telephone call to Mr. Becich from a pay phone. Mr. Becich told Chambers that he would not be able to make it, but that she should go back to the building and a person named Jack would be waiting to show her the apartment.

7. Chambers returned to the building and could get no response. She went back to the pay phone and called Mr. Becich again. He gave her the same instructions as before and the party returned to the building.

8. This time, Crayne answered the door and admitted the Chambers party. At this point, Crayne asked Chambers if Mr. Becich knew what "nationality" Chambers was, adding that there had never been any Black tenants at the building, but that he would show her the apartment anyway..

9. It is, in fact, the case that there had never been any Black tenants at the building.

10. This meeting occurred at a time when it was dark enough outside for the street lights to be on and it was dark inside the apartment as well. Apparently

³ Chambers is Armond's guardian, but she is not otherwise related to him. Dixon is Armond's father.

because of the poor lighting, Crayne told Chambers that he would have to go get a flashlight, and he left the room to do so.

11. By the time Crayne left to get a flashlight, Chambers was uncomfortable and had concluded that they did not want Black residents in the building. As a result, when Crayne returned, she told him that they were leaving, and did not view the apartment and only saw what was visible from the entry in poor lighting conditions.

12. Crayne has been diagnosed with Post Traumatic Stress Disorder and the record reflects that all his education was special education, suggesting that he may be developmentally disabled. From observing his demeanor while testifying, it is clear that Crayne is not a sophisticated person and it is possible that it was not his intention to suggest to Chambers that she would be any less welcome than any other tenant. There is, however, no reason to believe that Chambers should have perceived this possibility as a fact.

13. Chambers' conclusion that Blacks were not welcome was reasonable, even though other individuals might have responded differently. A representation that there have never been any Black tenants in the building would indicate to an ordinary listener a preference for tenants who are not Black, although other explanations may exist.

14. Chambers continued to seek an apartment and eventually rented one in East Chicago, Indiana. She claims losses as a result of differences in the furnishings and amenities in the two apartments, the difference in the location of the two apartments (both in terms of additional commuting time and in terms of the quality of the neighborhoods), and emotional distress. Furthermore, Chambers claims that the conditions in East Chicago were so bad that she eventually moved to Illinois, losing her section 8 subsidy in the process.

15. On this record, Chambers has shown out of pocket losses totaling \$280.00.

A. The apartment in Hammond was furnished with a refrigerator and a stove. Chambers purchased these items for the East Chicago apartment for the amount of \$280.00.

B. Chambers claims damages resulting from having to share laundry facilities with 9 other households in East Chicago as opposed to sharing with 5 other households in Hammond. The evidence reflects that the laundry facilities in Hammond worked sporadically until their removal shortly before the Hearing. The record does not support a finding that the laundry situation in East Chicago was any worse than it would have been in Hammond.

C. The record does not support that there is a difference in commuting time and expense between the two apartments and Chambers' place of employment. Chambers **estimated** the difference in mileage, one way, to be 10 miles. Based on that, she **estimated** the time difference to be 20 to 30 minutes longer from East Chicago. Michael **measured** the mileage difference to be a little over 2 miles further, one way, from East Chicago. Michael made the drives and it was actually quicker from East Chicago, apparently because of closer access to expressways. As a result, it is inappropriate, on this record, to find economic loss from a difference in commuting distance or time.

D. It is not in serious dispute that the East Chicago apartment was in an undesirable area, featuring crime, abandoned buildings, and graffiti, among other things. The outside access door did not lock, allowing anyone to walk into the building. On the other hand, there is also evidence of crime (including murder), graffiti, and gang activity in the area of the Hammond apartment. The building in which the Hammond apartment was located did not have a lock until the summer of 2005.

16. Chambers' monthly rent in East Chicago was \$625.00, and this was subsidized by a section 8 voucher of about \$100.00. The monthly rent in Hammond would have been \$665.00, also subsidized by a section 8 voucher. Because the amount of the voucher was determined by a formula that is not in evidence, it is impossible to determine what the rent differential ultimately was; however, it seems unlikely that the voucher for the Hammond rental would have been high enough that Chambers' share of the

rent in Hammond would have exceeded her share of the rent in East Chicago.

17. Chambers moved from the East Chicago apartment to an apartment in Calumet, Illinois in April 2005, and this move was one that resulted in her being unable to use the section 8 voucher. While this may represent an economic loss, it does not, on this record, appear to be a loss attributable to the events in March of 2004 leading her not to pursue rental from Respondents.

A. Chambers attributes the decision to move to the poor conditions in the neighborhood of the East Chicago apartment; however, there were comparable conditions in the area of the apartment being rented by Respondents.

B. The passage of time between the discriminatory act and Chambers' move to Illinois makes it impossible to find a causal connection between those two events.

18. There can be little doubt that Chambers experienced emotional distress as a result of being told, essentially, that she was not welcome to rent in Respondents' building because of her race. On the other hand, much of her testimony concerns her responses to conditions in the area where she did rent, conditions which were not substantially worse than those in the area of the apartment being rented by Respondents. Thus, it is likely that she would have experienced similar responses in the Hammond apartment.

19. 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 subject matter and the parties.
2. Chambers, Mr. Becich, Mrs. Becich, and Crayne are each a "person" as that term is defined in the Indiana Fair Housing Act, IC 22-9.5 ("the IFHA"). IC 22-9.5-2-11.

3. The IFHA includes the following provision:

A person may not make, print, or publish or cause to be made ... any ... statement ... with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, ... , or an intention to make such a preference, limitation, or discrimination.
IC 22-9.5-5-2.

4. That provision of the IFHA is identical to a provision in the federal Fair Housing Act, 42 U.S.C. §§3601-3631 ("the FHA"), specifically §804(c). 42 U.S.C. §3604(c).

5. It is appropriate to give great weight to federal cases interpreting federal civil rights statutes in interpreting Indiana's civil rights statutes when the two are similarly worded. *Indiana Civil Rights Commission v. Alder*, 714 N.E.2d 632 (Ind. 1999); *Indiana Civil Rights Commission v. Culver Educational Foundation*, 535 N.E.2d 112 (Ind. 1989).

6. A statement indicating a preference based on race may, under the (federal) FHA, be verbal. *Jancik v. Department of Housing & Urban Development*, 44 F.3d 553 (7th Cir. 1995). The same should be true under the IFHA.

7. The test for determining whether a particular statement indicates any preference or limitation based on a protected category such as race is whether the statement would suggest to an ordinary listener that a particular protected group is not preferred for the housing in question. *Jancik, supra*. That test has been satisfied in this case.

8. In Indiana, agency may result from apparent authority. Apparent authority is the authority that an agent possesses because of some manifestation from the principal. *Gallant Insurance Co. v. Isaac*, 751 N.E.2d 672 (Ind. 2001). Mr. Becich made such a representation to Chambers by directing her to Crayne to be shown the apartment, which necessarily entailed some ability to discuss availability.

9. Crayne violated IC 22-9.5-5-2 by stating that no Blacks had ever lived in the complex.

10. Mr. Becich and Mrs. Becich are also liable, by virtue of *respondeat superior*.

11. A spouse who jointly owns property may be liable under the IFHA when his or her spouse violates one of its provisions.
12. The IFHA provides that, if the ICRC " ... determines ... that a respondent has engaged in ... a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, ... and other injunctive or equitable relief." IC 22-9.5-6-15(a).
13. Chambers has demonstrated \$280.00 in out-of-pocket expenses resulting from the discriminatory housing practice, that amount being the cost of the refrigerator and stove.
14. Emotional distress is also a proper element of "actual damages". *Alder, supra*. Six Thousand Dollars (\$6, 000.00) is an appropriate amount to award in the circumstances of this case.⁴
15. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision.
16. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

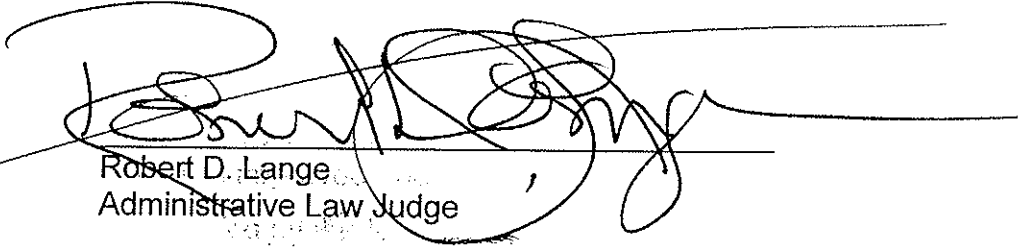
ORDER

1. Respondents shall cease and desist from making statements indicating a preference for tenants that are not African-American.
2. Respondents shall deliver to Chambers one or more checks totaling \$6, 280.00 no later than 60 days after the effective date of this Order.
3. Respondents shall be jointly and severally liable for all obligations imposed by this Order.

⁴ Chambers does not seek the assessment of a civil penalty under IC 22-9.5-6-15(b). There is no reason, on this record, to believe that assessing civil penalties against any or all of the respondents would increase the deterrent effect of the Order.

4. This Order shall take effect when it is approved and signed by a majority of the members of the ICRC unless it is modified by the ICRC pursuant to IC 4-21.5-3-31(a), stayed by the ICRC pursuant to IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 21 August 2006



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 21st day of August, 2006 on the following parties and attorneys of record:

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McHIE & McHIE
BY: Todd M. Conover, Esq.
Attorney for Respondents
53 Muenich Court
Hammond, IN 46320

and to be personally served this 21st day of August, 2006 on the following:

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