

**STATE OF INDIANA  
CIVIL RIGHTS COMMISSION**

**DOCKET NO. HOra06040139  
HUD NO. 05-06-1014-8**

**RUKHSANA KHAN,**

**Complainant,**

**vs.**

**RITA HELLMAN,**

**Respondent.**

**FILE DATED**

**OCT 26 2007**

Indiana State Civil Rights Commission

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

On June 6, 2007, 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 June 21, 2007, Respondent, Rita Hellman ("Hellman"), filed her Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. On June 25, 2007, Hellman filed three FAXes, each treated as a Brief In Support Of Objections and on June 27, 2007, Hellman filed another FAX treated as a Brief In Support Of Objections. On August 13, 2007, Complainant, Rukhsana Khan ("Khan"), filed her Response To Objections Of Respondent And Request For Adoption Of Proposed Findings Of Fact, And Conclusions Of Law. On October 18, 2007, Khan filed her Brief Of Complainant Rukhsana Khan.

Alpha Blackburn, the Chairperson of the ICRC presided over oral argument on Hellman's Objections on October 26, 2007. Commissioners David C. Carter (the Vice-Chairperson), Tehiji G. Crenshaw, and Steven A. Ramos were also present. Commissioners Barry Baynard, John E. Garcia, and Charles D. Gidney were absent. Hellman did not appear, by counsel or otherwise. Khan was represented by counsel, A. Douglas Stephens, Esq., of Clermont. Arguments were heard, 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.

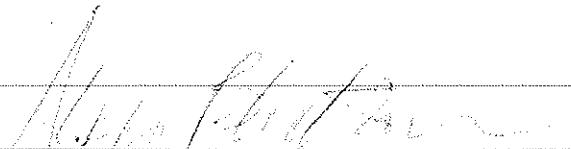
1. Hellman has not met the burden of an objecting party to demonstrate an error that affected the result.

## **IT IS, THEREFORE, ORDERED**

1. Hellman's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.

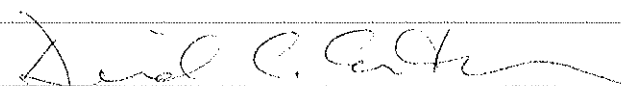
2. The ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

## **INDIANA CIVIL RIGHTS COMMISSION**



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Alpha Blackburn, Chairman



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David C. Carter, Vice-Chairperson



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Tehiji G. Crenshaw, Commissioner



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Steven A. Ramos, Commissioner

Dated: 26 October 2007

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

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STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. HOra06040139  
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RUKHSANA KHAN,  
Complainant,

VS.

RITA HELLMANN,  
Respondent.

FILE DATED

JUN 06 2007

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 March 21, 2007. Complainant, Rukhsana Khan ("Khan"), was present and was represented by counsel, A. Douglas Stephens, Esq., of Clermont. Respondent, Rita Hellman ("Hellman") was present and represented herself.

After opening statements were made, Khan called the following witnesses: Barry J. Stern ("Stern"), Darlene Wells ("Wells"), and herself. During the presentation of Khan's case, Complainant's Exhibit A ("CX\_") and CXB were admitted without objection and CXC and CXD were admitted over objection. After Khan rested her case, Hellman testified on her own behalf and then rested her case. Stern then testified in rebuttal and Hellman testified in surrebuttal. The parties waived oral closing arguments and the ALJ took the cause under advisement. The parties were allowed to file suggested decisions.

On May 11, 2007, the Transcript Of Proceedings was filed and on May 16, 2007,

Khan filed [Complainant's Suggested Proposed] Findings Of Fact, Conclusions Of Law, And Order<sup>1</sup>.

Having carefully considered the evidence and the arguments of counsel, and being duly advised in the premises, the ALJ proposes that the 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 (a) did Hellman interfere with Khan's opportunity to sell or rent a dwelling because of race and (b) if so, what relief should be awarded. SECOND PRE-HEARING ORDER ¶1 (March 15, 2007).
2. Khan is a Pakistani woman who has resided, at all material times, in the state of Indiana. She has owned more than one unit in the Gateway West development on the west side of Indianapolis for several years now. One of those units is at 3944 Gateway Court, next door to the unit owned, and resided in, by Hellman.
3. Hellman is a White woman who has resided, at all material times, at 3942 Gateway Court, a condominium unit on the west side of Indianapolis. Hellman has lived in this unit, which she co-owns with her mother, since approximately 1990.
4. Gateway is a planned unit development that consists of 155 units and has been in operation since at least 1975. In the beginning, about 95% of the residents were White. About 10% of the current residents are White, with the remainder being Black, Hispanic, or Pakistani.
5. Khan owns 2 units in this development. She purchased the unit at 3944 Gateway Court in 2001, approximately one year after she bought a unit at 3963 Gateway Court. She had rented out the latter unit almost immediately and, as of the Hearing, the original

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<sup>1</sup> This document did not show service on Hellman. Similarly, Hellman has sent a number of FAXes and e-mails to the ALJ that do not show service on Khan. The ALJ has, regarding all such materials, provided notice of their receipt and a copy to the parties. Except to the extent that this proposed decision constitutes a response to these apparently *ex parte* communications, the ALJ has not responded to any of them.

tenant still resided there. The unit at 3944 Gateway Court is located next door to the unit in which Hellman resides.

6. The purchase at 3944 has not worked out so well. Khan claims that Hellman has harassed tenants, tenants' children, and other Black persons in the presence of her tenants and potential tenants. This unit has been rented 3 times and, in none of those situations has the tenant renewed the lease, and some did not even stay for the entire term of the lease.

7. The past and proposed tenants of Khan have been African American.

8. Stern owns multiple units at Gateway and serves as the property manager. He has received a number of complaints from Khan, her tenants and other residents and owners about the harassment and statements from Hellmann.

9. Stern has also received a large volume of complaints from Hellman, many of which had a racial component. CXB, a tape of a message on the Association's answering machine that Hellman has admitted is her voice, ends with the phrase "keep the niggers out of here".

10. Wells, a tenant of a nearby unit, credibly testified regarding statements that she had heard Hellmann make about African Americans, that these statements were frequent, persistent, and unprovoked. By way of example, Hellman told Wells' grandchildren, ages 5 and 7, who were playing in the courtyard, to "get the hell out of there, you goddamn niggers".

11. Hellman's responses to Khan's claim are first, to deny that she harassed anyone and second, to ask why she was not confronted with these claims in writing or otherwise. These responses are unpersuasive for reasons set out below.

A. Observation of the witnesses (Stern, Khan, Wells, and Hellman) leads to the conclusion that those called by Khan, both individually and in combination, are more credible than Hellman.

B. The record reflects that efforts to discuss matters with Hellman would begin rationally but Hellman would soon become verbally combative and abusive to the point that continued discussion was unproductive. Eventually, such efforts were abandoned as futile.

12. Hellman's behavior was clearly an effort to minimize, if not eliminate, the number of neighbors and visitors who were persons of color. This is not merely a situation involving disputes between neighbors involving name-calling that might be called politically incorrect.
13. Hellman did interfere with Khan's right to rent out her property because of race.
14. At the time of complaint, Khan was renting the condo for \$650.00 per month. She went 10 months without renting the unit due to Hellmann's actions. Accordingly, she would have earned \$6,500.00 in gross rents.
15. Khan also lost the use of this income. Calculated at 8% simple interest, compounded annually, this totals \$520.00.
16. It seems likely that Khan experienced some emotional distress, but the record does not support anything beyond a nominal award of \$100.00.
17. At one point, Khan requested the award of attorney fees; however, there is no evidence of the amount of those fees or the amount of hours expended by counsel.
18. Hellman's claim that she is indigent is undisputed. For that reason, there is no reason to believe that the imposition of a civil penalty would have a deterrent effect.
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. Khan and Hellmann are each a "person" as that term is defined in the Indiana Civil Rights Law, IC 22-9 ("ICRL"). IC 22-9-1-3(a).
3. The ICRL defines an unlawful discriminatory practice as follows:
  - (l) "Discriminatory practice" means:
    - ...
      - (3) the promotion of racial segregation or separation in any manner

Every discriminatory practice relating to... the acquisition or sale of real estate ... shall be considered unlawful unless it is specifically exempted by this chapter.

IC 22-9-1-3(l)(3).

4. The Indiana Fair Housing Act, IC 22-9.5 ("the IFHA"), provides, in material part, that "[a] person may not coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any rights granted or protected by this chapter". IC 22-9.5-5-8(1).
5. The IFHA is virtually identical to the federal Fair Housing Act, 42 U.S.C. § 3601 et seq. Therefore, cases construing the federal law are instructive in a determination of whether a violation of the Indiana Act occurred.
6. The purpose of the IFHA is the elimination of discrimination. The Commission's duty is to reasonably interpret and enforce it to achieve that purpose. It is illegal for a racial group to try to coerce an owner of property into selling or renting only to a particular race. National Org. for Women v. State Div. Of Human Rights, 34 NY2d 416, 421.
7. Khan has proven by a preponderance of the evidence that Hellmann acted in a manner which interfered, coerced or intimidated with Khan's ability to lease or sell her property in an effort to induce Khan, as an owner or seller, into racially discriminating in the sale of her property.
8. No case establishes a minimum threshold for a violation of section 3617; however, the purpose of the provision is to prohibit a broad range of conduct which is intended to interfere with an individual's right to quiet enjoyment of housing. See, Michigan Prot. and Advocacy Serv., Inc. v. Babin, 18 F.3<sup>rd</sup> 337, 347 (6<sup>th</sup> Cir. 1994).
9. Section 3617 was not intended to be invoked to resolve neighborhood squabbles. See, e.g., Spom v. Ocean Colony Condo Ass'n., 173 F.Supp.2<sup>nd</sup> 244, 252 (D. N.J. 2001).
10. The facts of this case reveal more than a mere difference of opinion or feuding neighbors. The record makes clear Hellman's racial animus toward African Americans and her desire that they not reside at Gateway.
11. Hellmann may maintain that it is not unlawful to dislike African Americans; however, it is unlawful to use that animus as a motivation to interfere in the sale or rental of real estate to persons because of their race.
12. The evidence supports the logical conclusion that Hellmann's actions were intended



to prevent any more African Americans from buying or renting Khan's condo.

13. 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).

14. Section 6(k) of the ICRL governs the ICRC's authority upon the finding of an unlawful discriminatory practice and provides that, among its powers and duties, the ICRC

... shall state its findings of fact after a hearing and, if the commission finds the person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

(A) to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice ....  
IC 22-9-1-6(k)(A).

15. Khan has proven out of pocket losses that were the proximate result of the proven unlawful discriminatory act(s).

16. The loss of the use of rent is a part of the loss that a complainant incurs when those rents are lost. Thus, the awarding of interest to compensate for the loss of use is within the authority of the ICRC.

17. Interest should be awarded at an annual rate of 8%, compounded annually. This is the rate provided for in IC 24-4.6-1-103, a statute that is appropriate to consult in the absence of a more applicable statute. Indiana Insurance Company v. Sentry Insurance Company, 437 N.E.2d 1381 (Ind.App. 1982).

18. The burden of proof on the issue of mitigation of damages is on the wrongdoer. Colonial Discount Corp. v. Berkhardt, 435 N.E.2d 65 (Ind. App. 1982).

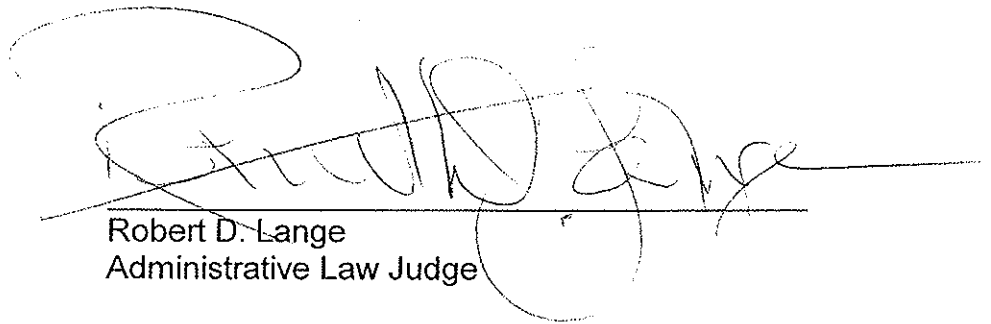
19. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

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

## ORDER

1. Hellmann shall cease and desist from making any comments to tenants, prospective tenants and potential purchasers that relate to race, national origin, sex, religion, age or disability.
2. Hellmann shall cease and desist from attempting to induce Khan, Gateway West Townhouse Association, or any other owner in the Gateway West subdivision from renting to any person based upon race, national origin, sex, religion, age or disability.
3. Hellmann shall deliver to the ICRC, within 90 days, one or more cashier's checks payable to Khan, in amounts totaling \$7,120.00.
4. This Order shall take effect immediately after 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 under IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 06 June 2007



Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 6th day of June, 2007 on the following parties and attorney of record:

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and to be personally served this 6<sup>th</sup> day of June, 2007 on the following:

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Indiana Civil Rights Commission  
c/o The Honorable Gregory Kellam Scott, Esq.; Director  
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