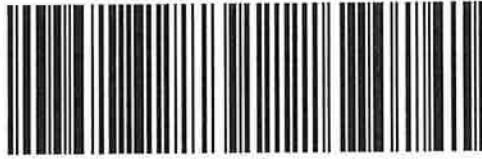


RECEIVED FEB 08 2016



JOHN BURKHARDT
INDIANA CIVIL RIGHTS COMMISSION
100 N SENATE AVE RM N103
INDIANAPOLIS, IN 46204-2255



Return Receipt (Electronic)

9214 8901 0661 5400 0076 5396 08

HOha15090693

AMY NELSON, EXECUTIVE DIRECTOR
FAIR HOUSING CENTER OF CENTRAL INDIANA
615 N ALABAMA ST STE 426
INDIANAPOLIS, IN 46204-1434

**TIME SENSITIVE
DOCUMENTS
ENCLOSED**

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MIKE PENCE, GOVERNOR
NOELL ALLEN, INTERIM EXECUTIVE DIRECTOR

ICRC No.: HOha15090693
HUD No.: 05-15-1427-8

NOELL ALLEN, in her official capacity as
INTERIM EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,

v.

CAROLYN SMITLEY & SMITLEY FAMILY TRUST,
Respondents.

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Interim Executive Director of the Indiana Civil Rights Commission ("Commission,")
pursuant to statutory authority and procedural regulations, hereby issues the following
findings with respect to the above-referenced case. Reasonable cause exists to believe that
an unlawful discriminatory practice occurred in this instance. A Charge is therefore issued in
accordance with 910 IAC 2-6-6 (b).

On September 29, 2015, Carolyn McGuffin ("Complainant") filed a Complaint with the
Commission against Carolyn Smitley and Smitley Family Trust ("Respondents") alleging
discrimination on the basis of disability in violation of the Indiana Fair Housing Act (Ind. Code
§ 22-9.5, et seq.) the Indiana Civil Rights Law (Ind. Code § 22-9, et seq.) and Title VIII of the
Civil Rights Act of 1968 as amended (42 U.S.C. § 3601, et seq.). Accordingly, the Commission
has jurisdiction over the parties and the subject matter of this Complaint. An investigation
has been completed. All parties have had an opportunity to submit evidence. Based on the
final investigative report and a review of the relevant files and records, the Interim Executive
Director now finds the following:



There are several issues pending before the Commission. The first issue is whether Respondents made discriminatory statements demonstrating a preference for tenants without disabilities. In order to prevail, Complainant must show that: (1) she has a disability as contemplated under the law; (2) Respondents made a statement that indicated or expressed a preference or limitation because of Complainant's disability; (3) she personally heard the statement, notice, or advertisement; and (4) Respondents confirmed an intent to indicate or express a preference or limitation because of Complainant's disability. It is evident that Complainant is a member of a protected class by virtue of her disabilities and Respondents made discriminatory statements demonstrating a preference for tenants without disabilities. Simply stated, the record supports the conclusion that Respondents made discriminatory statements as alleged.

By way of background, Smitley Apartments in Indianapolis are owned by Smitley Family Trust and managed by Carolyn Smitley. Evidence indicates that Complainant resided at Smitley Apartments for several years prior to the allegedly discrimination, albeit while the apartments were under different management. Complainant was a resident at the time Ms. Smitley assumed management in or around August 2015. Complainant's grandson Coty Cowles resided with Complainant and provided live-in aid.

Evidence shows that, upon Ms. Smitley's assumption of her managerial role, she began repeatedly entering Complainant's unit. Complainant claims that, on these occasions, Ms. Smitley made statements of preference and limitation relating directly to Complainant's disability. Evidence, including witness testimony, supports these claims, indicating that Ms. Smitley made statements such as, "I really don't want you living here in a hospital bed;" "Tammy should not have rented you an apartment in a hospital bed;" "I think you should go to a facility;" "I don't feel safe with you living here in a hospital bed;" "You need to move;" "I don't want you here;" "I don't think you're in good enough condition to be living here;" and "You should be in a nursing home." Evidence corroborates Complainant's claims that Respondents told Complainant that she was "a health hazard to other tenants in the building." Complainant and her grandson personally heard these and other such statements.

On September 9, 2015, Ms. Smitley filed a Notice of Claim for Possession of Real Estate naming Complainant as the Defendant and stating that Complainant's tenancy expired on account of "Non-payment of rent/living cond./refuses to leave." (sic) Evidence indicates that

on September 28, 2015, Ms. Smitley expressed to Complainant's Fair Housing Advocate, Amy Nelson, that Complainant "needs to be in a facility until she can get well" and that Respondents "had wanted [Complainant] to move." Evidence further indicates that after the judge presiding over the eviction proceedings ruled in favor of Complainant, Ms. Smitley asked the judge, "What can I do to get her out of the apartment?" Therefore, sufficient evidence has been submitted showing that Respondents' confirmed their intent to indicate or express a preference based on Complainant's disability. As such and based upon the aforementioned, reasonable cause exists to believe that a discriminatory practice occurred with respect to the first issue.

The second issue before the Commission is whether Respondents subjected Complainant to discriminatory rental terms, conditions, or privileges because of her disabilities. In order to prevail, Complainant must show that: (1) she has a disability as defined under the law; (2) she was qualified, ready, willing, and able to continue her tenancy with Respondents in a manner consistent with Respondents' reasonable terms and conditions; (3) she was subjected to different terms and conditions; and (4) Respondents treated others more favorably. Again, it is evident that Complainant has a disability and that she was ready and willing to continue her tenancy with Respondents. However, evidence shows that Respondents subjected Complainant to discriminatory terms and conditions because of actual and perceived disabilities. Evidence also suggests Respondents treated others more favorably.

The available evidence indicates that Complainant resided in her apartment without having transacted a written lease agreement with Respondents and that Complainant paid rent and otherwise satisfied Respondents' reasonable terms and conditions of rental. However, evidence indicates that treatment to which Respondents subjected Complainant – including restriction on bedding type; frequent unapproved entry into Complainant's apartment without advance notice; unapproved solicitation of Complainant's care providers for information about Complainant's condition; misappropriation of Complainant's security deposit; and Respondents' terms related to Complainant's "refusal to leave" – was based on Complainant's actual and perceived disabilities. For example, at the eviction proceedings Respondents initiated, Respondents articulated as causes for eviction Complainant's disability-related need for her "hospital bed" and a perceived disability.

Furthermore, the record indicates that it was only after Respondents learned of Complainant's disabilities that Respondents sought Complainant's eviction. Also, evidence

suggests that the other tenants complaining to Respondents about the disability they perceived in Complainant did not themselves have the same disability and were, as a result, treated more favorably by Respondents. Sufficient evidence exists supporting the conclusion that Respondents had the specific intent to limit Complainant's housing opportunities based on disability. As such and based upon the aforementioned, reasonable cause exists to believe that a discriminatory practice occurred as alleged.

The third issue is whether Respondents threatened or attempted to evict Complainant because of her disability. In order to prevail on such a claim, Complainant must show that: 1) she is a member of a protected class; 2) she was qualified, ready, willing, and able to continue occupancy consistent with Respondents' reasonable terms and conditions; 3) Respondent threatened or attempted to evict Complainant for one or more violations of the rules; and 4) Respondent knowingly permitted other similarly situated residents to commit similar violations of the rules without threatening or attempting eviction. The first two elements having been addressed, it is evident that Respondents threatened and attempted to evict Complainant on account of her disability.

Evidence shows that Respondents filed a Notice of Claim for Possession of Real Estate naming Complainant as the Defendant and stating that Complainant's tenancy expired on account of "Non-payment of rent/living cond./refuses to leave." (sic) Yet, evidence indicates that, during the eviction hearing, Respondents testified that the reasons for eviction included Complainant's "being in a hospital bed." Simply stated, in light of the discriminatory statements recounted above, it is directly evident that Respondents threatened and attempted to evict Complainant on account of her disability. As such and based upon the aforementioned, reasonable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Fair Housing Act, the Indiana Civil Rights Law, and/or Title VIII of the Civil Rights Act of 1968, as amended, occurred in the aforementioned case. As permitted by 910 IAC 2-6-6(h), Respondents, Complainant, or an aggrieved person on whose behalf the Complaint is filed may elect to have the claims asserted in a civil action under Ind. Code § 22-9.5-6-12 in lieu of an administrative proceeding under 910 IAC 2-7. In the event the parties seek to pursue such an election, it must be made not later than twenty (20) days after the receipt of service of this Notice of Finding and Charge. The notice of any such election must be filed with the Commission and

served on the Director, the Respondents, and Complainant in accordance with 910 IAC 2-6-6. If such an election is not timely made, the administrative proceedings initiated by the Charge will continue as scheduled. 910 IAC 2-6-6. Moreover, Respondents shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. Complainant and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing. If, at any time following service of this charge, Respondents intend to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondents must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

2 | 4 | 2016
Date


Noell Allen, Esq.
Interim Executive Director
Indiana Civil Rights Commission

SERVICE LIST

Served by Certified First Class United States Mail, return receipt requested, on the following:

CAROLYN MCGUFFIN
5000 SOUTHEASTERN AVE APT 8
INDIANAPOLIS, IN 46203-3764
Certified # 9214 8901 0661 5400 0076 5393 49

AMY NELSON, EXECUTIVE DIRECTOR
FAIR HOUSING CENTER OF CENTRAL INDIANA
615 N ALABAMA ST STE 426
INDIANAPOLIS, IN 46204-1434
Certified # 9214 8901 0661 5400 0076 5396 08

CAROLYN SMITLEY
7309 S ARLINGTON AVE
INDIANAPOLIS, IN 46237-9357
Certified # 9214 8901 0661 5400 0076 5396 77

SMITLEY FAMILY TRUST
5000 SOUTHEASTERN AVE
INDIANAPOLIS, IN 46203-3764
Certified # 9214 8901 0661 5400 0076 5397 38

AARON E. HAITH
136 E MARKET ST STE 200
INDIANAPOLIS, IN 46204-3260
Certified # 9214 8901 0661 5400 0076 5435 99



MIKE PENCE, GOVERNOR
NOELL ALLEN, INTERIM EXECUTIVE DIRECTOR

February 4, 2016

Carolyn McGuffin
5000 Southeastern Avenue, Apt B
Indianapolis IN 46203

ICRC/HUD No: HOha15090693/05-15-1427-8

Dear Ms. McGuffin:

Probable Cause has been found to believe that Respondent in the above named case may have violated the Indiana Civil Rights Law or Fair Housing Act, I am writing to inform you that an attorney has been assigned to prosecute this case. **The attorney is Fred Bremer He can be reached at (317) 232-2600 or (800) 628-2909, between the hours of 9:00AM and 4:00PM, Monday through Friday.**

You may contact this attorney with any questions you may have about this case. **Please be advised**, however, that this attorney does NOT represent you personally. Our Staff Attorneys represent the interest of the State of Indiana in enforcing the state civil rights laws. While our Staff Attorneys will seek to recover any damages to which you may be entitled, it is your right to obtain your own attorney to represent your personal interests in this matter. ***You must notify us, in writing, if your address or phone number change.*** Thanks for your attention regarding this matter.

Sincerely,
Shawn D. Thomas,
Intake Specialist

Sent certified mail to the following:
Carolyn McGuffin: 9214 8901 0661 5400 0076 5393 49

Hand Delivered: Noell Allen, Indiana Civil Rights Commission

cc:
Amy Nelson: 9214 8901 0661 5400 0076 5396 08
Carolyn Smitley: 9214 8901 0661 5400 0076 5396 77
Smitley Family Trust: 9214 8901 0661 5400 0076 5397 38
Aaron E. Haith: 9214 8901 0661 5400 0076 5435 99



YOUR RIGHT TO AN ATTORNEY

You have a right to have an attorney present and represent you at any stage during the pendency of your claim at the Indiana Civil Rights Commission. Prior to a finding of Probable Cause you may retain private counsel to represent you, if you wish. Pursuant to statute, (22-9-1-6) Indiana Civil Rights Commission Staff Attorneys will respond to prehearing Motions and Petitions, if the Complainant should wish. ICRC staff attorneys will also proceed with your case if a finding of Probable Cause has been made by the Commission. Probable Cause means that facts have been established that would lead a reasonable person to believe that discrimination has occurred. (010 IA 1-1-1-q). A finding of Probable Cause does not mean that discrimination has occurred, but rather that a public hearing is necessary to determine the issues.

When staff attorneys proceed with your claim, or respond to a Motion or other legal proceeding in your case, they do not do so strictly on your behalf. In accordance with Indiana Code Section 22-9-1-2, staff attorneys proceed on behalf of the public interest of the citizens of the State of Indiana, in order to eliminate unlawful discrimination. If you choose to have an ICRC staff attorney proceed with your claim, you will not be charged attorney's fees. If you choose to use private counsel, you must make your own arrangements with your attorney. If you are using private counsel you must complete and return the enclosed Attorney Information sheet within twenty (20) days of receipt of this letter. If you should have any questions you are strongly urged to call staff counsel of the ICRC to discuss our procedures. Please call 317-232-2600 or 1-800-628-2909.

Complainant,

v.

Docket No:
EEOC/HUD No:

Respondent.

PRIVATE ATTORNEY INFORMATION SHEET

ATTORNEY'S NAME

ADDRESS

TELEPHONE

Please return to:

**Supervising Attorney
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204**

You must also send a copy of this Information Sheet to the Office of Hearings and Appeals at the above address.



MIKE PENCE, GOVERNOR
NOELL ALLEN, INTERIM EXECUTIVE DIRECTOR

ALTERNATIVE DISPUTE RESOLUTION

A Notice has recently been issued finding probable cause to believe that an unlawful, discriminatory practice has occurred and that a public hearing is necessary to determine whether, in fact, the law has been violated. At this time, I would invite both parties to pause and seriously consider the possibility of resolving this dispute through mediation or other means of Alternative Dispute Resolution (ADR). The Indiana Civil Rights Commission employs trained, professional mediators to facilitate such a resolution. Our mediators have a high rate of success in resolving complaints of discrimination in a timely and cost-effective manner.

Unlike the process of adjudication, mediation allows both parties to have input into how the claims are resolved. Rather than having a judge determine the outcome after costly and time-consuming discovery, complainants and respondents have found the ADR process to be much more beneficial, not only in compensating for alleged damages but in possibly rebuilding damaged relationships for the future.

Attached are frequently asked questions about the mediation process. Please give serious consideration to this alternative. If you are interested in pursuing this option, you may reach me directly at the telephone number below. I will be happy to answer any questions you may have and make arrangements for a mediation conference to be held.

Sincerely,

Noell Allen, Interim Executive Director
317-232-2600

Attachments



CONCILIATION AT THE INDIANA CIVIL RIGHTS COMMISSION

Conciliation is a process that is intended to assist parties in resolving disagreements regarding conflicting interests. Conciliation or alternative dispute resolution has been successful from grade school playground conflicts to the Arab-Israeli conflict.

A trained facilitator works with the parties to guide them toward a mutually satisfactory solution. This occurs at a non-adversarial session that is structured but less formal than the alternative, the legal adjudication process.

Mediation is a voluntary process. It is optional for both parties. The conciliation session is completely confidential. The process encourages problem solving and open communication between the parties.

WHO BEARS THE COST FOR CONCILIATION?

Conciliation regarding complaints filed with the Indiana Civil Rights Commission is at no cost to the parties.

WHAT ARE THE ADVANTAGES OF CONCILIATION?

The purpose of a conciliation process is to provide an optional alternative to the long, expensive and adversarial legal adjudication process. In virtually all cases, it is less costly, less adversarial and much faster than the alternative. It is completely voluntary for parties.

Mediation can:

Allow the parties to get different views of the case;

Clarify the issues causing the disagreement;

Stimulate mutual problem-solving efforts;

Provide those involved with uninterrupted opportunities to present their points of view;

Help individuals focus on what they have in common rather than on the issues, which divide them;

Be considered the new humanism because in formal litigation, a businessperson has someone else do the dirty work, but in mediation, he or she has to sit there and deal with the adversary as a human being.

MUST PARTIES AGREE TO CONCILIATE?

Conciliation is voluntary for both parties. Unless both parties agree to attempt conciliation as a way to help resolve their disagreement, a conciliation session cannot be attempted.

HOW DOES THE PROCESS WORK?

A Facilitator is assigned to the case and takes into account the need to assure neutrality by assigning a mediator sufficiently removed from knowledge of Complainant or Respondent.

The parties are then contacted by a staff person to confirm the date, time and location for the conciliation session and to determine who will participate. At that time, the staff person answers any questions about the process and may request additional information from the parties.

WHO ARE THE FACILITATORS?

The individuals selected to serve as facilitators have successfully completed a specialized training program. In addition to the initial training, the facilitators participate in regularly scheduled in service training sessions in order to assure updating of appropriate information and skills.

Facilitators were selected on the basis of the following qualifications:

Neutrality;

Appropriate personal skills and qualities;

Knowledge of State and Federal Civil Rights Laws and Regulations;

Knowledge of the process of conciliation.

WHO MAY ATTEND THE MEDIATION SESSION?

The number of participants at each conciliation session is kept to an absolute minimum in order to enhance the potential for effective problem solving.

At the session the parties to the dispute must have the authority to make decisions and to commit any resources agreed upon as the result of the conciliation.

Participants, in addition to the parties to the dispute, may be those (agreed to by both parties) who have knowledge, which may be deemed relevant to conciliation.

The facilitator makes the final decision on who will attend the conciliation session.

HOW LONG DOES A CONCILIATION SESSION TAKE?

The conciliation session generally lasts an average of approximately three hours. Since a session could take up to a full day, it is recommended that participants plan to set aside the entire day, even though the session is likely to conclude in a shorter period of time.

WHAT OCCURS DURING THE CONCILIATION SESSION?

The conciliation session consists of the following phases:

INTRODUCTION: The facilitator begins the session promptly and explains the conciliation process and the ground rules for the session to all of the participants.

JOINT SESSION: Both parties to the dispute are given an opportunity--- without interruption---to present the issues from their points of view. The facilitator may ask questions and summarize what has been said.

CAUCUS: The facilitator may use the caucus, which is an opportunity for each party to meet privately with the facilitator and further clarify issues and positions. The facilitator will not share information provided during the caucus without permission.

CLOSURE: If an agreement is reached, the parties determine the terms of the agreement and the mediator puts the agreement in writing. The **CONSENT AGREEMENT** is signed by the parties and, at the conclusion of the session, each party receives a copy. (See the sample Consent Agreement.)

Not all conciliation sessions will result in a written agreement. If an agreement is not reached, the facilitator will certify to the parties, in writing, that the session has resulted in no agreement. A copy will be placed in the Civil Rights Commission file.

The conciliation session is completely confidential. At the conclusion of the session, and in the presence of the parties, the facilitator will destroy any notes that he or she has taken during the session.

The facilitator is excluded from participation in subsequent proceedings such as hearings. Nothing that occurs at a mediation session is admissible as evidence in a hearing.

No recording of conciliation sessions is allowed and no records of the proceedings are kept other than written agreements if/when agreement is reached.

WHAT IS THE ROLE OF THE FACILITATOR?

The facilitator is a neutral third party who acts as a mediator in assisting the parties in resolving their disagreement.

Although the facilitator is in control of the session, he or she is not the decision maker. The facilitator allows the parties to present their positions and attempt to help them achieve mutual understanding and a solution to the problem that is in the best interest of the parties.

The facilitator summarizes positions and may help the parties consider possible alternatives.

WHAT IS THE ROLE OF THE PARTIES?

The parties are expected to approach the conciliation session in good faith and with the intention of attempting to reach an agreement. It is important that all parties' approach the session with a willingness to listen and to consider all aspects of the agreement, if reached, and to develop the terms of the agreement with the assistance of the facilitator.

CONCLUSION

The purpose of conciliation is to provide an alternative to the long adversarial legal adjudication process as a way to resolve disagreements, clarify issues and stimulate mutual problem solving efforts. Even if an agreement is not reached, there is the potential of both parties leaving the session with an enhanced perspective of the issues.



MIKE PENCE, Governor
NOELL ALLEN, INTERIM EXECUTIVE DIRECTOR

NOTICE OF ELECTION OF FORUM

Recent changes in Indiana Civil Rights Laws give parties involved in civil rights cases the right to decide whether their case will be tried by an administrative law judge appointed by the Indiana Civil Rights Commission or by a judge of the county where the alleged acts of discrimination occurred.

This decision would be critical to the outcome of a case so it should be made with the assistance of legal counsel. If the Complainant has not hired an attorney to represent him or her in this matter, an attorney on the staff of the Indiana Civil Rights Commission may be consulted without cost by calling (317) 232-2600 or toll free at 1-800-2909.

PLEASE READ ALL OF THIS NOTICE FOR A FULLER EXPLANATION OF YOUR RIGHTS AND PRIVILEGES IN MAKING THIS DECISION

I. INDIANA CIVIL RIGHTS LAW PROVIDES THAT THE PARTIES MAY HAVE A TRIAL IN A STATE COURT OR IN AN ADMINISTRATIVE HEARING BEFORE THE INDIANA CIVIL RIGHTS COMMISSION

The parties to a civil rights case have the right to chose to have their case decided either:

1. By the judge in a circuit court in the county in which the alleged discriminatory practice occurred; or
2. By the Indiana Civil Rights Commission after an administrative hearing conducted by its administrative law judge. The administrative hearing will be conducted in Indianapolis, Indiana or the parties can request the hearing to be held in the county in which the alleged discriminatory practice occurred.

However, the right to have this case decided by a judge in state court is available only if all parties chose to have the trial in state court. Otherwise, the case **automatically** will be tried before an administrative law judge at the Indiana Civil Rights Commission.

II. CHOOSE THE PROCEDURE

A. Civil Action in a Circuit or Superior Court

If you desire to have this case decided by a judge in state court, **written notice** of your choice must be **received** by the Indiana Civil Rights Commission at the following address **prior to the commencement of a hearing on the record**:



**STATE OF INDIANA
CIVIL RIGHTS COMMISSION**

Complainant,

v.

**ICRC NO. HO
HUD NO.**

Respondent.

NOTICE OF ELECTION

The undersigned hereby elects, pursuant to IC 22-9.5-6-12, to have the above-captioned claim decided in a state court of law.

This election must be made within twenty (20) days after the receipt of the reasonable cause finding.

Dated: _____

Complainant or Attorney

Respondent or Attorney

Address

Address

City State Zip Code

City State Zip Code

Area Code - Telephone Number

Area Code - Telephone Number

Please return to:

**Realty Unit Supervising Attorney
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204**

You must also send a copy of this Notice to the Docket Clerk of the Indiana Civil Rights Commission at the above address.

**STATE OF INDIANA
CIVIL RIGHTS COMMISSION**

Complainant,

v.

**ICRC NO. HO
HUD NO.**

Respondent.

NOTICE OF ELECTION

The undersigned hereby elects, pursuant to IC 22-9.5-6-12, to have the above-captioned claim decided in a state court of law.

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Dated: _____

Complainant or Attorney

Respondent or Attorney

Address

Address

City State Zip Code

City State Zip Code

Area Code - Telephone Number

Area Code - Telephone Number

Please return to:

**Realty Unit Supervising Attorney
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204**

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