



# Maine Human Rights Commission

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July 14, 2014

## INVESTIGATOR'S REPORT MHRC No: H15-0178 HUD No. 01-15-0292-8

██████████ (Lisbon)

v.

██████████, ██████████, ██████████ (Rockport)

### I. Complainant's Complaint:

Complainant ██████████ alleged that Respondents ██████████ and ██████████ discriminated against her on the basis of her association with an individual with a disability by refusing to let her granddaughter's service animal accompany her daughter and granddaughter when they visited Ms. ██████████ at her apartment.

### II. Respondents' Answer:

Respondents stated that the Site Manager who told Ms. ██████████ that her granddaughter's service animal could not come to the property was new and had not received the training regarding service animals at the time. Respondents ultimately told Ms. ██████████ that her granddaughter's service animal could visit the property.

### III. Jurisdictional Data:

- 1) Date of alleged discrimination: March 19, 2015 through May 26, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): April 22, 2015.
- 3) Respondents are 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 ██████████, Esq. Respondents are represented by ██████████, Esq.

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<sup>1</sup> Complainant named Respondent ██████████ Limited Liability in her complaint; that Respondent stated that its legal name is ██████████. Because Complainant has not amended her complaint to that effect, the caption provided by Complainant has been retained, and Respondent will be referred to as "Respondent" or "██████████" throughout this report.

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- 5) Investigative methods used: A thorough review of the written materials provided by the parties and an Issues and Resolution Conference ("IRC"). 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] lives at [REDACTED] Mill 1 in Lisbon, Maine.
- b) [REDACTED] is the managing agent for [REDACTED] Mill I.
- c) [REDACTED] [REDACTED] [REDACTED] owns [REDACTED] Mill I.

- 2) Complainant provided the following in support of her position:

- a) Ms. [REDACTED]'s daughter and granddaughter lived with her at [REDACTED] [REDACTED] until shortly before she filed her complaint of discrimination. While her daughter and granddaughter lived with her, they had been approved to have a service animal in their unit for her granddaughter.
- b) One day after Ms. [REDACTED] daughter and granddaughter moved out of the unit, they visited her at [REDACTED] Mill 1 and brought her granddaughter's service animal with them.
- c) On March 19, 2015, Ms. [REDACTED] was given a lease violation for allowing the service animal accompanying her granddaughter in her apartment, along with two other lease violations.
- d) The next day, Ms. [REDACTED] told the Site Manager that the dog that had visited her unit was a service animal. The Site Manager told Ms. [REDACTED] that her daughter and granddaughter were no longer tenants and were not allowed to bring the service animal to the property.
  - i. At the IRC, Ms. [REDACTED] stated that another employee who Ms. [REDACTED] believed had worked for Respondents for approximately two years reiterated that since the service animal was not Ms. [REDACTED] it was not permitted at the property.
- e) A few days after Ms. [REDACTED] received the lease violations, Respondents informed all tenants in writing that pets were not allowed on the property unless they belonged to the tenant who lived at the property.
- f) Ms. [REDACTED]'s granddaughter's service animal has not been back to property since Ms. [REDACTED] received the lease violation related to the service animal, and Ms. [REDACTED] daughter and granddaughter who visited a minimum of three times a week to check in on Ms. [REDACTED] were not able to visit as much.

- 3) Respondents provided the following in response to Complainant's allegations:

- a) On March 19, 2015, Site Manager received several complaints from another tenant about Ms. [REDACTED]. One of the complaints the Site Manager received was that Ms. [REDACTED] daughter had brought her dog to Ms. [REDACTED] unit.

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- b) After reviewing the file and finding no authority for Ms. [REDACTED] to have a dog at her unit, Site Manager decided that she would issue a notice of violation to Ms. [REDACTED] to inform her of the violations and put her on notice of them moving forward.
  - i. The lease violation informs the tenant of the violation but has no further effect than to put the tenant on notice.
- c) When Site Manager issued the notice of violation to Ms. [REDACTED] she was not aware that Ms. [REDACTED] daughter's dog was a service animal.
- d) After Ms. [REDACTED] received notice of the violation, Ms. [REDACTED] called Site Manager to tell her that the dog was a service animal. Site Manager still indicated that the dog could not visit the property.
- e) When Site Manager received Ms. [REDACTED] complaint of discrimination she sent it to the Regional Manager who advised her that because the dog was a service animal, it was permitted on the property in accordance with Respondents' animal policy.
- f) Because Ms. [REDACTED] had filed a complaint of discrimination, the matter was referred to Respondents' attorney to determine how to proceed.
- g) On May 26, 2015, Ms. [REDACTED] was notified by letter from Respondents' attorney that the service animal could be present on the property. Part of the delay in notifying Ms. [REDACTED] was a result of Respondents' attorney's schedule.
- h) At the time of the events in the complaint, Site Manager had been working for Respondents for two weeks and had not received fair housing training on service animals. Site Manager has since received training regarding service animals.
- i) Respondents dispute that Ms. [REDACTED] daughter and granddaughter frequented the property often after they moved out of Ms. [REDACTED] unit.

**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).

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- 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).
- 5) Here Complainant alleged that Respondents refused to allow her daughter and granddaughter to bring a service animal on the property when they visited her. Respondents stated that Site Manager did tell Complainant the dog could not come on the property, but Respondent corrected the issue.
- 6) 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).
- 7) 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 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).
- 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) Because this case does not involve direct evidence, , Complainant establishes a prima-facie case with regard to her claim of discrimination in the price, terms, conditions, or privileges of the sale, rental, or lease of a housing accommodation by showing (1) that Complainant is a member of a protected class, (2) that Complainant was not offered the same terms, conditions or privileges of rental of a dwelling or not provided the same services or facilities in connection therewith made available to others, and (3) under circumstances giving rise to a reasonable inference of prohibited discrimination. *See Khalil v. Farash Corp.*, 260 F. Supp. 2d 582, 588 (W.D.N.Y. 2003).
- 10) 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.
- 11) After Respondents have 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 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, 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. In order to prevail, Complainant must show that she would not have suffered the adverse action but for membership in

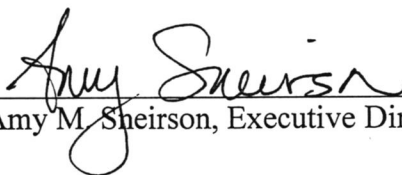
the protected class, although protected-class status need not be the only reason for the decision. *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).

- 12) Complainant has met the prima-facie case in her terms/conditions claim. She has shown that she is a member of a protected class due to her association with a person with a disability, and she was treated differently due to that association under circumstances giving rise to a reasonable inference of unlawful discrimination.
- 13) Respondents provided a non-discriminatory reason for Site Manager's actions, stating that she had only been working for Respondent for two weeks and not received fair housing training at the time of the events that lead to the complaint.
- 14) At the final analysis, the record supports a finding that Respondents' stated reason is irrelevant and that unlawful discrimination has occurred, with reasoning as follows:
  - a) Respondents do not deny that Site Manager told Complainant that she could not have her granddaughter's service animal present at the property. While Respondent took steps after the fact to correct the issue, that does not negate the fact that, for at least a two month period, Complainant was told, incorrectly, that she could not have the service animal visit her unit which affected the enjoyment of her unit.
- 15) Discrimination on the basis of disability in the terms and conditions of Complainant's housing is found.

**VI. Recommendation:**

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

There are **Reasonable Grounds** to believe that Respondents [REDACTED] and [REDACTED] discriminated against Complainant [REDACTED] on the basis of disability by refusing to allow her granddaughter's service animal on their property in violation of the MHRA, and the complaint should be conciliated in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sheirson, Executive Director

  
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Victoria Ternig, Chief Investigator