



Maine Human Rights Commission

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June 5, 2014

INVESTIGATOR'S REPORT

MHRC No. H14-0047

HUD No. 01-14-0177-8

██████████ (Lewiston)

v.

██████████ (Poland)

I. Complaint:

Complainant ██████████ alleges that Respondents ██████████ and ██████████ d/b/a ██████████ Properties discriminated against her on the basis of her disability by refusing her the reasonable accommodation of a service animal and by evicting her.

II. Respondent's Answer:

Respondents denied discrimination and alleged that Complainant did not disclose that her dog was a service animal until after she was served with a Notice to Quit, and that she was evicted for other nondiscriminatory reasons.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: November 12, 2013.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): March 4, 2014.
- 3) Respondents own three rental units at one property and are subject to the Maine Human Rights Act ("MHRA"), the federal Fair Housing Act ("FHA"), and state and federal housing regulations.
- 4) Respondents are represented by ██████████ Esq. Complainant is not represented by counsel.
- 5) Investigative methods used: A thorough review of the materials submitted by the parties, and an Issues and Resolution Conference. 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, issues, facts and documents in this case are as follows:

- a) Complainant has Post Traumatic Stress Disorder and Generalized Anxiety Disorder. She lived with her husband at a property owned by Respondents from June 20, 2008, until on or around May 15, 2014, when she vacated the apartment. Complainant was first given a Notice to Quit by Respondents on November 12, 2013.
 - b) Respondents own and manage one residential property consisting of three rental units.
 - c) Complainant lived with a service dog throughout her time at Respondents' property. Respondents were aware that she had a service animal.
 - d) On or around November 8, 2013, Complainant decided to keep a dog – which would be the second in her housing unit – that she had been fostering. She was in the process of registering the dog as a service animal. Complainant alleges that she informed Respondents that her second dog was a service animal and that she was in the process of registering it.
 - e) Respondents told Complainant that she could not live with a second dog and that she would be evicted if she chose to do so. Respondents allege that Complainant only mentioned that the dog was a service animal after she was told she would have to get rid of the dog and after being served with the Notice to Quit.
 - f) Complainant was issued a Notice to Quit on November 12, 2013.
 - g) Complainant alleges that Respondents served her with the Notice to Quit and began the eviction process because of her newly-requested service animal. Respondents allege that Complainant was a problematic tenant anyway, and that even if her second dog was a service animal, she would have been evicted.
 - h) Medical documents from Complainant's Licensed Clinical Social Worker and Doctor of Osteopathy are attached as Exhibit A.
 - i) Complainant submitted text messages between Complainant and Respondents about her request to keep a second dog, which are attached as Exhibit B.
- 2) Complainant provided the following:
- a) Respondents were aware of her mental disability because [REDACTED] worked with her and knew that she had begun a medical leave of absence. Respondents were also aware that she had a service dog who she had lived with since she moved in.
 - b) When she asked Respondents if she could keep a second dog, she did not present it as a service animal right away. She was embarrassed, and did not feel that it was necessary. However, she did disclose soon thereafter via text message (see Exhibit B) that she was in the process of registering the dog as a service animal, and that the dog helped her with her disability.
 - c) Respondents ignored Complainant's statement about the dog being a service animal and were adamant that she would have to either get rid of the dog or move out. The text messages in Exhibit B show that despite the fact that she disclosed to Respondents that the dog was a service animal, they insisted that she would not be allowed to keep it, and that she was going to be evicted

regardless (see Exhibit B). She did not fight the issue further or submit medical documents at the time, as it was clear it was not a topic that was up for debate.

- d) Respondents evicted her because she wanted to keep a second dog, even though it was a service animal. A service animal is not a pet, and there is no limit on the number of service animals Complainant can have. It is clear that Respondents did not want more dogs on the property and were not going to consider Complainant's request for a service animal.
- 3) Respondents provided the following:
- a) Respondents have a no-dog policy at the property, but allowed Complainant to have a service dog when she moved in as the dog was reasonable. Complainant decided to keep a second dog (a Pit Bull) without asking permission, and did not state that it was a service animal at the time she first discussed it with Respondents. At the time that Complainant decided to add a second dog, Respondents had already decided that they would not allow any more dogs on the property, as there were too many already (they allowed other tenants to have dogs as well).
 - b) Complainant refused to get rid of the dog. She only claimed that it was a service dog after she was served with a Notice to Quit. Complainant was told to get rid of the dog or leave the property prior to her mentioning that it was being registered as a service animal.
 - c) At that point, Respondents' relationship with Complainant had deteriorated and they wanted to evict her regardless of the dog issue, because she was a problematic tenant and the neighbors complained about her frequently. Complainant did not push the service dog issue. Respondents felt that they had reached an agreement that Complainant would be allowed to stay an extra couple of months and then would move out.
 - d) Complainant did not provide the medical documents in Exhibit A until Respondents were in court with her over the eviction. Even if Complainant had shown that the dog was a service animal prior to court, she would have still been evicted for other reasons.

V. Analysis:

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 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.

Refusal to Permit the Use of a Service Animal

- 2) 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 a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service 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 a service 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 a service animal.

5 M.R.S. § 4582-A(3).

3) The MHRA (5 M.R.S. § 4553-9-E) defines a service animal in housing as:

(1) An animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician's assistant, nurse practitioner or licensed social worker; or

(2) 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...

4) Here, it is not in dispute that the dog Complainant requested permission to keep was a service animal, as Complainant submitted medical documentation meeting the definition above (see Exhibit A). However, since these medical documents were not submitted by Complainant at the time she initially asked to keep the animal, the disputed issue is whether Complainant presented the new dog as a service animal to Respondents at the time of her request to keep it, and whether Respondents refused, despite knowing that it was a service animal.

5) After reviewing the evidence in this case, it is found that Respondents unlawfully refused Complainant the use of a service animal. Reasoning is as follows:

a) It is undisputed that Respondents told Complainant that she had to get rid of her new dog or get out, and that she was served with a Notice to Quit for that purpose. Respondents acknowledged this. While Complainant admitted that she did not immediately (when served with the notice) state that she was in the process of getting the dog registered as a service animal, it is clear from the text messages in Exhibit B that Complainant did disclose this information to Respondents in the days that followed.

b) It is also clear in the text messages in Exhibit B that Respondents were adamant that Complainant could not have another dog, even after receiving the texts regarding it being registered as a service animal, and that they were no longer going to accept additional dogs at the property, much less a Pit Bull. Respondents made it very clear that a second dog was not up for debate, and they did not request any further medical documentation.

c) Respondents were aware that Complainant has a disability, as they were aware of her prior service animal living with her at the time. When Complainant stated that she was in the process of registering the dog as a service animal, Respondent should have considered this a request for a reasonable accommodation of a second service animal. Instead, Respondents proceeded with the eviction process and ignored Complainant's statement that the dog was a service animal. It is clear Respondents did not consider her request for accommodation, as they did not ask Complainant for medical documentation, and simply insisted that no more dogs would be allowed at their rental property.

d) The fact that Complainant had a service animal already is not relevant to this analysis, particularly since Respondents did not actually consider Complainant's request at all.

- 6) It is found that Respondents denied Complainant use of a service animal for her disability in housing.

Disability Discrimination: Eviction

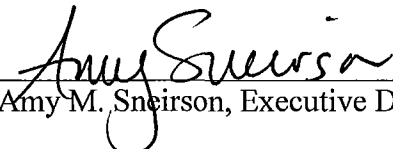
- 7) Because this case does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination by proving (1) she was a member of a class protected under the MHRA; (2) Respondent was aware of Complainant's membership in that class at the time of the eviction; (3) Complainant was willing and qualified to continue renting her apartment; and (4) Respondent refused to permit Complainant to continue to rent the apartment. *See Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997).
- 8) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondent to articulate a legitimate, nondiscriminatory reason its action. *See United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep't of Human Servs*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.
- 9) In order to prevail, Complainant must show that she would not have suffered the adverse action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 10) Here, Complainant established a prima-facie case of disability discrimination by showing that she has a disability under the MHRA (undisputed), Respondents were aware of this disability (undisputed), she was willing and qualified to continue renting the apartment, and she was served with a Notice to Quit and forced to leave the apartment.
- 11) Respondents articulated legitimate, nondiscriminatory reasons for evicting Complainant, namely that she decided to keep a second dog without their permission and without presenting it as a service animal, and that she was a bad tenant about whom the neighbors had complained many times in the past.
- 12) Complainant was able to show that Respondents' reasons were false or irrelevant and that were it not for her service animal, she would not have been evicted. Reasoning is as follows:
- a) Respondents allege that at the time Complainant mentioned the service animal, they had decided to evict her anyway because she was a poor tenant and had been one for a long time. Respondents did not provide sufficient evidence to support this claim.
 - b) More importantly, Respondents could not provide reasoning for why they did not serve Complainant with a Notice to Quit at any point in the past for reasons unrelated to the service animal, if those reasons actually were the reason for her eviction. It is clear from the record (mainly Exhibit B) that Respondents' eviction proceeding was directly linked to Complainant's request to keep her second service animal, and were it not for this animal, she would not have been evicted.

- c) As explained above, Complainant does not have to show that there were no other reasons for her eviction, only that were it not for her membership in a protected class (in this case, her disability and need for the reasonable accommodation of a service animal), she would not have been evicted.

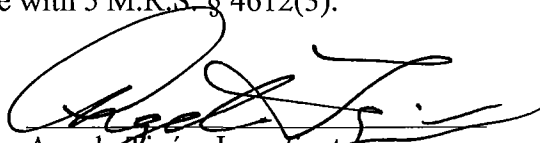
VI. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that [REDACTED] and [REDACTED] discriminated against [REDACTED] on the basis of disability by refusing to consider her request to use a service animal in housing.
- 2) There are **Reasonable Grounds** to believe that [REDACTED] and [REDACTED] discriminated against [REDACTED] on the basis of disability evicting her after she requested to use a service animal.
- 3) Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneider, Executive Director



Angela Pizon, Investigator

Feb. 25. 2014 10:36AM

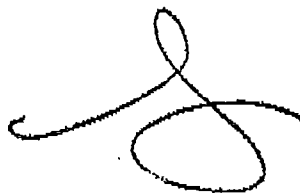
02/14/2014

[REDACTED]
6 KING AVE APT B APT B
LEWISTON, ME 042405263

To whom it may concern:

Please allow Megan to keep a dog. Megan is suffering from several medical and psychiatric conditions and the dog is a positive facet in her life, helps her reduce her symptoms, and decreases isolation. Medically speaking I think she benefits from keeping the dog. Please call concerns or questions

DO
Electronic Signature

A handwritten signature in black ink, consisting of a large, stylized loop that starts with a long horizontal stroke from the left, curves up and over to the right, then loops back down and under to the left, ending with a small vertical stroke.

Feb. 25. 2014 10:36AM

02/12/2014

██████████
6 KING AVE APT B
LEWISTON, ME 042405263

To Whom It May Concern:

The purpose of this letter is to confirm that I have been treating ██████████ (DOB 7/17/1984) since May of 2013. I am a Licensed Clinical Social Worker in the state of Maine. I work for ██████████ and my office is at ██████████

██████████ sees me for numerous issues related to mental health including Post Traumatic Stress Disorder and Generalized Anxiety Disorder. Over the course of treatment, I have seen that ██████████ relationship with her dog Montana is very therapeutic and helps aid her treatment. ██████████ is able to use Montana as a tool to her be more aware of her emotional states and she assists ██████████ in feeling motivated and supported when completing activities of daily living. Montana helps ██████████ feel safe when leaving her home and decreases her isolation. It is my clinical opinion that Montana is a beneficial component of ██████████ treatment with me.

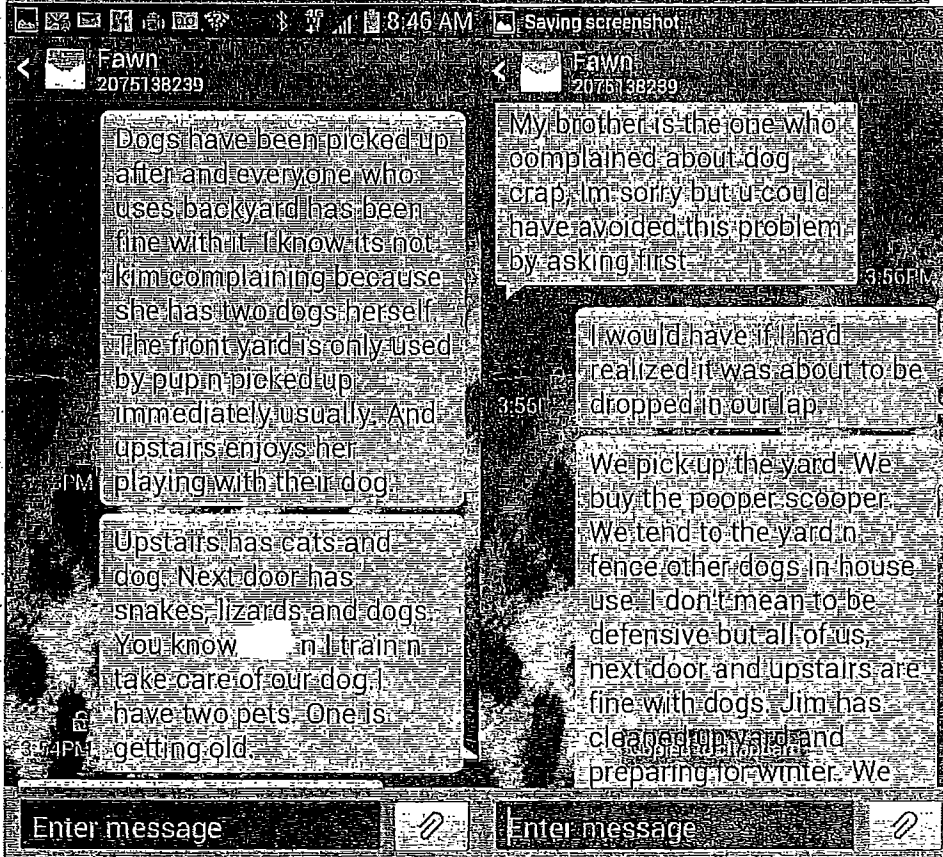
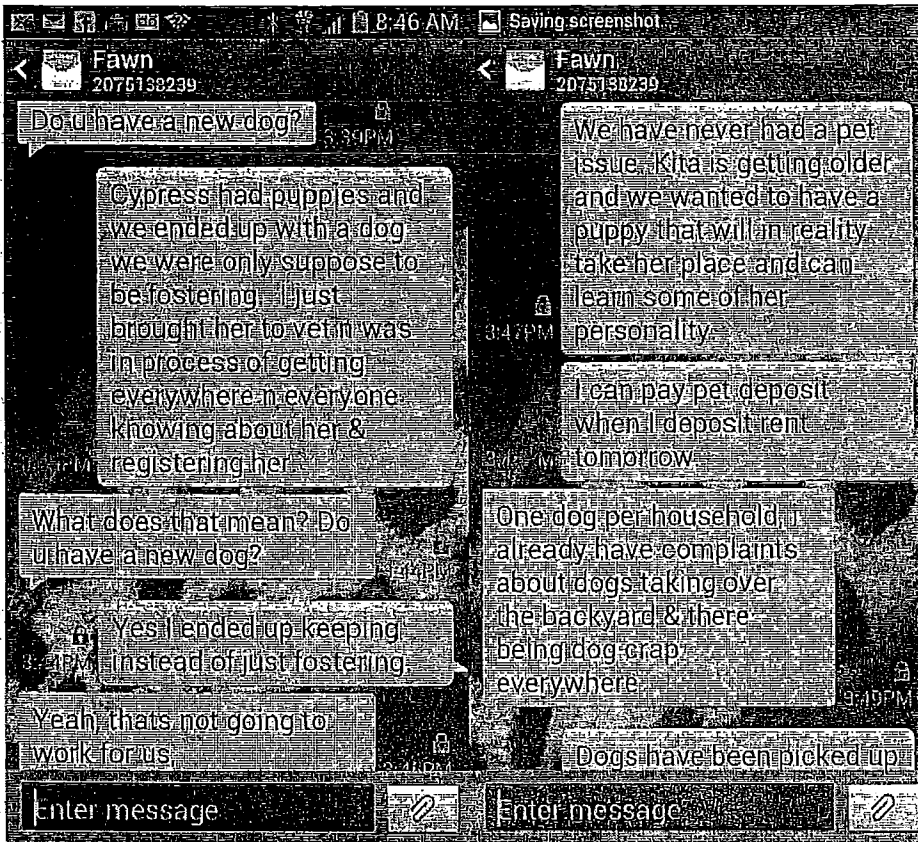
Please contact me with any questions.

Respectfully submitted,



LCSW February 12, 2014

11/9/13



Fawn 2075138239

fine with dogs [redacted] has cleaned up yard and preparing for winter. We aren't destroying the place with a new pet.

3:59 PM

I will be having a chat with [redacted] as well about having 2 dogs.

So where do we go from here?

I guess you've got stuff to think about.

We will let you know. We cared n loved for her while we fostered her and she has become a part of our

Enter message

Fawn 2075138239

simmy... i'm w/increly fee... the same. Neither of us expected this but we are not hurting the household.

4:10 PM


11/13/2013 Tue

Can I have a letter stating that I am being evicted over getting my dog?

I just need reason so I can take eviction to dhs and try to pull something out of my ass to move my family.

4:59 PM

5:03 PM



Enter message

Fawn 2075138239

Montana is registered as a Psychiatric Service Animal and I am willing to fight that this is discrimination based on you knowing my business from being coworker at [redacted] in my recent psychiatric diagnosis. I will be calling a lawyer. This is not fair Fawn.

6:00 PM

Ur not being evicted over dog, ur just being evicted.

That's fine. Its still discrimination.

Copied to clipboard

We have been great

Enter message

Fawn 2075138239

Ur not being evicted over dog, ur just being evicted.

6:39 PM

That's fine. Its still discrimination.

We have been great tenants for years n I am in a mental health mess n you know it and you are evicting me.

We have done nothing to deserve this Fawn. We have always been good to you.

If I had got rid of the dog you wouldn't have done this. I am using her as a

Enter message

