

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. HOr08100647
HUD NO. 05-09-1369-8

MARIE and EDDIE WOMACK,

Complainants,

v.

FRED WEBB, ANGELA WEBB, and
PRESTIGE HOMES[, LLC];

Respondents.

FILED

Indiana State Civil Rights Commission

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 12, 2010, 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 August 27, 2010, Complainants, Marie Womack ("Marie") and Eddie Womack ("Eddie") (collectively "the Womacks"), filed Complainant's (sic) Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. On September 2, 2010, Respondents - Fred Webb Angela Webb and Prestige Homes[,LLC] (collectively "Respondents") - filed Respondents' Response [To] Complainant's (sic) Filed Objections To [Proposed] Findings [Of Fact] And Conclusions [Of Law, And Order]

David C. Carter, Vice-Chairperson of the ICRC, presided over oral argument on the Womacks' Objections on October 22, 2010. Other Commissioners present were Barry Baynard, Tehiji G. Crenshaw and John E. Garcia. Commissioners Alpha Blackburn (the Chairperson), Charles D. Gidney and Steven A. Ramos were absent. The Womacks were present and were represented by counsel, Frederick S. Bremer, Esq., Staff Attorney. Respondents were represented by counsel, Charles E. Davis, Esq. of the Fort Wayne firm of DAVIS LAW LLC. Arguments of counsel were heard, questions were asked by members of the ICRC and the cause was taken under advisement.

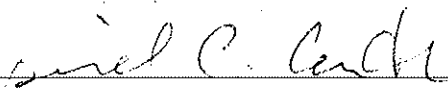
Having carefully considered all of the foregoing and being duly advised in the premises, the ICRC finds and rules as follows.

1. The Womacks have not met the burden of an objecting party to show an error that affected the result.

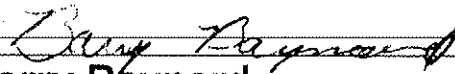
IT IS, THEREFORE, ORDERED

1. Complainant's (*sic*) Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.
2. The ICRC 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.

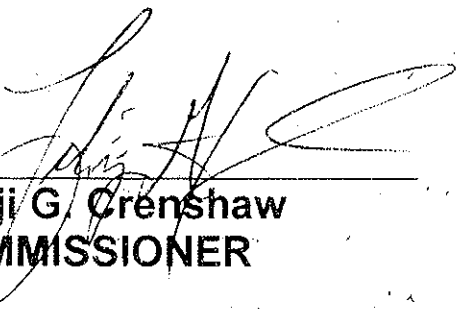
INDIANA CIVIL RIGHTS COMMISSION



David C. Carter
COMMISSIONER



Barry Baynard
COMMISSIONER



Tehiji G. Crenshaw
COMMISSIONER



John E. Garcia
COMMISSIONER

Dated: 22 October 2010

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

Marie and Eddie Womack
2009 Black Bear Drive
Fort Wayne, IN 46808

Fred Webb, Angela Webb, and Prestige Homes
7726 Lima Road
Fort Wayne, IN 46818

DAVIS LAW, LLC
BY: Charles E. Davis, Esq.
Attorney for Respondents Fred Webb, Angela Webb, and Prestige Homes
614 West Berry Street, Suite A
Fort Wayne, IN 46802

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

Frederick S. Bremer, Esq.; Staff Attorney
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204-2255

MARIE and EDDIE WOMACK,

Complainants,

FILE DATED

v.

AUG 12 2010

FRED WEBB, ANGELA WEBB, and
PRESTIGE HOMES[, LLC];

Respondents.

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 21 and 22, 2009.

Complainants, Marie Womack ("Marie") and Eddie Womack ("Eddie") (collectively "the Womacks"), were present and were represented by counsel, Frederick S. Bremer, Esq., Staff Attorney. Respondents Fred Webb ("Fred") and Angela Webb ("Angela") (collectively "the Webbs") were present and the Webbs and Respondent Prestige Homes[, LLC] ("Prestige") collectively "Respondents") were represented by counsel, Charles E. Davis, Esq. of the Fort Wayne firm of DAVIS LAW, LLC.

After opening statements were made, the Womacks called Marie, Lisa Hunter, Octavia Garrett, Cyteria A. Womack ("Cyteria"), Eddie, and Kelly Bristow ("Bristow") to testify on their behalf. During the presentation of the Womacks' case, Complainant's Exhibit 1 ("CX_"), CX2, CX3, CX4, CX5, CX6CX7, CX8, CX9, Respondent's Exhibit A ("RX_"), RXB, and CX10 were admitted into evidence without objection,

After the Womacks rested their case, Respondents called Fred, Angela, Bristow, Sara Scheid ("Scheid"), Bonnie Coates, and Vonda Bates to testify on their behalf. During the presentation of Respondents' case, RXC, RXD, RXF, and RXE were admitted

into evidence without objection. The parties waived 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 December 4, 2009 and that briefs could be filed by the same date. This deadline was later extended to December 18, 2009. ORDER (December 3, 2009).

On December 18, 2009, the Womacks filed Complainants' Post-Trial (*sic*) Brief and [Complainants' Suggested] Proposed Findings Of Fact[,] Conclusions Of Law[,] And Order. On December 22, 2009, Respondents filed Prestige Homes, LLC [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 the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The issues are (1) whether Respondents denied the Womacks a housing opportunity on a racially discriminatory basis, and (2) if so, what damages should be awarded. See FIRST PRE-HEARING ORDER ¶8 (May 19, 2009).
2. The Womacks are adults and a married couple who have resided, at all material times, in Fort Wayne, Indiana. Both Marie and Eddie are African American.
3. Prestige is an enterprise that, at all material times, has done business in the state of Indiana. Prestige's business involves developing subdivisions and selling the homes built in those subdivisions. Angela is one of the owners of Prestige and Fred, Angela's husband, is an employee of Prestige. Both Angela and Fred are Caucasian.
4. One of Prestige's modes of operation was to sell a home on a conditional sales contract but require the buyer to obtain conventional financing within 2 years. This method allowed some buyers who, whether because of excessive debts and/or insufficient income, could not obtain conventional financing to purchase a home and keep

that home if they could solve enough of those problems to obtain conventional financing within the 2 year period. If Prestige was sufficiently confident that this would occur, the conditional sales contract might involve no down payment, or a small one.

5. In some cases, buyers using this method did not obtain the required conventional financing in the required time, and, in those cases, Prestige would re-acquire possession of the home and attempt to sell it again. Since it is no longer a new house, this is not a favorable situation for Prestige. Although receiving contract payments would seem to be better for Prestige than the house sitting empty, where Prestige really makes significant profit is when a house is purchased for cash or with conventional financing.

6. On June 8, 2008, an advertisement placed by Prestige appeared in the classified section of the Fort Wayne Journal Gazette, advising that some residential properties listed by address could be obtained with no down payment and one year's worth of free utilities. CX1.

7. One of the properties listed in the ad ("the Crossland property") was at 10135 Crossland in New Haven, a bedroom community to Fort Wayne, and the ad listed the Crossland property for \$975.00 per month. CX1.

8. Marie was interested in the Crossland property and on June 10, 2008, she contacted the telephone number listed in the ad. She spoke to Bristow, Prestige's Office Manager, who is Caucasian, and was given directions.

9. Eddie, Marie, and their daughter Cyteria went to view the property. The house was still unfinished but they decided that they were interested in purchasing the property. One of them called the number again to see what to do next. Again, they spoke to Bristow, and were given directions to the office and told that they needed to bring proof of their income.

10. After stopping by home to pick up proof of income, the Womacks and Cyteria went to Prestige's offices where they spoke to Bristow. They provided Bristow with the proof of income documents that they had brought and completed an application that, among other things, authorized a pulling of a credit report on the Womacks. CX2. Bristow returned the income documents to the Womacks, who asked when they would know whether they had gotten the house. Bristow said she'd talk to them the next day.

11. The Womacks' application showed income of "\$4.062", presumably meaning \$4,062.00 per month. The application also had sections entitled "Bankruptcy" and "Foreclosures". After both appeared the words Yes or No and How long ago followed by a blank line. On the Womacks' application, "No" was circled in both cases and the "How long ago" blank was not completed. CX2. It appears that the Womacks had initiated a bankruptcy proceeding that was not completed and that a foreclosure action was initiated against them but was also not completed. Whether "no" is an accurate response under these circumstances is unclear.

12. The next step in the process was to forward the application and supporting documentation to Ty McInturff ("McInturff"), Branch Manager at Primary Residential Mortgage, Inc. ("PRM"), usually by FAX, to determine whether the Womacks were creditworthy. Based upon their credit history – including tax liens, a foreclosure, and a bankruptcy – McInturff decided that PRM would not extend credit to the Womacks. RXF. There is no evidence that suggests that McInturff knew the Womacks' race.

13. With this information, Bristow informed the Womacks that they would need a down payment of \$3,500.00 and would have to meet with Fred. The Womacks claim that Bristow advised them that if they put down a \$3,500 down payment and met with Fred that they had the house. This is just not credible for several reasons, including that there was no way that Bristow could know that. A meeting with Fred was scheduled for June 18, 2008 but was cancelled because Fred had an emergency.

14. The day after the Womacks completed their application, Scheid and her husband Terry, both of whom are Caucasian, applied for the Crossland property by phone. RXC. Their application acknowledged bankruptcy for both. The Scheids' application showed weekly income of \$975.00, net, which, when converted to a monthly figure, is slightly higher than the amount shown by the Womacks. McInturff also rejected this application. Scheid was told that they did not want to sell to her and her husband because they did not think they could obtain permanent financing within 2 years.

15. Scheid, when told that she and her husband did not qualify for financing, asserted that her father, Jeffrey L. Bartlett ("Bartlett"), would probably buy the home for them for cash. A meeting was arranged with Fred and the Scheids a couple of days later. Bartlett

was vacationing in Ireland at the time, but an application was eventually taken from him on June 23, 2008. CXD. Bartlett's application showed earnings of over \$100,000 per year and was approved. Earnest money of \$3,000 was furnished to Prestige.

16. The Womacks did have \$3,500 available from the settlement of a claim against a casino. CX6, CX7. They evidently made several attempts to arrange an appointment with Fred, none of which ever resulted in a meeting. They claim to have packed up all their belongings and performed repairs on their rented house, in preparation for moving, and to have cut short a vacation over July 4 and adjusted their travel time in hopes of having that meeting.

17. On or about July 7, 2008, the Womacks and Cyteria went to the offices of Prestige to inquire about not yet being scheduled to meet with Fred. Bristow advised that Fred had decided that they could not get the house because Fred did not think that they could qualify for a mortgage in two years.

18. The Crossland property was eventually sold to Bartlett and his wife, for cash, on July 23, 2008. RXE.

19. The New Haven area was, at all relevant times, racially mixed although the particular cul-de-sac on which the Crossland property is located was all Caucasian. That cul-de-sac is too small a sample from which to draw a conclusion that racial discrimination was involved.

20. Approximately 40% of Prestige's clients are African Americans.

21. There is no direct evidence that the failure to negotiate with the Womacks occurred because of race.

22. There is no evidence that the standard used in deciding not to negotiate with the Womacks – being able to obtain conventional financing within 2 years – screened out a larger percentage of African American applicants than Caucasian applicants.

23. The Womacks and the Scheids are not similarly situated. Both couples were rejected based upon the 2 year standard and Prestige showed interest in the Scheids only after learning that someone might pay cash for the property. The Womacks did not offer any such information, nor is there any evidence that they could have done so.

24. Respondents did not deny the Womacks a housing opportunity because of race.

25. 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. Eddie, Marie, Fred, Angela, and Prestige 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 and the Indiana Civil Rights Law, IC 22-9-1 ("the ICRL"). IC 22-9-1-3(a).
3. The IFHA provides, in material part, that
"[a] person may not refuse to sell..., refuse to negotiate for the sale ... of ... a dwelling to any person because of race
IC 22-9.5-5-1(a)
4. The ICRL provides, in material part, as follows:
 - (l) "Discriminatory practice" means:
 - (1) the exclusion of a person from equal opportunities because of race ...;
 - (2) a system that excludes persons from equal opportunities because of race ...;

.....

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).
5. Indiana courts have applied cases decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et. seq.* ("Title VII") to identify the burden and allocation of proof in cases under the ICRL alleging unlawful discrimination pertaining to real estate. *Indiana Civil Rights Commission v. Washburn Realtors, Inc.*, 610 N.E.2d 293 (Ind. Ct. App. 1993), and in cases under the IFHA. *Indiana Civil Rights Commission v. County Line Park, Inc.*, 738 N.E.2d 1044 (Ind. 2000).

6. Possible ways to show that unlawful racial discrimination occurred where, as here, there is no direct evidence of a discriminatory motive, are the theories of disparate impact and disparate treatment. The disparate impact theory requires the complainants to show that the respondent applied a facially neutral policy that screened out a significantly larger percentage of African Americans than Caucasians unless the respondent has proven the policy to be justified by business necessity. The disparate treatment theory requires the complainant to make a *prima facie* case of unlawful discrimination, raising a rebuttable presumption of unlawful discrimination that will prevail if (a) the *prima facie* case is not rebutted by evidence of a legitimate business reason for the adverse action or if (b) the asserted legitimate business reason is shown to be a pretext for unlawful racial discrimination. *County Line Park, supra*.

7. The Womacks have not demonstrated that Respondents applied a policy that had a disparate effect on African Americans.

8. It can, on this record, be assumed that the Womacks have met their burden of proving a *prima facie* case since Respondents have met their burden of introducing evidence that the Womacks were rejected for a legitimate business reason, that reason being the determination that the Womacks would not qualify for conventional financing within 2 years.

9. The Womacks attempt to show that that reason is a pretext for racial discrimination by claiming that the Scheids, unlike the Womacks, were able to meet with Fred after their initial application was rejected in an attempt to qualify them. The difference here, though, was not race but that the Scheids, unlike the Womacks, had indicated that someone might pay cash for the property.

10. Respondents did not refuse to negotiate with the Womacks, or otherwise deny an opportunity for the acquisition of real estate, by the Womacks, because of race.

11. Respondents did not commit an unlawful discriminatory practice under the ICRL or a violation of the IFHA against the Womacks.

12. Under the ICRL, if the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against said person. IC 22-9-1-6(m).

13. Dismissal is also the appropriate result under the IFHA when no unlawful discrimination is found.

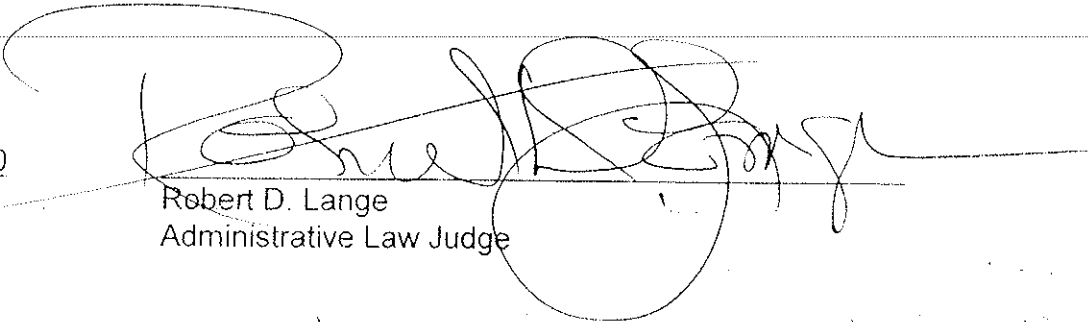
14. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

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

ORDER

1. The Womacks' complaint is **DISMISSED**, with prejudice.

Dated: 12 August 2010



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 12th day of August, 2010 on the following parties and attorney of record:

Marie and Eddie Womack
12202 Shearwater Run
Huntertown, IN 46845

Fred Webb, Angela Webb, and Prestige Homes
7726 Lima Road
Fort Wayne, IN 46818

DAVIS LAW, LLC

BY: Charles E. Davis, Esq.

Attorney for Respondents Fred Webb, Angela Webb, and Prestige Homes

614 West Berry Street, Suite A

Fort Wayne, IN 46802

and to be personally served this 12th day of August, 2010 on the following attorney of record:

Frederick S. Bremer, Esq.; Staff Attorney

Indiana Civil Rights Commission

Indiana Government Center North

100 North Senate Avenue, Room N103

Indianapolis, IN 46204-2255

and to be served by electronic mail this 12th day of August, 2010 on the following:

Indiana Civil Rights Commission

c/o Jamal L. Smith, Executive Director

Jamsmith@gov.in.gov