



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

www.maine.gov/mlrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT
MHRC # H16-0376, HUD # 01-16-4389-8
November 22, 2016

Pine Tree Legal Assistance, Inc. (Portland)

v.

King Weinstein/Portland Avenue Associates¹ (Old Orchard Beach)

I. Summary of Case:

Complainant is a legal services organization that receives federal funding to conduct Fair Housing Testing. Complainant alleged that Respondent discriminated against its fair housing tester ("Tester") in the terms and conditions of the housing application process based on disability, because Tester had an assistance animal. Respondent, the owner and manager of the property Tester inquired about renting, denied discrimination and alleged that it rents to tenants with assistance animals. The Maine Human Rights Commission Investigator conducted a preliminary investigation, which included a thorough review of the materials submitted by the parties, an Issues and Resolution Conference ("IRC"), and requests for further information and documents. Based on this information, the Investigator recommends that the Commission make a finding that there are reasonable grounds to believe Respondent discriminated against Complainant in housing on the basis of disability.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: November 2015 – May 17, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 10, 2016.
- 3) Respondent owns and manages 100 rental units at three locations and is subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Complainant is represented by Jill Hunter, Esq. Respondent is not represented by counsel in this case.

¹ Complainant named King Weinstein/Portland Avenue Associates as the Respondent in its Complaint; Respondent stated that its legal corporate name is Portland Avenue Associates. As Complainant did not amend its Complaint, Respondent will continue to be named here as King Weinstein/Portland Avenue Associates.

III. Development of Facts:

- 1) Complainant provided the following in support of its claims:
 - a) Tester has a disability and uses a dog as an assistance animal. Tester met with an employee of Respondent ("Employee 1") to inquire about a housing unit, and when Employee 1 saw Tester's dog, she said that Respondent does not allow pets. Tester explained that it was an assistance animal, and Employee 1 stated that it did not matter. Tester explained further that the animal was necessary for her disability and that she had a medical document to show this. Employee 1 stated that she could attach the document to her application but that Respondent would still not rent to her. When Tester called a separate time to inquire about a rental unit, a different employee ("Employee 2") told her that while Respondent accepted service animals, Respondent would not accept an emotional therapy dog.
- 2) Respondent provided the following in support of its position:
 - a) Respondent allows pets in general as well as service animals and did not deny Tester a rental unit or otherwise discriminate against her for having an assistance animal. Neither Employee 1 nor Employee 2 would have stated that Complainant's assistance animal was not allowed. Respondent currently has a tenant with a service animal.² Respondent does not have a specific policy regarding assistance animals. If a tenant indicates that they have one on their application, no further information or medical documentation is requested.
- 2) The Investigator made the following Findings of Fact:
 - a) Complainant submitted a copy of Tester's notes taken at the time she interacted with Employee 1. The notes state that Employee 1 told her no dogs were allowed, that it did not matter if the dog was an assistance animal, and that Tester could attach a doctor's note to her application, but Respondent would still not rent to her.³
 - b) Employee 1 no longer works with Respondent. Respondent has no knowledge of what Employee 1 stated and did not contact her regarding Complainant's allegations.
 - c) Complainant submitted an audio recording of two telephone conversations between Tester and Employee 2. During the first conversation, Employee 2 told Tester that Respondent does not allow pets and that she was not sure Respondent would allow service animals in long term rentals as opposed to nightly rentals, but would check with Respondent. During the second conversation, Employee 2 stated that Respondent does allow service dogs, but that Respondent does not allow "emotional therapy dogs."
 - d) Respondent submitted a letter from the town of Old Orchard Beach stating that after a fire in January of 2015 Respondent offered to temporarily house residents displaced by the fire, some of which had pets. There is no reference to service or assistance animals in the letter.

² Respondent was asked to provide information to confirm this but did not.

³ Complainant also provided notes from a second tester, who did not present as having an assistance animal. The notes show that this tester asked about [REDACTED] due to an [REDACTED], and was told that this would not be an issue because no animals were permitted.

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 makes it unlawful for an owner or manager of rental property to discriminate against any individual because of disability in the “price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations.” 5 M.R.S. § 4582.
- 3) The MHRA provides that it is unlawful:

For any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of an assistance animal or otherwise discriminate against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation unless it is shown by defense that the assistance animal poses a direct threat to the health or safety of others or the use of the assistance animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of an assistance animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such an assistance animal.

5 M.R.S. § 4582-A(3).

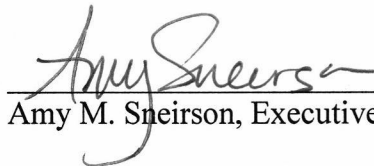
- 4) For housing, the MHRA defines “assistance animal” as “an animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician assistant, nurse practitioner or licensed social worker” or as “an animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or retrieving dropped items. 5 M.R.S. § 4553(1-H).
- 5) Here, Complainant was able to show that Respondent discriminated against Tester in the housing application process because of Tester's use of an assistance animal. Reasoning is as follows:
 - a) Complainant submitted notes taken by Tester indicating Employee 1 told her that Respondent did not accept dogs, regardless of whether they were assistance animals. While Respondent alleged Employee 1 would not have stated this, it is undisputed that Respondent has no knowledge of what Employee 1 said to Tester and had no further evidence to refute Tester's allegations.
 - b) An audio recording of the conversation between Tester and Employee 2 confirmed that Employee 2 stated that while Respondent would accept “service animals” Respondent would not accept “emotional therapy dogs.” As defined above, an assistance animal can be an animal that has been determined necessary to mitigate the effects of a mental disability, not just a physical disability. Employee 2's statement could be interpreted to mean Respondent would not accept an assistance animal for a mental disability.

- c) Even if Respondent showed it has rented to tenants with assistance animals in the past (which it did not), this does not change the fact that Tester was discriminated against due to statements made by Employee 1 and Employee 2. Respondent is liable for the actions of its employees.
- 6) Disability discrimination was found.


VI. Recommendations:

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

There are **Reasonable Grounds** to believe that King Weinstein/Portland Avenue Associates discriminated against Pine Tree Legal Assistance, Inc. in the terms and conditions of housing based on disability and conciliation of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Angela Tizon, Investigator