



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC No. H16-0072

HUD No. 01-16-4040-8

May 19, 2016

Sabrina Tremblay and Joseph Stevens (Buxton)

v.

Peter Tucci (Buxton)

I. Complaint:

Complainants alleged that Respondent discriminated against them on the basis of familial status in the terms and conditions of housing by posting an unlawful advertisement, making unlawful inquiries, and by refusing to rent them the housing accommodation.¹

II. Respondent's Answer:

Respondent did not refute Complainants' allegations but denied discriminatory intent. Respondent stated that he does not rent to families with minor children because he wants to protect his property from damage.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: October 2, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 11, 2016.
- 3) Respondent owns two rental properties and is subject to the Maine Human Rights Act ("MHRA"), the federal Fair Housing Act ("FHA"), and state and federal housing regulations.
- 4) Complainant is represented by Jill Hunter, Esq. Respondent is not represented by counsel.

¹ In his response to the Commission's Request for Information and Documents, Respondent stated that he does not rent to recipients of Section 8 housing. Because Complainants did not raise public assistance as an allegation of discrimination in their initial complaint and did not subsequently submit an amended complaint to include discrimination on the basis of public assistance, this allegation will not be addressed further in the report.

- 5) Investigative methods used: A thorough review of the materials submitted by the parties. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of “reasonable grounds” or “no reasonable grounds” in this case.

IV. Development of Facts:

- 1) The relevant parties and facts in this case are as follows:
 - a) Complainants attempted to apply for a housing accommodation owned by Respondent on October 2, 2015 and were denied.
 - b) Complainant submitted a photograph of an advertisement posted by Respondent outside of the property Complainants inquired about renting. The advertisement is a “For Rent” sign that states, “non smoking, no pets, no kids.” Respondent did not deny placing this sign on the property, or that he and the property were covered by the MHRA (and FHA).
- 2) Complainant provided the following:
 - a) Respondent discriminated against them on the basis of familial status by refusing to rent them a housing accommodation because of their minor children. Complainant Sabrina Tremblay called Respondent on October 2, 2015 and asked him if the sign he had posted stating “no kids” was serious, because she was interested in renting the home for her family. Respondent then asked Ms. Tremblay how many children she had and how old they were, to which she responded that she had three children, ages 11, 5, and 10 months. Respondent told her that he did not want young children in the house, and then ended the call.
- 3) Respondent provided the following:
 - a) Respondent did post the sign and did inquire about the ages of Complainants’ children. Respondent did not rent to Complainants because they had minor children. Respondent does rent to families with children, just not minor children. Respondent does not rent to tenants with minor children for the same reason he does not rent to smokers and pet owners: it is about protecting his property from potential damage.

V. Analysis:

- 1) The MHRA requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 Maine Revised Statutes (“M.R.S.”). § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA provides that it is unlawful housing discrimination for an owner to (among other things):

Make or cause to be made any written or oral inquiry concerning the familial status of any prospective purchaser, occupant or tenant of the housing accommodation.

Refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any person the housing accommodation because of familial status.

Make, print or publish or cause to be made, printed or published any notice, statement or advertisement relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon familial status.

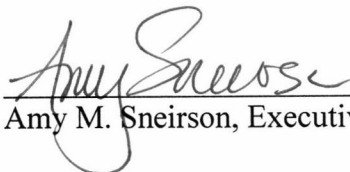
5 M.R.S. § 4581-A(1)(A-C)

- 3) A mixed-motive analysis applies in cases involving “direct evidence” of unlawful discrimination. *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment case); *Texas v. Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d 722, 730 (D. Tex. 2000) (Fair Housing Act). “Direct evidence” consists of “explicit statements by [Respondent] that unambiguously demonstrate [Respondent’s] unlawful discrimination. . . .” *Doyle*, 2003 ME 61, ¶ 14, n.6. Where this evidence exists, Complainant “need prove only that the discriminatory action was a motivating factor in an adverse [housing] decision.” *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1st Cir. 2002) (employment); *Doyle*, 2003 ME 61, ¶ 14, n.6. Upon such a showing, in order to avoid liability, Respondent must prove “that it would have taken the same action in the absence of the impermissible motivating factor.” *Id.*; *Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d at 730. *Cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O'Connor, J., concurring).
- 4) Here, there is direct evidence of discrimination in that Respondent acknowledged that he posted an advertisement stating that no children were allowed, that he inquired about the ages of Complainants’ children, and that he refused to rent to Complainants because they had minor children.
- 5) Due to the fact that Respondent acknowledged the discriminatory acts – posting an unlawful advertisement, and making unlawful inquiries to Complainants, and refusing to rent Complainants the housing accommodation – no further analysis is necessary.
- 6) Discrimination on the basis of familial status was found.

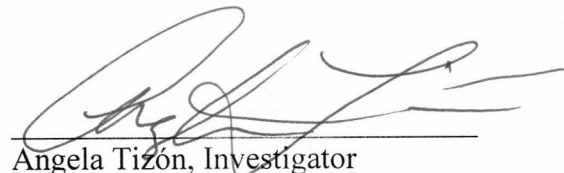
VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following findings:

- 1) There are **Reasonable Grounds** to believe that Respondent Peter Tucci discriminated against Complainants Sabrina Tremblay and Joseph Stevens on the basis of familial status by posting a discriminatory advertisement, making an unlawful inquiry, and refusing to rent to them; and
- 2) Conciliation of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Angela Tizon, Investigator