

- 5) Investigative methods used: A thorough review of the written materials provided by the parties, a Fact Finding Conference ("FFC"), witness interviews, and requests for additional information to both parties. This 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 parties in this case are as follows:

- a) Ms. [REDACTED] is Caucasian. Mr. [REDACTED] is African-American, and is Ms. [REDACTED] boyfriend. Ms. [REDACTED] and Mr. [REDACTED] have two children together. One of their children, Child 1, has severe disabilities and has more pronounced African-American features than their other child, Child 2.
- b) The unit Ms. [REDACTED] was shown (the "Unit") is part of the [REDACTED] apartment complex, located on [REDACTED], Maine. Mr. [REDACTED] is the owner of Townhouse Estates, and the property is managed by MM which is owned by Mr. [REDACTED] and his wife ("President" of MM).

- 2) Complainants provide the following in support of their position:

- a) Ms. [REDACTED] was looking for a three-bedroom unit because her home at the time was being demolished to make an amphitheater.
- b) Ms. [REDACTED] had seen an ad for the Unit which was listed by Respondents. She contacted the rental office and left a message stating that she had a three bedroom Section 8 voucher. She also stated that she had a child in a wheelchair, and she needed the Unit to be accessible.
- e) The next day, Mr. [REDACTED] returned her call, stating that he had listened to her message and although it was not his job, he wanted to personally take care of returning her call. Ms. [REDACTED] told Mr. [REDACTED] that Child 1 was severely disabled. She also stated that she needed to find a new home immediately because she had received a notice to quit to move out of her home which expired on October 1. She reiterated that she had a Section 8 voucher, and that four people would be moving into the Unit.
- i. Mr. [REDACTED] stated that he and President were experienced and skilled at processing Section 8 paperwork.
- d) Mr. [REDACTED] told Ms. [REDACTED] that he understood what she was going through from past experience, and that he would like to rent the Unit to her. Mr. [REDACTED] further stated that the Unit would work out because there were no stairs inside. There were stairs to enter the unit from outside, but Mr. [REDACTED] stated that he would build a ramp before Ms. Kelderhouse moved in, so that when the Unit passed its Section 8 inspection everything would be ready.
- i. Mr. [REDACTED] asked Ms. [REDACTED] if she would like to move forward with getting the Unit, and she stated that she would like to move forward.

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- e) Mr. [REDACTED] told Ms. [REDACTED] to call MM's office assistant ("Office Assistant") the next business day. Ms. [REDACTED] was instructed to tell Office Assistant that she had spoken to Mr. [REDACTED] and to get an application for the Unit.
- f) On September 15, 2014, Office Assistant called Ms. [REDACTED] and told her that they had received her application. They set up a time for Ms. [REDACTED] to do a walk-through and interview with Mr. [REDACTED]
- i. Respondents had the information necessary to perform credit and criminal background checks when they received Ms. [REDACTED] application.
- ii. Ms. [REDACTED] understood that she would not have been given an opportunity for a walk-through if she had not qualified for the Unit.
- g) On September 19, 2014, Ms. [REDACTED] went to Respondents' office with her children, and then drove to the Unit with Mr. [REDACTED]. When Mr. [REDACTED] noticed that Child 1 is part African-American in appearance when they walked into the office, he had a surprised look on his face and then contained himself.¹ During the walk-through, Mr. [REDACTED] asked Child 2 if her father was going to be moving into the unit. When Child 2 responded yes, [REDACTED] demeanor changed. He had been open and nice, but he then became cold, closed-off, and resistant.
- h) After the walk-through, Mr. [REDACTED] told Ms. [REDACTED] that he would work on the ramp after Section 8 was approved although he had previously said he would build it before then. They returned to Respondents' office to complete HUD Section 8 paperwork so that a HUD inspection could be arranged. After reviewing the packet, Mr. [REDACTED] told Ms. [REDACTED] that he had the radon information and also gave her a lead paint disclosure form. The only remaining information needed for the HUD forms was Respondents' personal/business information. Mr. [REDACTED] stated that President would complete the rest of the information for the packet and that it was not complicated.
- i. Mr. [REDACTED] further stated that they would fax the information to the Section 8 administrator due to the urgency of Ms. [REDACTED] need to move, and that Respondents would be in touch.
- i) Ms. [REDACTED] did not hear from Respondents. On September 25, 2014, after waiting several days, she called Respondents' office. Mr. [REDACTED] picked up the phone. Ms. [REDACTED] asked him if he had heard about a date for the HUD inspection. Mr. [REDACTED] told her that the landlord packet had not been done and that they had been really busy. [REDACTED] reminded him of the urgency of her situation and asked him to get the information completed right away. Mr. [REDACTED] said that he could do that. Mr. [REDACTED] never mentioned that President was too busy to do the paperwork, or that Respondents were too busy to process her paperwork.
- j) On September 30, 2014, Ms. [REDACTED] still had not heard from Respondents, so she contacted the office again. She spoke with Office Assistant, who told Ms. [REDACTED] that she would let Mr. [REDACTED] know that [REDACTED] needed to speak with him.

¹ Ms. [REDACTED] provided that Mr. [REDACTED] was sitting at the front desk on the phone when she entered. He gave her a puzzled look, partially stood up to look at her children, and then looked back at her with a weird look.

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- k) On October 1, 2014, Mr. [REDACTED] called Ms. [REDACTED] and stated that he did not have time to finish her application and would not be able to help her. Ms. [REDACTED] asked him if he needed more time to get the packet done. Mr. [REDACTED] responded that he did not need more time, he was sorry, he just could not help her. Mr. [REDACTED] told Ms. [REDACTED] to look at the glass as half-full.
- i. At the FFC, Ms. [REDACTED] stated that she told Mr. [REDACTED] that if he had extra time he could keep them in mind so that they could pursue the Unit at the Premises.
- l) On October 2, 2014, Ms. [REDACTED] saw the same ad she had responded to in the newspaper. Ms. [REDACTED] called MM and Office Assistant picked up the phone. Ms. [REDACTED] (without giving her name) asked if there was a three-bedroom unit available. Office Assistant stated there was one available. Ms. [REDACTED] then said that she had a Section 8 voucher and asked if Office Assistant was familiar with the paperwork. Office Assistant was enthusiastic and stated that they dealt with Section 8 and are very familiar with it.
- m) Ms. [REDACTED] never withdrew her application for the Unit. She did ask for her Section 8 form, because she had given the only copy of her Section 8 paperwork to Respondents and needed a copy so that she could apply for other places.
- i. Respondents scanned and emailed a copy of her Section 8 paperwork after Ms. [REDACTED] requested a copy. They kept the copy she had previously sent to them.
- 3) Respondents provide the following in response to Complainant's allegations:
- a) MM is a small property management company. Generally, the administrative processes are handled by President with assistance from an office assistant. Mr. [REDACTED] generally handles office repairs and maintenance with assistance from maintenance staff. Due to the small size of the company, there are times when responsibilities overlap as circumstances require.
- b) The application process for [REDACTED] is generally handled by Office Assistant with supervision and final approval from President. From time to time Mr. [REDACTED] will step in and handle parts of the application process.
- c) The following procedures describe the application process:
- i. An applicant fills out the application which is then reviewed. The applicant is either denied or contacted to schedule an interview.²
- ii. The next step is to schedule an interview and to show the applicant the rental unit to determine if the applicant has an interest in the unit. If the applicant shows interest, an interview checklist is completed.³

² A denial occurs at this time if the application is incomplete or if the application shows an obvious disqualifier such as the applicant desire to move into the unit with pets, which are not allowed under the rules and regulations of Townhouse Estates. Applications are date stamped, and they contact the applicants based on who is first in time.

- (1) Once the interview checklist has been completed, the remainder of the application process is purely administrative and Mr. [REDACTED] has little role in this process.
- iii. Once the interview process is completed, Respondents perform background checks which include credit checks, criminal background checks, and feedback from previous landlords.
- iv. If the background checks are good, the next step is to complete the paperwork required by Rural Housing and the Section 8 program.
- v. Once the paperwork is completed, the applicant is invited to sign a lease for the unit.
- d) Ms. [REDACTED] application process did not follow the normal course.
- e) Mr. [REDACTED] responded to Ms. [REDACTED] initial message on a weekend due to the holiday weekend and the fact that the office would not reopen until Tuesday morning.
- f) Ms. [REDACTED] came to the office for her interview⁴ and then viewed the Unit with Mr. [REDACTED]. After viewing the Unit, they returned to the office and completed the interview checklist.
- i. At the FFC, Mr. [REDACTED] stated that he spoke with Ms. [REDACTED] about needing a ramp for her daughter. He recalled saying that if the Unit passed the housing inspection then he would build a ramp. He did not recall stating that he would build a ramp prior to the housing inspection.⁵
- g) At the time Ms. [REDACTED] had completed steps 1 through 3 of the application process, President was extremely busy with other projects which had strict completion timeframes. Mr. [REDACTED] chose not to burden President with another task and held off presenting Ms. [REDACTED] paperwork until President's time pressures had been relieved a bit.
- h) When [REDACTED] called September 25, 2014, to ask when the Section 8 inspection would be completed and to see when she could move into the Unit, Mr. [REDACTED] tried to explain that the paperwork had not been completed since President was tied up with other pressing matters.
- i. Ms. [REDACTED] reminded Mr. [REDACTED] about the urgency of her situation and Mr. [REDACTED] responded that he would do what he could. At the FFC, Mr. [REDACTED] stated that he understood the urgency of Ms. Kelderhouse's situation.

³ The interview checklist is a suggestion by Rural Housing and is used with all applicants. If the applicant is a Section 8 or Rural Housing applicant, President likes to talk with them about what each party can expect from the tenancy.

⁴ Typically if Office Assistant schedules an interview, she would check President's calendar, but that did not occur in this case.

⁵ The cost of installing a ramp would be roughly \$2,500.00. Mr. [REDACTED] did not believe he would commit to building the ramp prior to approval in the housing inspection.

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- i) A few days later Ms. [REDACTED] called again. Mr. [REDACTED] responded to Ms. [REDACTED] call and explained that due to the "press of business" they had been unable to complete her paperwork. Mr. [REDACTED] apologized to Ms. [REDACTED] and explained that Respondents would be unable to help her. Respondents stated that they were not able to help her due to Ms. [REDACTED] need for an immediate solution to her housing situation against the backdrop of Respondent's inability to complete the necessary paperwork and research to determine her eligibility for the Unit within her time frame.
 - i. Ms. [REDACTED] requested her paperwork and it was returned after this conversation.
 - j) At the FFC, Mr. [REDACTED] stated that they were overwhelmed with business at the time Ms. [REDACTED] applied for housing. He thought that he and Office Assistant would be able to complete the paperwork, but they could not. He did not give Ms. [REDACTED] paperwork to President to complete it because she had so much going on, and he did not want to put any additional burden on her.
 - i. He further stated that he had not completed Section 8 paperwork before so he could not complete Ms. [REDACTED] application. Office Assistant was not able to complete the paperwork either. Mr. [REDACTED] was concerned about holding up Ms. [REDACTED] from finding housing.
 - ii. At the FFC, President stated that she was never informed about Ms. [REDACTED] application, but it would not have taken long "at all" to complete the application. She further stated that it could take two weeks to a month from the time an applicant applies to when a determination on whether the applicant is eligible for a unit depending on whether and when the applicant gets back to Respondents.
 - k) At the FFC, President stated that they were very busy at the time Ms. [REDACTED] applied for housing in part because they manage rentals and condo associations. President was doing budgetary work and working on annual meetings. Because most of the individuals are summer residents there was a large demand for services as people were getting ready to leave to go back to their homes. Respondents also had a couple of legal issues they were dealing with at the time as well.
 - l) Mr. [REDACTED] denies Ms. [REDACTED] characterization of how he acted as being racially motivated.
 - m) Ms. [REDACTED] was not denied housing at Townhouse Estates since the application process was not completed. Ms. [REDACTED] requested her Section 8 paperwork back. MM made the assumption that she had found acceptable housing somewhere else.
 - n) In the past Respondents have rented to tenants who are African-American, Native American, and Hispanic. Respondents currently rent to a Caucasian male who has an African-American child.
- 4) On the application, Mr. [REDACTED] was listed as a live-in aide.
 - 5) In a transcript of the phone call Ms. [REDACTED] made to Respondents on October 6, 2014, without mentioning her name, Office Assistant told her that Respondents do not usually show units until it is the applicant's time to get into a unit.
 - a) Respondents stated that the ad that [REDACTED] responded to is a generic ad that Respondents are required by law to place on a periodic basis whether or not rentals are available.

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- 6) At the FFC, Mr. [REDACTED] further explained that he uses the saying "look at the glass as half full," a lot, and he was trying to present to Ms. [REDACTED] the fact that things were not all bad and there is some good out there. He was trying to be encouraging to her.
- 7) At the FFC, Neither President nor Mr. [REDACTED] recalled if other applications or leases were processed during the time Ms. [REDACTED] was looking for housing.
 - a) In response to a request for additional information, Respondents provided that there was one application processed during the period of time Ms. [REDACTED] was looking for housing and in touch with Respondents. This application resulted in a lease being signed. It was not for a Section 8 rental.
- 8) In a telephone interview with Office Assistant, who no longer works for Respondents, she stated that she recalled Ms. [REDACTED] looking for housing with Respondents. Office Assistant stated that she did a credit check for Ms. [REDACTED] because that is Respondents' standard before they interview anyone.⁶ She further stated that President was not involved, and Mr. [REDACTED] interviewed Ms. [REDACTED].
 - a) Office Assistant did not know why Respondents did not complete Ms. [REDACTED] application. She stated that Mr. [REDACTED] kept putting Ms. [REDACTED] off. Office Assistant made several comments to Mr. [REDACTED] about the fact that Ms. [REDACTED] had a handicapped child, and that there was no reason that she should not have gotten an apartment. Mr. [REDACTED] kept telling her that he did not have time to deal with it, but never explained why.
 - b) Office Assistant could not have completed Ms. [REDACTED]'s application because she did not know how to do the Section 8 paperwork. She assumed that Mr. [REDACTED] knew how to do the Section 8 paperwork because he told her on more than one occasion that he would have to show her how to do it so she knew what was going on. Several times Office Assistant asked Mr. [REDACTED] to show her how to do the Section 8 paperwork, but he told her he did not have time to show her.
 - i. Mr. [REDACTED] never told Office Assistant that President was the only person that could complete the Section 8 paperwork.
 - c) Office Assistant spoke with Ms. [REDACTED] on more than one occasion and told her many times that she was so sorry. She was very apologetic, but told Ms. [REDACTED] that her hands were tied.
- 9) Respondent provided a statement from one of its employees who stated that she was in the office the day that Ms. [REDACTED] came in for her interview. She did not see or hear "anything unusual during the time that Ms. [REDACTED] was in the office."

V. Analysis:

- 1) The MHRA provides that the Commission or its investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful

⁶ Respondents clarified that President does the final interview with applicants.

⁷ Office Assistant stated that President does not do interviews, Mr. [REDACTED] typically does the applicant interviews.

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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 Complainants prevailing in a civil action.

- 2) The MHRA provides, in part, that any person has the right to rent an apartment without discrimination on the basis of race, and that it is unlawful to refuse to rent a dwelling on the basis of race. 5 M.R.S. § 4581-A(1)(B); 94-348 C.M.R., Ch. 8, § 8.04(a)(1). The MHRA further provides, in part, that it is unlawful to engage in "discrimination in the terms, conditions or privileges of... rental of a dwelling, or in the provision of services or facilities in connection with... rentals, and engaging in conduct relating to providing housing because of race." 5 M.R.S. § 4581-A(1)(D); 94-348 C.M.R., Ch. 8, § 8.04(a)(2, 3)
- 3) "The doctrine of *respondeat superior* enables the imposition of liability on a principal for the tortious acts of his agent." *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1096 (7th Cir. 1992) (Fair Housing Act case involving real estate agents). "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." Restatement 3d of Agency, § 1.01; *U.S. v. Habersham Properties, Inc.*, 319 F.Supp.2d 1366, 1375 (N.D.Ga. 2003). A principal is liable if the unlawful acts of its agent are within the scope of the agent's apparent authority, even if the principal neither authorized nor ratified the acts. 5 M.R.S. § 4553(10)(E); *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d at 1096.
- 4) Because Mr. [REDACTED] was acting on behalf of MM, the doctrine of *respondent superior* applies.
- 5) Here Complainants alleged that they were discriminated against in housing on the basis of race because Respondents denied them housing by not acting on their rental application. Complainants alleged that Mr. [REDACTED] gave [REDACTED] the impression that Complainants had been selected as tenants, but after Mr. [REDACTED] saw that their children were part African-American, they were denied housing. Respondents stated that Complainants were not denied the opportunity to rent the Unit because of race but because they were too busy to process the application within Complainant's timeframe, and also because Complainants withdrew their application.
- 6) Because this case does not involve direct evidence, Complainants establish a prima-facie case of unlawful housing discrimination by proving (1) that Complainants are member of a protected class; (2) that Complainants applied for and were qualified to rent the Unit; (3) that Respondents rejected Complainants; and (4) that the housing accommodation remained available thereafter. See *United States v. Grishman*, 818 F. Supp. 21, 23 (D.Me. 1993); *HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990).
- 7) Once Complainants have established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondents to articulate a legitimate, nondiscriminatory reason for 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 Respondents have articulated a nondiscriminatory reason, Complainants must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. See *id.* Complainants' burden may be met either by the strength of Complainants' evidence of unlawful discriminatory motive or by proof that Respondents' 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, Complainants can meet their 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.

- 8) In order to prevail, Complainants must show that they 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).
- 9) Here, Complainants have established a prima-facie case of race discrimination in housing. Ms. [REDACTED] is Caucasian and is in a relationship and has children with Mr. [REDACTED] who is African-American. Complainants alleged that once Mr. [REDACTED] saw their children, who have African-American features, he treated Ms. [REDACTED] differently. Complainants applied for and presumably were qualified for the apartment, as Ms. [REDACTED] believed that she would not have been scheduled to view the Unit if she was not qualified to rent it. Respondents rejected Complainants' application by failing to finish the application process which resulted in Complainants being denied housing, and the Unit remained available and is still available.
- 10) Respondents have articulated a legitimate, nondiscriminatory reason for not renting to Complainants in that they were very busy at the time Ms. [REDACTED] applied and did not have time to process her application. Ms. [REDACTED] did not ask them to continue the application process after she asked for her paperwork.
- 11) At the final stage of the analysis, the record shows that Respondents' reason for not renting to them was false or irrelevant and that race was a deciding factor in their decision not to rent to Complainants, with reasoning as follow:
- a. Mr. [REDACTED] statement asking Child 2 if her father was going to be living in the Unit can lead to an inference of pretext. While Respondent argued that Mr. [REDACTED] had a reason/right to know who would be living in the Unit, Mr. [REDACTED] was not listed as the children's father on the application and his race was not known based on the application. A reasonable inference to make about his question is that it was based on the fact that the children had African-American features, and to determine if their father would be living in the Unit. At the FFC, Ms. [REDACTED] credibly stated that Mr. [REDACTED] demeanor towards her changed after he met her with her children, and then he later asked Child 2 if their father would be living in the Unit.
 - i. Mr. [REDACTED] did not recall many specific things about the interaction with Ms. [REDACTED] while she was able to remember specifics about their interactions. The conclusion is not that Mr. [REDACTED] was not credible; however, Ms. [REDACTED] was credible, and remembered more than he did, so her statements about her interactions with him are considered credible and accurate.
 - b. President stated at the FFC that it would not have taken a lot of time to complete Ms. [REDACTED] application. Mr. [REDACTED] stated that he did not give President the application to complete because President was too busy, and he did not want to add another burden to her. If the application would not have taken long to complete and potentially would have resulted in placing a tenant in a vacant unit, it is hard to understand why Mr. [REDACTED] would not have mentioned the application to President and had her decide if she had time to complete it. This is true especially considering the urgency of Complainants' need to find housing, which Mr. [REDACTED] said he understood.

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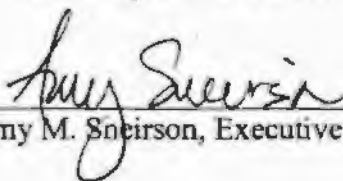
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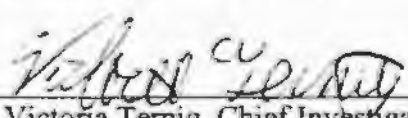
- c. While Respondents argued that Office Assistant is a disgruntled employee, she stated that she spoke with Mr. [REDACTED] several times about completing Ms. [REDACTED] application and assumed he could complete the Section 8 paperwork. Respondents stated and maintain that Mr. [REDACTED] did not do Section 8 paperwork, so he would not have been able to complete the process. However, Office Assistant stated that she had several conversations with Mr. [REDACTED] about him showing her how to do the paperwork, so that they could complete Ms. [REDACTED] application.
- d. Again, even assuming Mr. [REDACTED] could not complete the Section 8 paperwork, the fact that he did not inform President, who completes applications, that they had a prospective tenant, does not seem plausible. This is coupled with the fact that at least one other application was processed resulting in a signed lease during the same period Complainants were trying to secure housing with Respondents.
- e. Respondents' explanation of its rental process does not include a final interview with President. Notably, Respondents provided that the rest of the process after the interview checklist is done is purely administrative. Additionally, the credit check is listed as coming after the interview and interview checklist, yet Office Assistant stated that they performed the credit check prior to the interview because that is Respondents' standard procedure.
- f. It does not appear that the parties dispute that the Respondents' completion of the Section 8 paperwork was the only thing preventing Complainants from becoming tenants. Ms. [REDACTED] asked Mr. [REDACTED] if he needed more time to process her application, and he told her that he did not need more time. Even if Mr. [REDACTED] statement that he believed he was holding Complainants up from finding housing was true, Ms. [REDACTED] did not withdraw her application; to the contrary, she asked if he needed more time to complete the application process. Respondents could have proceeded in completing the Section 8 paperwork when they had time and contacted Ms. [REDACTED] when they did to see if she still needed housing. They did not do this.
- 12) Given the Commission's "reasonable grounds" standard, Complainants have shown that they were discriminated against on the basis of race when Respondents gave Ms. [REDACTED] the impression that she was approved for housing, delayed completing the paperwork, and ultimately told her they did not have time to complete the paperwork which resulted in a denial/refusal to rent.
- 13) Discrimination in the refusal to rent on the basis of race is 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 Respondents [REDACTED] Realty Corporation and [REDACTED] discriminated against Complainants [REDACTED] and [REDACTED] in housing on the basis of race by refusing to rent them a dwelling; and
2. The complaint should be conciliated in accordance with 5 M.R.S. § 4612(3).


Amy M. Snirson, Executive Director


Victoria Ternig, Chief Investigator