

LORRAINE C. EAST-MILLER,

Complainant,

vs.

LAKE COUNTY SHERIFF'S
DEPARTMENT,

Respondent.

FILED

SEP 11 2006

Indiana State Civil Rights Commission

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 11, 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"). No objections have been filed to the ICRC's adoption of the proposed decision.

On August 29, 2006, Respondent, Lake County Sheriff's Department ("LCSD"), filed its Motion To Set Aside Default Judgment (*sic*) And Terminate Proceedings On The Basis Of Settlement and Respondent's Brief In Support of Motion to Set Aside Default Judgment (*sic*) and Terminate Proceedings on the Basis of Settlement. On September 12, 2006, Complainant, Lorraine C. East-Miller ("East-Miller"), filed Complainant's Motion In Opposition To Respondent's Motion To Set Aside Default Judgment.

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

1. LCSD's Motion is not entitled as an objection to the ICRC's adoption of the proposed decision. More importantly, the content of LCSD's motion does not complain of anything in the proposed decision. As a result, the motion can not be treated as if it were an objection to the adoption of the proposed decision.

2. IC 4-21.5-3-29(d)(1) provides, in material part, that "[t]o preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default and must object to the order in a writing that: (1) identifies the basis of the objection with reasonable particularity." (All emphasis added.) LCSD's Motion fails to meet both emphasized requirements.

3. IC 4-21.5-3-29(c) provides that "[i]n the absence of an objection or a notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order". (Emphasis added.)

4. Alternatively, both release and *res judicata* are affirmative defenses that LCSD failed to plead and prove in a timely manner.


IT IS, THEREFORE, ORDERED

1. LCSD's Motion To Set Aside Default Judgment (*sic*) And Terminate Proceedings On The Basis Of Settlement is **DENIED**.

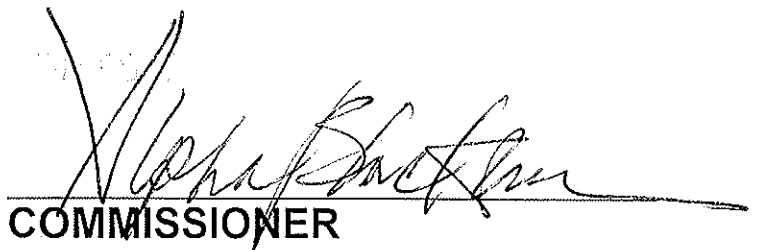
2. The ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

Dated: 22 September 2006

To be served by first class mail on the following parties:

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GEORGE C. PATRICK & ASSOCIATES, P.C.
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and to be personally served on the following attorney of record:

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STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. PArt03110410

LORRAINE EAST-MILLER,
Complainant,

FILE DATED

VS.

AUG 11 2006

LAKE COUNTY SHERIFF'S
DEPARTMENT,

Indiana State Civil Rights Commission

Respondent.

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

A Hearing on Damages was held before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on May 4, 2005. Complainant, Lorraine East-Miller ("East-Miller"), was present. Robin Clay, Esq., Staff Counsel at the ICRC, appeared in the public interest on behalf of East-Miller. Respondent, Lake County Sheriff's Department ("LCSD"), did not appear, by counsel or otherwise.

An opening statement was made on behalf of East-Miller. East-Miller testified on his own behalf and a closing argument was made. The ALJ ordered that East-Miller file her suggested proposed decision on or before June 3, 2005 and the cause was taken under advisement. This deadline was later extended to June 13, 2005.

On June 13, 2005, East-Miller filed Complainant's [Suggested] Proposed Findings Of Fact, Conclusions Of Law and Order.

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

FINDINGS OF FACT

1. East-Miller ("East-Miller") is an African-American woman who has resided, at all material times, in the state of Indiana.
2. LCSD is a municipal sheriff department and performs the usual functions of a police department in Lake County, Indiana..
3. East-Miller filed this complaint against LCSD on November 3, 2003, alleging discrimination in public accommodations based upon retaliation. COMPLAINT OF DISCRIMINATION (November 3, 2003) ("COMPLAINT"). The body of the complaint reads as follows:
 - I. On or about September 4, 2003 Respondent subject me to unlawful retaliation.
 - II. I believe Respondent retaliated against me due to my previous formal complaint of discrimination.
 - A. Since January 2001 I have noticed a suspicious person and vehicle within the vicinity of my home.
 - B. I have contacted Respondent on several occasions to report the suspicious person and vehicle. Respondent either shows up too late to acquire the needed information, or never shows up at my property after I place my report.
 - C. Further, after arriving at my property the deputies fail to properly investigate and ask questions such as "what do you want us to do."
 - D. I have attempted to make appointments with the Lake County Sheriff to discuss the departments' failure to properly respond to my reports, though the Sheriff has failed to acknowledge my requests.
 - E. It is my belief that Respondent is failing to respond to my reports due to my previous formal complaint of discrimination against the Lake County Sheriffs Department.
 - III. As a remedy, I am seeking any available under Indiana Civil Rights Law.
COMPLAINT, ¶19.
4. On or about November 6, 2003, a Notice Of Complaint ("NOTICE"), together with a copy of East-Miller's complaint, was mailed by certified mail, return receipt requested to LCSD at the address listed for LCSD in East-Miller's complaint. The NOTICE advised LCSD that it needed to file an Answer to the COMPLAINT and was received on or about November 13, 2003. APPLICATION FOR ORDER BY DEFAULT ("APPLICATION"), Exhibit A.

5. The ICRC made other efforts to obtain an Answer from LCSD. APPLICATION, Exhibits B, C.
6. No Answer or other response was filed by LCSD.
7. On November 18, 2004, the ALJ issued his NOTICE OF PROPOSED DEFAULT ORDER ("NPDO"), notifying LCSD, among other things, that (1) the ALJ proposed to enter an Order By Default against LCSD (NPDO, ¶1); (2) that LCSD could file a written motion requesting that the proposed default order not be imposed, stating the grounds, within 7 days after service of the proposed default order (NPDO, ¶2).
8. LCSD did not file a written motion requesting that the proposed default order not be imposed.
9. On December 10, 2004, the ALJ issued his ORDER BY DEFAULT AND NOTICE OF HEARING ON DAMAGES.
10. On January 31, 2005, LCSD filed its Verified Motion To Continue Hearing, a Motion denied the same day. ORDER DENYING MOTION FOR CONTINUANCE (January 31, 2005). At the Hearing on February 1, 2005, Staff Attorney Clay's request that the hearing be continued to enable the parties to discuss settlement was granted and a Status Conference was scheduled. Settlement did not occur. STATUS CONFERENCE ORDER AND NOTICE OF HEARING ON DAMAGES (March 10, 2005).
11. LCSD, on more than one occasion, has failed to respond to East-Miller's safety concerns. One of those involved attempted break-ins and suspicious people lurking around her home. She called 911 several times to report these incidents, but no one responded.
12. Another occasion included an unknown man sleeping on East-Miller's property. That time, LCSD told her that they would send the police out right away, but no one ever came. East-Miller and her husband ended up chasing the person off the property themselves.
13. When East-Miller made the 911 calls, she identified herself by name and address.
14. East-Miller became so concerned for her safety that she hired a private investigator to look into some of the suspicious problems she had been having. She also

bought a home alarm system. These efforts cost at least Five Thousand Dollars (\$5,000.00).

15. LCSD will still not grant East-Miller an appointment to discuss these matters, and refuses to accept her phone calls.

16. An employee of LCSD told East-Miller "in so many words" that LCSD was not responding to her because of prior complaints she had made.

17. Before these events, East-Miller had filed at least one prior complaint with the ICRC against LCSD. LCSD had knowledge of that complaint at all material times.

18. LCSD failed to timely respond to East-Miller's requests for assistance because of race and because East-Miller had filed a previous complaint against LCSD.

19. The COMPLAINT and East-Miller's testimony set out a *prima facie* case that LCSD refused to communicate with East-Miller because of race and because she had filed a previous complaint against LCSD with the ICRC.

20. East-Miller experienced extreme inconvenience, stress in her pregnancy, strain on her family, emotional distress, humiliation, and embarrassment as a result of LCD's actions.

21. 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. East-Miller and LCSD are each a "person" as that term is defined in the Indiana Civil Rights Law, IC 22-9 ("the ICRL"). IC 22-9-1-3(a).

3. LCSD offers its services to the general public and, as a result, is a "public accommodation". IC 22-9-1-3(m).

4. The ICRC's Rule 6.1 provides, in material part, that "[w]hen a party has failed to plead or otherwise defend as provided by these rules, after proper notice, and that fact is made to appear by affidavit or otherwise, the party may be defaulted". 910 IAC 1-6-1.

5. The effects of an order by default include that the allegations of the complaint are deemed admitted.

6. The ICRL makes it a discriminatory practice to exclude a person from equal opportunities because of race. IC 22-9-1-3(l). Every discriminatory practice relating to, among other things, public accommodations is unlawful unless specifically exempted by the ICRL. *Id.* Because there is no such applicable exemption, LCSD's failure to timely respond to East-Miller's requests for assistance was unlawful.

7. The ICRL provides that

[t]he commission shall prevent any person from ... otherwise discriminating against any other person because he filed a complaint....

IC 22-9-1-6(h).

8. Section 6(k) of the ICRL governs 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 his 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).

9. Monetary relief, including actual damages, is appropriate under section 6(k) of the ICRL.

10. "Actual damages" includes compensation for emotional distress. *Indiana Civil Rights Commission v. Alder*, 714 N.E.2d 632 (Ind. 1999). Ten Thousand Dollars (\$10,000.00) is an appropriate amount in this case.

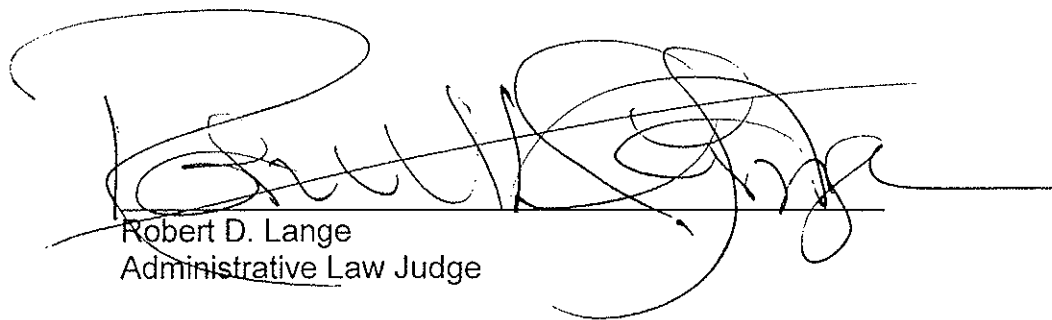
10. Administrative review of this proposed decision may be obtained by any interested and affected person who is not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days of after service of this proposed decision.

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

ORDER

1. LCSD shall cease and desist from refusing to communicate with affected persons because of race.
2. LCSD shall cease and desist from refusing to communicate with affected persons because those persons have previously filed a complaint with the ICRC.
3. LCSD shall develop and implement a training program that will educate its staff on dealing with the minority population, and that stresses the duty to deal with all of its customers on a fair and impartial basis.
4. LCSD shall include a written non-discrimination statement in all of its training manuals for officers that deal with the public.
5. LCSD shall deliver a check, payable to the ICRC, as escrow agent for East-Miller, in the amount of Fifteen Thousand Dollars (\$15, 000.00).
6. This Order shall take effect immediately after it is approved and signed by a majority of the members of ICRC, unless it is modified by ICRC pursuant to IC 4-21.5-3-31(a), stayed by ICRC under 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 11 August 2006



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 11th day of August, 2006 on the following parties and attorney of record:

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