



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/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT

H14-0554

HUD No. 01-14-0530-8

December 4, 2014

██████████, ██████████
v.
██████████, ██████████, ██████████

I. Complainant's Complaint:

Complainant ██████████ alleged that she was discriminated against by Respondents ██████████ for her association with an individual with a disability. Ms. ██████████ alleged that she was denied the right to have her daughters visit her with their service animals when the ██████████ refused to make a reasonable accommodation of allowing the animals at her residence. Ms. ██████████ also alleged that Respondents retaliated against her by starting the eviction process because she allowed one of her daughters' service animals to be at the property while her daughter helped her unpack, and because she asserted her rights and filed a housing discrimination complaint against Respondents.

II. Respondents' Answer:

The ██████████ stated that Ms. ██████████ did not tell them prior to signing the lease that her daughters would be visiting with their dogs, and that Ms. ██████████ never showed them the paperwork stating that the dogs were service animals. They deny any retaliation against Ms. ██████████.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: August 8, 2014, and continuing.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 26, 2014. Complainant filed an amended complaint with the Commission on November 5, 2014.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- 4) Complainant is represented by [REDACTED]. Respondents are represented by [REDACTED], [REDACTED].
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and a telephone interview with one of Respondents' tenants. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" here.

IV. Development of Facts:

1) The parties in this case are as follows:

- a) Ms. [REDACTED] rented a single family mobile home owned by the Respondents located at [REDACTED] [REDACTED] (the "Premises").
- b) Respondents own and manage the Premises, as well as two other mobile homes and two multi-family rental buildings.

2) Complainant provides the following in support of her position:

- a) Prior to moving into the Premises, Ms. [REDACTED] was camping in the area with one of her adult daughters ("Daughter 1"), Daughter 1's service animal, and Daughter 1's husband. Ms. [REDACTED] visited the Premises and introduced Daughter 1 to Mrs. [REDACTED] and "made a note" of her service dog. When Mrs. [REDACTED] saw Daughter 1's service dog, she asked, "they're not going to be living here, are they?" Ms. [REDACTED] responded and stated that they were visiting and the dog was a service dog. Ms. [REDACTED] also told Mrs. [REDACTED] that she had two adult daughters with disabilities who live in Massachusetts and each has a service animal. Mrs. [REDACTED] responded, "no pets," and Ms. [REDACTED] told her that she understood.
- i. During the conversation Mrs. [REDACTED] did not say anything about restricting visitors. Ms. [REDACTED] was open about the fact that her adult daughters would probably visit her around the holidays with their service dogs.
- b) Ms. [REDACTED] signed a one-year lease for the Premises for a tenancy period from July 2, 2014, to July 1, 2015.
- c) On July 16, 2014, Ms. [REDACTED] moved into the Premises with her grandchildren, who she was adopting. Ms. [REDACTED] other adult daughter, Daughter 2, is the mother of the grandchildren.
- d) On August 6, 2014, Daughter 2 and her husband visited the Premises to help Ms. [REDACTED] unpack. Daughter 2 has disabilities and has a service animal, a dog named Goose, which is fully immunized and licensed in a municipality in Massachusetts. Daughter 2 had gotten Goose two weeks prior to coming to assist Ms. [REDACTED]. Daughter 2 has a letter of medical necessity for Goose which she carries with her at all times, and which she brought with her when she visited Ms. [REDACTED].

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- e) On or around August 8, 2014, Mrs. [REDACTED] came to the Premises and spoke with Ms. [REDACTED] about Goose. Ms. [REDACTED] explained that Goose was Daughter 2's service animal and that Daughter 2 had the paperwork to show the dog was a service animal.
- f) Mrs. [REDACTED] told Ms. [REDACTED] that Daughter 2 could not be at the Premises because of Goose. Ms. [REDACTED] responded that she did not know what could be done since it was a Friday afternoon and they had no resources. Mrs. [REDACTED] told Ms. [REDACTED] that she knew when she moved to the Premises that no pets were allowed. Ms. [REDACTED] explained that Goose was not a pet, she was a service animal.
- g) At that time, Ms. [REDACTED] offered to get the paperwork to show that Goose was a service animal. Mrs. [REDACTED] responded, "no, I believe you."¹ Mrs. [REDACTED] asked how often Goose would be at the Premises. Ms. [REDACTED] responded that Goose would be present once a month for a couple days when Daughter 2 came to visit her children, who lived at the Premises with Ms. [REDACTED]. Ms. [REDACTED] also stated that Goose would probably be present for a little while longer around Christmas.
- h) Mrs. [REDACTED] told Ms. [REDACTED] again that she could not have any pets. Ms. [REDACTED] responded again that Goose was not a pet, she was Daughter 2's service animal. Mrs. [REDACTED] stated that Respondents did not care; they said no pets, and they meant no pets. Both women continued to repeat the same things during the exchange.
- i) Ms. [REDACTED] stated that she had two daughters who have service animals. She then stated that her other daughter was unlikely to come visit her except for at Thanksgiving, and if she came she would have her service animal with her.
- j) Mrs. [REDACTED] asked Ms. [REDACTED] why she had not asked for permission for Daughter 1's service animal to be at the Premises. Ms. [REDACTED] responded that Daughter 1 had her service animal for many years and had traveled with her service animal everywhere including trains, camping, busses, apartments, restaurant, and hospitals and had never been denied access to any place because of her service animal.
- k) Ms. [REDACTED] then told Mrs. [REDACTED] that Goose was not her animal, that her lease did not prohibit or limit visitors, and that there was nothing in writing prohibiting service animals from visiting or living with her at the Premises. Ms. [REDACTED] told Mrs. [REDACTED] that Daughter 2 was in school and the school had already arranged to accommodate her.
- l) Ms. [REDACTED] told Mrs. [REDACTED] that she did not intend to upset her and that if she had known it was going to be a problem she would have made other arrangements. Mrs. [REDACTED] told Ms. [REDACTED] that she would let Mr. [REDACTED] know about the visits and then left the Premises.
- m) On August 12, 2014, Ms. [REDACTED] was served with a seven day notice to quit. The reason given for terminating Ms. [REDACTED] tenancy was because she was in violation of the lease in that she has "pets living in the leased premises that are not authorized to be there."

¹ Ms. [REDACTED] stated that she offered to show the [REDACTED] the paperwork for Goose repeatedly on other occasions, but the offer was never accepted by the [REDACTED]. The paperwork for Goose was provided as part of the investigation.

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- n) After Ms. [REDACTED] was served with the notice to quit, she went to talk with the [REDACTED]s at their business. Ms. [REDACTED] asked if there was a way to work out the situation and come to an agreement. Mr. [REDACTED] said, "[n]o I want you out." Ms. [REDACTED] responded that Goose was not at the Premises, she was just visiting, but she is a service dog. Mr. [REDACTED] responded, "you have two kids with service dogs. What is THAT all about?" Ms. [REDACTED] stated she was sorry and that her children's medical situation does not relate to her lease. Mr. [REDACTED] responded that it does pertain to the lease because Ms. [REDACTED] had a dog in the Premises and Respondents said no pets were allowed.
- o) Ms. [REDACTED] told Mr. [REDACTED] that she could arrange for the dogs to be kenneled if necessary, but Mr. [REDACTED] said no. Mr. [REDACTED] then told Ms. [REDACTED] that she had told Mrs. [REDACTED] that nothing could be done. Ms. [REDACTED] denied this, but Mrs. [REDACTED] reiterated that Ms. [REDACTED] had said that nothing could be done. Ms. [REDACTED] stated that she was not going to argue with them and left.
- p) On August 18, 2014, Mr. [REDACTED] came to the Premises and asked if she was going to vacate the Premises the next day. Ms. [REDACTED] said that she was not. Mr. [REDACTED] asked her when she was going to be out, and Ms. [REDACTED] responded that she would leave at the end of her lease. Mr. [REDACTED] stated that she needed to leave, and Ms. [REDACTED] responded that she could not leave. Mr. [REDACTED] said, "then court". Ms. [REDACTED] stated that he would have to evict her, and closed the door.
- q) On August 25, 2014, Ms. [REDACTED] was served with a forcible entry and detainer ("FED") action with a court return date of September 19, 2014.
- r) On October 27, 2014, the moving company Ms. [REDACTED] hired loaded most of her belongings that day. Ms. [REDACTED] did not use a U-Haul truck for her move.² The company that helped Ms. [REDACTED] move used a pickup truck with a long trailer with the company name written on the side of it.
- s) On October 28, 2014, Ms. [REDACTED] noticed a four-door dark blue pick-up truck with a camper and two people inside following her. She had not seen this vehicle before around the Premises.
- t) Ms. [REDACTED] planned to move before October 31, 2014 because the [REDACTED] brought a court action to evict her.³ On October 29, 2014, Mr. [REDACTED] went to the Premises and asked Ms. [REDACTED] when she would be out of the Premises. Ms. [REDACTED] told him that she would be out by October 31, 2014. Mr. [REDACTED] told Ms. [REDACTED] she would be "served" for money that she owed Respondents. Ms. [REDACTED] responded, "I'm sure I will."
- u) Mr. [REDACTED] then told Ms. [REDACTED] that he knew where she lived because he followed her. Ms. [REDACTED] told Mr. [REDACTED] that he was out of control and needed to seek help because stalking is serious. Ms. [REDACTED] called 911 and waited for the sheriff. The sheriff prepared a cease-harassment order against Mr. [REDACTED]. Mr. [REDACTED] left before the sheriff arrived, but was later served with a cease-harassment notice by Skowhegan law enforcement.

² One of Ms. [REDACTED] neighbors moved out of their complex around late September 2014. This neighbor rented a U-Haul.

³ Complainant stated that she planned to move before the October 31, 2014, return date. It is presumed the court summons return date of September 19, 2014 was moved.

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- i. During this exchange Ms. [REDACTED] never mentioned anything about gas.
 - v) On October 30, 2014, Mr. [REDACTED] arrived at Ms. [REDACTED]'s new residence with three other men. Mr. [REDACTED] told Ms. [REDACTED] that he had followed her to see where she had moved. He told her that he had come to tell her that she did not need to go to court the next day. Ms. [REDACTED] asked Mr. [REDACTED] to leave on several occasions, but he did not leave. Ms. [REDACTED] called the police. Mr. [REDACTED] and the three men he was with went to the end of her driveway. When the police arrived, they served Mr. [REDACTED] with a no-trespass order.
 - i. The sergeant told Ms. [REDACTED] that the no-trespass order had been served and told her that Mr. [REDACTED] mentioned something about a key. The sergeant told Ms. [REDACTED] that he did not believe Mr. [REDACTED] had come all that way to get a key. Neither Mr. [REDACTED] nor the sergeant asked Ms. [REDACTED] for the key.
 - w) From October 28-31, 2014, Ms. [REDACTED] continued to move her things out of the Premises, picking up her last remaining belongs and cleaning on October 31, 2014. When Ms. [REDACTED] vacated the Premises on October 31, 2014, she locked the door and turned off the lights. She left the barn key in the barn. Shortly after she locked the Premises she gave the key to one of her attorneys who returned it to Mr. [REDACTED] attorney.
- 3) Respondents provided the following in response to Complainant's allegations:
- a) Respondents do not have a written policy regarding reasonable accommodations, but if accommodations are necessary it is their policy to accommodate.
 - b) One of Respondents' tenants informed the [REDACTED] that Ms. [REDACTED] had a dog at the Premises. After speaking with Mr. [REDACTED], Mrs. [REDACTED] went to speak with Ms. [REDACTED] about the dog.
 - c) Mrs. [REDACTED] asked Ms. [REDACTED] if Daughter 2 had a dog, and Ms. [REDACTED] responded yes, that it was a service dog. Ms. [REDACTED] asked Ms. [REDACTED] why she had not told Mrs. [REDACTED] about the dog. Ms. [REDACTED] responded that she did not think of it to tell her and also stated that she had another daughter with a service dog.
 - d) Mrs. [REDACTED] then told Ms. [REDACTED] that all of the times she had mentioned no pets or animals of any kind were allowed Ms. [REDACTED] did not tell her about the service animal(s). Ms. [REDACTED] responded that she had not thought about it, and that she had gotten rid of her fish to comply with the no-pets policy.
 - i. Mrs. [REDACTED] had spoken to Ms. [REDACTED] many times because Ms. [REDACTED] had called to ask about the Premises, and Ms. [REDACTED] never mentioned any pets.
 - e) Towards the end of their conversation, Ms. [REDACTED] said that she had the paperwork to show that the dog was a service animal, but she never went inside to get it to prove that the dog was a service animal.
 - f) Mrs. [REDACTED] told Mrs. [REDACTED] that she would tell Mr. [REDACTED] what was said.

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- g) Mrs. [REDACTED] later found out that Ms. [REDACTED] had said that the dog had been at the Premises for only five days. Another tenant told Mrs. [REDACTED] that Ms. [REDACTED] had talked with the tenant and said, "you told the landlord, you squealed." The tenant responded that the [REDACTED] did not allow pets. Ms. [REDACTED] then stated, "well, that dog was here for two weeks before anybody found out and you went and told the landlord it was here..."
- h) The next day, Ms. [REDACTED] asked Respondents if they would allow the dog to stay at a local kennel. Mr. [REDACTED] said, "no, you're going to be out."
- i) Ms. [REDACTED] never made any written or oral request for accommodations when the parties signed the lease. After the dog was seen at the Premises, Ms. [REDACTED] raised the issue of services animals but failed to provide any written documentation related to the dog.
- j) The lease signed by the parties provided that, "[p]ets are not allowed without the prior written consent of the Lessor... Any Lessee who wishes to keep a pet in the rented unit must sign a Pet Agreement Addendum. **If any pets are found living in leased premises that are not authorized, Lessee will automatically be evicted from the leased premises.**" [Emphasis in original]
- k) The [REDACTED] stated that it would not be too expensive, or an undue administrative burden, to grant the accommodation of allowing Ms. [REDACTED]'s daughters' service animals to be present when they visited her. The [REDACTED] stated that the lease prohibited pets, and Ms. [REDACTED] never provided documentation related to disability and anyone's need for a service animal. The [REDACTED] felt that there was no request for accommodations.
- l) The [REDACTED] have never been asked to accommodate a tenant for a service animal, and have not had any tenants who were asked to vacate for the same or similar reasons as Ms. [REDACTED].
- m) After the [REDACTED] attorney looked into the matter further, the [REDACTED] made the decision to withdraw the eviction against Ms. [REDACTED] in September 2014.
- n) Mr. [REDACTED] had received two phone calls from other tenants who said they had seen Ms. [REDACTED] moving out. Because of the phone calls he received, he went to the Premises on October 29, 2014, to discuss with Ms. [REDACTED] when she would be moving out.
- o) Mr. [REDACTED] asked Ms. [REDACTED] if she was moving out. Ms. [REDACTED] responded, "yes, you kicked me out, of course I'm moving." Mr. [REDACTED] then told Ms. [REDACTED] that he would be serving her with a small claims case to recover rent that was owed. He also told her that he had her new address because someone followed her to her new residence. Ms. [REDACTED] told Mr. [REDACTED] it was weird to have someone follow her. He responded that he had to find out where she lived so he could serve papers on her for small claims court.
- p) Mr. [REDACTED] asked Ms. [REDACTED] if she would be out of the Premises that day. Ms. [REDACTED] said that she did not have enough gas, and that she may need a few more days to complete her move. Mr. [REDACTED] responded, "ok, no problem".
- q) The [REDACTED] went back that night to see if Ms. [REDACTED] had completed her move. They noticed that all the lights were on and the door was wide open but no one was at the Premises. The [REDACTED] inspected

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

the Premises and felt that it was clear that she had moved everything out and had left. Mr. [REDACTED] shut off the lights and closed and locked the door.

- r) The next morning, Mr. [REDACTED] contacted his attorney to discuss changing the locks. Mr. [REDACTED]'s attorney advised him that since Ms. [REDACTED] had moved out the [REDACTED] no longer had to appear in court for the eviction since it had not been filed with the court yet.
- s) Since Ms. [REDACTED] had mentioned to Mr. [REDACTED] that she did not have any gas, he thought it would be nice to go to her new residence to pick up the keys for the Premises and to let Ms. [REDACTED] know that she did not have to appear in court since she had moved.
- t) On October 30, 2014, when he arrived at Ms. [REDACTED]'s new residence he knocked on the door, but no one answered. He got back in his truck to leave when one of Ms. [REDACTED]'s grandchildren announced that he was there. Ms. [REDACTED] came out and asked Mr. [REDACTED] what he wanted. Mr. [REDACTED] explained that all he needed were the keys to the Premises and the padlocks on the shed. He also told her that she did not need to go to court the next day since she had moved out. Mr. [REDACTED] was trying to be nice and save her money by getting the keys and telling her about court.
- u) Ms. [REDACTED] refused to give Mr. [REDACTED] the keys and called the police. Mr. [REDACTED] waited for the police to arrive, and they told him to leave and gave him a notice to cease.
- v) Mr. [REDACTED] stated that he did not follow Ms. [REDACTED] to her new residence; one of his tenants had and then told him where Ms. [REDACTED] had moved.
- w) Ms. [REDACTED] returned one key to the Premises, but not the padlock key, through her attorney to Mr. [REDACTED]'s attorney.

4) Complainant provided the following in response to Respondents' position:

- a) Ms. [REDACTED] never said that the other tenant "squealed" to the [REDACTED]. The other tenant spoke with Ms. [REDACTED] about Daughter 2's service animal because the tenant had given up an animal to live at the Premises and she was wondering how Ms. [REDACTED] could have a dog at the Premises. Ms. [REDACTED] and the tenant had a friendly conversation about Daughter 2 visiting with her service animal. Goose had not been there for two weeks, she was there for a total of six days.
- b) Ms. [REDACTED] did not ask if the service dogs could be put in the kennel if she stayed at the Premises. Ms. [REDACTED] asked if she and the [REDACTED] could work something out for her daughters' future visits and mentioned the kennel in that context.
- c) Ms. [REDACTED] did not discuss her daughters and their service animals when she signed the lease because they were never going to be living at the Premises and were not parties to the lease. They were occasional visitors with service animals.
- d) Ms. [REDACTED] did not break the lease provision that prohibits pets; she allowed a visiting service animal which is neither an animal that resides in the Premises nor a pet.

5) The tenant who followed Ms. [REDACTED] to her new residence, Tenant 1, stated the following:

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- a) Tenant 1 went to see Mrs. [REDACTED] about something, and told Mrs. [REDACTED] that there was a U-Haul on the property, and that she had seen someone moving out. Mrs. [REDACTED] asked her where someone was moving from, and Tenant 1 showed Mrs. [REDACTED] where. Mrs. [REDACTED] stated "are you kidding me". Tenant 1 then asked Mrs. [REDACTED] if she would have another trailer for rent. Mrs. [REDACTED] told Tenant 1 that Ms. [REDACTED] owed them a lot of money and had not mentioned that she was moving out. Tenant 1 did not remember when she had this conversation with Mrs. [REDACTED] but believed it had occurred at the end of September.
- b) One day, Tenant 1 was pulling out of her yard and saw that Ms. [REDACTED] was pulling out as well. Tenant 1 thought she would follow Mrs. [REDACTED] to see where she was going. No one asked Tenant 1 to follow Mrs. [REDACTED]. She followed Ms. [REDACTED] and found out where she lived and got the mailbox numbers.⁴ Tenant 1 went to see the [REDACTED] and gave them Ms. [REDACTED]'s new address. Tenant 1 thought she had followed Ms. [REDACTED] in mid-October, but was not certain. Tenant 1 offered the address to the [REDACTED], they did not ask her for Ms. [REDACTED]'s address.

V. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA provides, in part, that any person has the right to rent housing without discrimination on the basis of disability. 5 M.R.S. § 4581-A(1)(B); 94-C.M.R. Ch. 8 8.04(a)(1).
- 3) Additionally, it is unlawful to limit "the use of privileges, services or facilities associated with a dwelling because of [the] physical or mental disability, of an owner, tenant or a person associated with him or her." 94-348 C.M.R. Ch. 8, § 8.04(C)(4).
- 4) The MHRA also provides, in part, that it is "unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act", 5 M.R.S. § 4633(2), or to "evict... any tenant of any housing accommodations because of physical or mental disability." 5 M.R.S. § 4581-A(1)(E).

Disability Discrimination: Terms and Conditions/Reasonable Accommodation

- 5) Pursuant to the MHRA, it is unlawful to "[d]iscriminate against any person because of ... physical or mental disability,... in the price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations or in the furnishing of facilities or services in connection with any housing accommodations". 5 M.R.S. § 4581-A(1)(D).
- 6) The Commission's regulations make clear that the obligation not to discriminate includes not discriminating against individuals because of their association with an individual with a disability. A

⁴ Tenant 1 could not remember the address at the time of the interview.

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

housing provider violates the law by “[l]imiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, or physical or mental disability, of an owner, tenant or a person associated with him or her.” 94-348 C.M.R. Ch. 8, §8.04(C)(4) and §8.06(A)(2)(c).

- 7) The MHRA makes it unlawful “[f]or any owner...managing agent or other person having the right... rent, lease or manage a housing accommodation or any of their agents to refuse to make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give a person with physical or mental disability equal opportunity to use and enjoy the housing. 5 M.R.S. § 4582-A(2).
- 8) The MHRA and the Commission’s regulations state that it is unlawful “for any owner... managing agent or other person having the right to... rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of a service animal...” 5 M.R.S. § 4582-A(3); 94-348 C.M.R. Ch. 8, § 8.06(E).
- 9) The federal FHA is structured in such a manner that the obligation to provide reasonable accommodations to a tenant when necessary due to their association with an individual with a disability is clear. The federal statute establishes that housing providers may not discriminate against tenants on the basis of their association with an individual with a disability, and then defines “discriminate” as including a failure to make reasonable accommodations when necessary to afford “such person” – which includes the tenant” – the “equal opportunity to use and enjoy a dwelling”. See 42 U.S.C. § 3604(f).
- 10) While the structure of the MHRA is less clear on this point, the statute nonetheless similarly supports the conclusion that reasonable accommodations must be granted to a tenant when necessary, due to the tenant’s association with an individual with a disability, to allow tenants the equal use and enjoyment of their dwelling. The MHRA should be interpreted in favor of broad coverage. See 94-348 C.M.R. ch. 8, § 8.01(C)(1) (“Consistent with the public policy underlying the Act (as expressed in §4552), and with firmly established principles for the interpretation of such humanitarian legislation, the remedial provisions of the Act shall be given broad construction and its exceptions shall be construed narrowly.”).
- 11) As noted above, the MHRA does not allow discrimination against individuals on the basis of their association with an individual with a disability. Since visitors to a housing accommodation may not have an explicit right to request accommodations from a housing provider, the only means of ensuring the rights provided for in 5 M.R.S. § 4582-A(3)(prohibiting the denial of use of service animals by individuals with disabilities “at the housing accommodation”) is to allow a tenant to make such requests for those with whom they are associated.
- 12) Without the right to request an accommodation for individuals with disabilities with whom they are associated, tenants (such as Complainant in this case) may be denied the equal use and enjoyment of their dwellings based solely on their association with an individual with a disability. In this case, Complainant alleged that she could not have her daughters visit her because Respondents would not allow the reasonable accommodation of letting their service animals be present at the Premises. This appears to be a valid claim of discrimination under the MHRA, in that the refusal to provide this accommodation may have resulted in discrimination in the terms and conditions of Complainant’s tenancy (not allowing visitors).
- 13) To establish a prima-facie case of failure to accommodate, Complainant must show that:

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- (1) She or someone she is associated with has a "physical or mental disability" as defined by the Maine Human Rights Act;
- (2) Respondent knew or reasonably should have known of the disability;
- (3) Complainant requested a particular accommodation;
- (4) The requested accommodation is necessary to afford Complainant an equal opportunity to use and enjoy the housing;
- (5) The requested accommodation is reasonable on its face, meaning it is both efficacious and proportional to the costs to implement it; and
- (6) Respondent refused to make the requested accommodation.

See 5 M.R.S. § 4582-A(2); *Astralis Condominium Ass'n v. Secretary, U.S. Dept. of Housing and Urban Development*, 620 F.3d 62, 67 (1st Cir. 2010) (interpreting similar provision in Fair Housing Amendments Act, but seemingly placing burden on Complainant to show accommodation was reasonable); *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002) (plaintiff's burden is only to show reasonableness "on its face"). Compare *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (interpreting ADA) (holding that plaintiff need only show requested accommodation was feasible "on the face of things").

- 14) If Complainant makes this showing, Respondent can defeat the claim by showing that the proposed accommodation was unreasonable, meaning "it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program." *Oconomowoc Residential Programs*, 300 F.3d at 784.
- 15) The evidence in this case supports Complainant's claim that Respondents denied Complainant a reasonable accommodation.
 - a) Complainant's daughters have disabilities and have service animals. Complainant provided (or offered to provide) the paperwork for Daughter 2's need for her service animal as part of the investigation.
 - b) Respondents should have reasonably known of Complainant's daughters' disabilities based on the conversations between the parties. Complainant alleged that she offered to shown Respondents the paperwork showing that at least one of the dogs was a service animal. Respondents stated that they were never shown the paperwork, but admit that paperwork was mentioned, which supports a finding that they knew that Complainant was asking to have the dog present because of her daughter's disability.
 - c) Complainant made a request for accommodations for her daughters and their service animals after she was living at the Premises.
 - d) The accommodation request was reasonable. Respondents even stated that they felt that the request was reasonable and would not be an undue administrative burden.
 - e) The record also shows that Respondents denied Complainant's request. Respondents took issue with the fact that Complainant did not make the request for her daughters' service animals to be present at the Premises when she initially moved to the Premises. Complainant knew that her daughters had approved service animals. As such, she did not consider them pets and did not think about asking Respondents for permission for them to be at the Premises when her daughters visited her there. The

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

record also shows that Complainant got rid of pet fish she had because she knew pets were not allowed at the Premises. Complainant was not required to request permission from Respondents to have the service animals visit when she began her tenancy, just as she would not have been required to request advance permission if her daughters used other accommodations for their disabilities, such as canes for balance or wheelchairs.

- f) The paperwork provided for Daughter 2's service animal is dated prior to when she was on the Premises. It is feasible to believe that Daughter 2 had the paperwork with her, and that Complainant could have shown it to Respondents if they had given her the opportunity to do so. The fact that Goose was a service animal would take his presence at the Premises outside of the pet lease provision.
- g) Respondents stated that they do not have written policies regarding accommodations, but that it would be their practice to accommodate if asked to do so. In this case, Complainant did ask, albeit not on the timeline that Respondents would have preferred. Despite saying they would be willing to accommodate if the situation arose, Respondents in fact did not accommodate in this case when they were presented with the request, and did not ask Complainant to show them paperwork to prove that the service dog was in fact a service animal.

16) It is found that Respondents denied Complainant a reasonable accommodation on the basis of disability.

Retaliation Claim

- 17) The MHRA provides that “[a] person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act.” 5 M.R.S. § 4633(1).
- 18) The Commission’s housing regulations further provide, that “[e]victing tenants because of...physical or mental disability of a tenant’s guest,” is prohibited. 94-348 C.M.R. Ch. 8, § 8.04(B)(2)(e).
- 19) In order to establish a prima-facie case of retaliation, Complainant must show that she engaged in statutorily protected activity, she was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56 (employment case); *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006) (same). The term “materially adverse action” covers actions that are harmful to the point that they would dissuade a reasonable person from making or supporting a charge of discrimination. *See Burlington Northern*, 126 S. Ct. 2405. One method of proving the causal link is if the adverse action happens in “close proximity” to the protected conduct. *See id.*
- 20) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondents must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondents make that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*

INVESTIGATOR'S REPORT:

H14-0554

HUD No. 01-14-0530-8

- 21) Complainant has met her prima-facie case for her retaliation claim. Complainant has shown that she engaged in protected activity by opposing Respondents' refusal to allow her daughters' service animals at the Premises and also by filing a complaint with the Commission. Complainant was also subjected to a materially adverse action, since eviction proceedings were commenced and continued against her. Mr. [REDACTED]'s actions of showing up at Complainant's new residence could be considered intimidating and is also a materially adverse action since it could be considered harmful enough that it could dissuade a reasonable person from making or supporting a charge of discrimination. Finally, Complainant has also shown that there was a causal link between her protected activity and the materially adverse actions she experienced.
- 22) Respondents have stated what they felt was a legitimate non-discriminatory reason for starting and continuing eviction proceedings against Complainant, which is that the lease did not allow pets to be present at the Premises, and Complainant did not make them aware that the dog(s) would be present at the Premises. Additionally Respondents objected that Complainant did not make her request to have her daughters' dogs present at the time she signed the lease. Respondents did not provide a legitimate reason for the alleged intimidation, stating only that it did not happen, and that Mr. [REDACTED] went to Complainant's new residence to be "nice" by collecting the key from her there.
- 23) At the final stage of the analysis, Complainant has shown that she has at least an even chance of success in court with her retaliation claim and that there is a causal connection between her protected activity and the materially adverse action she experienced.
- a. Complainant's protected activity of requesting to have her daughters' service animals at the Premises when they visited, despite the fact that she asked after signed the lease, was causally connected to her eviction and the subsequent treatment she received from Respondents. Respondents continually stated no pets were allowed at the Premises and started eviction proceedings against Complainant on the basis that she allowed an unauthorized pet onto the Premises, even though Complainant told them that the dog was a service animal. Respondents stated that Complainant never showed them the paperwork for the service animal, but the record reflects that Respondents never asked to see it, either. Daughter 2 had the paperwork to show that her dog was a service animal. It does not logically follow that Complainant would not have provide the documentation if Respondents had asked to see it. Complainant allegedly told Respondents that she had the paperwork to show them on multiple occasions and on one occasions Mrs. [REDACTED] told Complainant that she believed her and then on the other occasions Respondents flat out refused to the offer to view the paperwork.
 - b. Additionally, Respondents' treatment of Complainant in continually asking her when she was going to move and also Mr. [REDACTED] following her to her new residence, allegedly with three other men, was connected to the same series of events regarding the service animal. Both parties were represented by counsel during these events. As such, Mr. [REDACTED]'s statement that he was just trying to be nice in going to Complainant's new residence, given the adversarial nature of the events between the parties, seems unlikely. Mr. [REDACTED] could have engaged his attorney to get the information he was seeking from Complainant, and could have delivered the message about court proceedings being canceled through counsel as well.
- 24) Retaliation in housing in violation of the MHRA is found.

INVESTIGATOR'S REPORT:

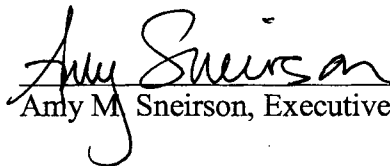
H14-0554

HUD No. 01-14-0530-8

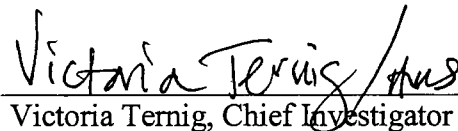
VI. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Respondents [REDACTED] [REDACTED] discriminated against Complainant [REDACTED] in the terms and conditions of her housing when they denied her a reasonable accommodation in housing on the basis of disability in violation of the Maine Human Rights Act;
2. There are **Reasonable Grounds** to believe that Respondents Respondents [REDACTED] [REDACTED] retaliated against Complainant [REDACTED] in housing for asserting her rights under the Maine Human Rights Act and for filing a complaint with the Maine Human Rights Commission; and
3. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Victoria Ternig, Chief Investigator