



**FILED:**  
December  
10, 2024

**STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

<b>Gregory L. Wilson, Sr., in his official capacity as Executive Director of the Indiana Civil Rights Commission and Melissa Thompson,</b>  Complainant,  V.  <b>Indianapolis Housing Authority/John J. Barton Annex,</b>  Respondent.	Administrative Cause No.: ICRC-2411-003271  Underlying Agency Action No.:  HOha24060517  05-24-0558-8
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**FINAL ORDER ON RESPONDENT’S NOTICE OF ELECTION**

**JURISDICTION**

The Commission of the Indiana Civil Rights Commission (“ICRC”) has subject matter jurisdiction over housing 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 Notice of Election (“Notice”) successful in moving this matter out of the administrative forum?

**FINDINGS OF FACT**

1. On November 20, 2024, the ICRC, after conducting a neutral investigation, made a reasonable cause and probable cause finding on Melissa Thompson’s June 18, 2024, complaint that alleged Respondent violated the Indiana Fair Housing Act (“IFHA”) and the Indiana Civil Rights Law (“ICRL”) by discriminating against Ms. Thompson in the protected area of housing on the basis of disability.
2. The Notice of Election was filed on December 10, 2024, by Respondent.

3. The Notice was served on: Melissa Thompson (aggrieved person), ICRC Staff Attorney Vanessa Powell, and the undersigned ALJ.
4. By the date the Notice was filed, a hearing had not yet begun on this matter.

### **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).<sup>1</sup> 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). 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 served on all Parties and was made on ICRC's form.

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<sup>1</sup> After the creation of the Office of Administrative Law Proceedings, service on the OALP ALJ meets the requirement that service be completed on the ICRC Docket Clerk, whose function, prior to the transition, was to provide filing to the ICRC ALJ.

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 such that the ICRC shall dismiss the ICRL claim pending in the administrative forum.

### **DECISION**

1. The Notice is GRANTED in part and DENIED in part.
2. The Complaint of Discrimination under the IFHA against Respondent should be DISMISSED, with prejudice. 910 IAC 2-7-9(a).
3. The Notice is not effective in moving the Complaint of Discrimination under the ICRL out of the administrative forum. This will result in a bifurcation of these proceedings and will be addressed at the next 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).

SO ORDERED: December 10, 2024



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

### **APPEAL RIGHTS**

A person who wishes to seek judicial review of this final determination must file a petition for review in an appropriate court within 30 days of the date this Order was served. See Ind. Code § 4-21.5-5-5. Guidance for calculating deadlines may be found at Ind. Code § 4-21.5-3-2.

Other requirements for a petition for judicial review may be found at Ind. Code Ch. 4-21.5-5. A petition for judicial review must be served on the Office of Administrative Law Proceedings at [oalp@oalp.in.gov](mailto:oalp@oalp.in.gov) to ensure the Office prepares the record that will be filed in the court presiding over the judicial review.

**Distribution List:**

Complainant, Melissa Thompson, served by US Mail at 501 North East Street, Apartment 518, Indianapolis, IN 46204

ICRC Staff Attorney, Vanessa Powell, served by email at [attyvpowell@yahoo.com](mailto:attyvpowell@yahoo.com)

Respondent, Indianapolis Housing Agency, served by email at [charles.bush@icemiller.com](mailto:charles.bush@icemiller.com) and [Germaine.Willett@icemiller.com](mailto:Germaine.Willett@icemiller.com)

Respondent, John J. Barton Annex, served by US Mail at 501 North East Street, Indianapolis, IN 46204