

COMMISSION MEETING MINUTES

Senator Conference Center (Best Western) Embassy Room
284 Western Ave ~ Augusta, Maine

April 13, 2009

Chair Paul Vestal called the April 13, 2009 Commission meeting to order at 8:31 a.m. Present were Commissioners: Paul Vestal, Chair; Jadine O'Brien; Sallie Chandler; Joseph Perry; and Kenneth Fredette.

Paul Vestal called for adoption of the agenda.

- Executive Director Patricia Ryan requested that case *E07-0691: Bouchard v. Hannaford* be tabled to the next meeting at the request of the parties.
- Executive Director Patricia Ryan requested that case *PA08-0007: Cousins V. Fidelity Investments* be removed from the agenda due to settlement between the parties.

CONSENT AGENDA (*see list attached*)

Commissioner O'Brien moved, seconded by Commissioner Chandler to accept the Investigator's recommendations in each of the cases on the Consent Agenda. 5 in favor, 0 opposed

MINUTES

Commissioner O'Brien moved, seconded by Commissioner Chandler to adopt the January 12th, 2009 and March 5, 2009 Commission Meeting Minutes as amended. 5 in favor, 0 opposed.

QUARTERLY PROGRAM REVIEW

Inventory Status Reports & Resolutions: There were 643 open cases at the end of March 2009. The Commission closed 197 cases during the preceding quarter. 63 of those cases were closed providing some benefit to Complainants. The monetary amount recovered for Complainants during that time period was \$562,293.

Training and Education – Commissioners reviewed Compliance Officer Fran Davis' second and third quarter reports and they were placed on file.

Litigation - Commissioners agreed to move this item to the end of the agenda.

Financial Report - Commissioners reviewed the quarterly financial report and it was placed in the file.

ADMINISTRATION

Personnel Report: Commissioners reviewed the reports dated February 24th and April 7th, 2009 and they were placed on file.

COMPLIANCE

Conciliation Agreement:

- *Hawkins v. Nappi Auto Parts*: Commissioner O'Brien moved, seconded by Commissioner Chandler to accept the conciliation agreement. 5 in favor, 0 opposed.
- *Seavey v. Boyle*: Commissioner Fredette moved, seconded by Commissioner Chandler to accept the conciliation agreement. 5 in favor, 0 opposed.

Compliance Report: Commissioners reviewed Fran Davis' report and it was placed on file.

INVESTIGATION

- New Charges: Commission staff opened 29 new cases in January; 38 new cases in February; and 38 new cases in March.
- Administrative Dismissals: Commission staff administratively dismissed 28 cases in January; 35 cases in February and 35 cases in March.
- Pre-determination Settlements: During the month of January and February, investigators were responsible for obtaining settlements in 17 cases resulting in a total monetary relief of \$134,392. During the month March investigators were responsible for obtaining settlements in 13 cases resulting in a total monetary relief of \$253,000.

CASES VOTED ON:

E07-0244: Mark Roscoe (Waterville) v. Sullivan and Merritt Constructors, Inc. (Hermon): Attorney Al Stevens restated the position of the Complainant. Attorney John Krampf restated the position of the Respondent. Field Investigator Robert Beauchesne restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Chandler to find **reasonable grounds** to believe that unlawful employment discrimination because of disability has occurred. 4 in favor, 1 opposed.

E07-0320: Joseph Donahue, Jr. (Scarborough) v. Clair Saco Honda (Saco): Attorney Alan Townsend restated the position of the Complainant. Attorney John Wall restated the position of the Respondent. Commissioner O'Brien moved, seconded by Commissioner Chandler to find **reasonable grounds** to believe that unlawful employment discrimination because of age has occurred. 5 in favor, 0 opposed.

E07-0524: Tammy Chaput (Portland) v. Roof Specialists, Inc. (Portland): Tammy Chaput restated the position of the Complainant. Attorney Gregg Frame restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Fredette to find **reasonable grounds** to believe that unlawful employment discrimination because of sexual harassment and constructive discharge has occurred. 5 in favor, 0 opposed.

E07-0532: Donna Rowe (Presque Isle) v. The Aroostook Medical Center (Presque Isle): Donna Rowe restated the position of the Complainant. Attorney Ella Brown restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Fredette to find **reasonable grounds** to believe that unlawful employment discrimination because of reasonable accommodation has occurred. 5 in favor, 0 opposed. Commissioner O'Brien moved, seconded by Commissioner Fredette to find **reasonable grounds** to believe that unlawful employment discrimination because of disability and whistleblower retaliation has occurred. 5 in favor, 0 opposed.

E07-0533: Timothy Wilcox (Warren) v. State of Maine/Corrections/Maine State Prison: Complainant was not present. Respondent was not present. Commissioner O'Brien moved, seconded by Commissioner

Chandler to find no reasonable grounds to believe that unlawful employment discrimination because of disability has occurred. 4 in favor, 0 opposed, 1 abstained. (Fredette abstained).

E07-0646: Janice Moore (Turner) v. Wal-Mart (AR): Janice Moore restated the position of the Complainant. Attorney Patricia Peard restated the position of the Respondent. Field Investigator Michele Dion restated the facts of the case. Commissioner Fredette moved, seconded by Commissioner Chandler to find no reasonable grounds to believe that unlawful employment discrimination because of retaliation or disability has occurred. 5 in favor, 0 opposed.

E07-0683: Melissa Clark (MA) v. Wilfrid Cassette d/b/a Breezy Meadows (Saco): Melissa Clark restated the position of the Complainant. Wilfred Cassette restated the position of the Respondent. Field Investigator Angela Tizon restated the facts of the case. Commissioner Perry moved, seconded by Commissioner Chandler to find **reasonable grounds** to believe that unlawful employment discrimination because of sexual harassment and constructive discharge has occurred. 5 in favor, 0 opposed.

E07-0701: Ellen Gammon (Auburn) v. Crisis & Counseling (Augusta): Ellen Gammon restated the position of the Complainant. Attorney Eric Uhl restated the position of the Respondent. Field Investigator Paul Pierce restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Perry to find no reasonable grounds to believe that unlawful employment discrimination because of sex, age or disability has occurred. 4 in favor, 1 abstained. (Vestal abstained). Commissioner Perry moved, seconded by Commissioner Chandler to find **reasonable grounds** to believe that unlawful employment discrimination because of whistleblower retaliation has occurred. 3 in favor, 1 opposed, 1 abstained. (Vestal abstained)

E07-0719: Melanie Rounds (Livermore Falls) v. Realty Management Resources (Rockport): Melanie Rounds restated the position of the Complainant. Attorney Chad Cloutier restated the position of the Respondent. Field Investigator Paul Pierce restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Fredette to find no reasonable grounds to believe that unlawful employment discrimination because of sex or whistleblower retaliation has occurred. 5 in favor, 0 opposed.

E07-0734: Jean Noyes (Bath) v. City of Bath: Attorney Jeffrey Young restated the position of the Complainant. Roger Terriault restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Fredette to find no reasonable grounds to believe that unlawful employment discrimination because of age has occurred. 5 in favor, 0 opposed.

At 12:15 Kenneth Fredette left the meeting.

E08-0065: Malinda Joyce-Taylor (Herman) v. Microdyne Outsourcing/L-3 Comm. (Orono): Complainant was not present. Attorney John Diviney restated the position of the Respondent. Field Investigator Paul Pierce restated the facts of the case. Commissioner O'Brien moved seconded by Commissioner Chandler to find no reasonable grounds to believe that unlawful employment discrimination because of sex has occurred. 4 in favor, 0 opposed. Commissioner O'Brien moved seconded by Commissioner Chandler to find no reasonable grounds to believe that unlawful employment discrimination because of whistleblower retaliation has occurred. 4 in favor, 0 opposed.

E08-0088: William Anderson (Millinocket) v. Theriault Tree Harvesting, Inc. (Stratton): Attorney Alan Townsend restated the position of the Complainant. Attorney Allison McLaughlin restated the position of the Respondent. Field Investigator Paul Pierce restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Perry to find **reasonable grounds** to believe that unlawful employment discrimination because of whistleblower retaliation has occurred. 4 in favor, 0 opposed.

E08-0095: Melissa Brown (South Thomaston) v. South Thomaston Fire Department: Wayne Brown restated the position of the Complainant. Attorney Mark Dunlap restated the position of the Respondent. Commissioner O'Brien moved, seconded by Commissioner Perry to find no reasonable grounds to believe that unlawful employment discrimination because of sex or retaliation has occurred. 4 in favor, 0 opposed.

At 12:47 p.m. Chair Vestal called for a lunch break until 1:27 p.m.

E07-0401: Daniel Deane (Stetson) v. B & B Paving, Inc. (Hermon): Attorney Chad Hansen restated the position of the Complainant. Attorney Anne Marie Storey restated the position of the Respondent. Field Investigator Michele Dion restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Perry to find no reasonable grounds to believe that unlawful employment discrimination because of whistleblower retaliation has occurred. 4 in favor, 0 opposed.

E08-0111: Alicia Nield (Rockland) v. Oak Island, Inc. (Rockland): Attorney Maria Fox restated the position of the Complainant. Attorney Bob Brower restated the position of the Respondent. Commissioner Chandler moved, Seconded by Commissioner Perry to find **reasonable grounds** to believe that unlawful employment discrimination because of sexual harassment and constructive discharge has occurred. 3 in favor, 0 opposed, 1 abstained. (O'Brien abstained).

E08-0112: Alicia Nield (Rockland) v. All-4-U (Rockland): Attorney Maria Fox restated the position of the Complainant. Jim Gamage restated the position of the Respondent. Field Investigator Paul Pierce restated the facts of the case. Commissioner Chandler moved, Seconded by Commissioner Perry to find no reasonable grounds to believe that unlawful employment discrimination because of sexual harassment or constructive discharge has occurred. 3 in favor, 0 opposed, 1 abstained. (O'Brien abstained).

E08-0177: Lyman Phelan (Glenburn) v. American Red Cross Blood Services (Bangor): Attorney Judith Thornton restated the position of the Complainant. Attorney Geoffrey Weymouth restated the position of the Respondent. Chief Field Investigator Barbara Lelli restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Chandler to find no reasonable grounds to believe that unlawful employment discrimination because of age or whistleblower retaliation has occurred. 4 in favor, 0 opposed.

E08-0201: Melanie Wallace (Saco) v. H. D. Good all Hospital (Sanford): Attorney Arthur Dumas restated the position of the Complainant. Attorney Alan Muir restated the position of the respondent. Field Investigator Paul Pierce restated the facts of the case. Commissioner Perry moved, seconded by Commissioner Chandler to find **reasonable Grounds** to believe that unlawful employment discrimination because of disability has occurred. 3 in favor, 0 opposed. 1 abstained. (O'Brien abstained)

H08-0468: Ernest Watson et al (Bangor) v. Bangor Housing Authority et al (Bangor): Complainant was not present. Respondent was not present. Commissioner O'Brien moved, seconded by Commissioner Chandler to find no reasonable grounds to believe that employment discrimination because of disability or retaliation has occurred. 4 in favor, 0 opposed.

H08-0612-A: Nicole Dussault (Scarborough) v. RRE Coach Lantern Holdings (Scarborough);

H08-0612-B: Nicole Dussault (Scarborough) v. Resource Real Estate Mgt, Inc. (NE):

Attorney Pat Ender restated the position of the Complainant. Attorney Margaret LePage restated the position of the Respondent. Field Investigator Angela Tizon restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Perry to find **reasonable grounds** to believe that unlawful housing discrimination because of receipt of public assistance has occurred. 4 in favor, 0 opposed.

H08-0634: Darrell Eaton (Bangor) v. Bangor Housing Authority et al (Bangor): Complaint was not present. Respondent was not present. Commissioner O'Brien moved, seconded by Commissioner Chandler to find

no reasonable grounds to believe that unlawful housing discrimination because of disability or reasonable accommodation has occurred. 4 in favor, 0 opposed.

EXECUTIVE SESSION:

Commissioner O'Brien moved, seconded by Commissioner Chandler to move into executive session to discuss litigation with Commission Counsel pursuant to 1 M.R.S.A. §405(6)E and (6)F. 4 in favor, 0 opposed

Commissioner O'Brien moved, seconded by Commissioner Chandler to move out of executive session. 4 in favor, 0 opposed

LITIGATION:

Quarterly Review: Commission Counsel John Gause reviewed three cases: *E04-0635: Robert Duggan v. Integrity Electric*, *H05-0236: Dodge v. McAdoo* and *H06-0539: Lamontagne v. Crowley* in his litigation report.

- Commissioner Chandler moved, seconded by Commissioner O'Brien not to file a complaint in case *E07:0129: Amanda Peters v. Maxim Healthcare Services*. 4 in favor, 0 opposed
- Commissioner Chandler moved, seconded by Commissioner O'Brien not to file a complaint in case *E07-0206: Kevin Brown v. Hart Transportation Systems, Inc. (demotion and termination following leave of absence for heart attack)*. 4 in favor, 0 opposed
- Commissioner Chandler moved, seconded by Commissioner O'Brien not to file a complaint in case *E07-0353: Jonathan Perales v. Movie Gallery (termination following report of racial and national origin harassment by a customer)*. 4 in favor, 0 opposed
- Commissioner Chandler moved, seconded by Commissioner O'Brien not to file a complaint in case *E08-0136: Douglas H. Birt v. Patrick Day d/b/a Maine Street Market and Day's Diner*. 4 in favor, 0 opposed
- Commissioner Chandler moved, seconded by Commissioner Perry to file a complaint in case *H08-0281: Ixchel Maybury v. Maine State Housing Authority*. 4 in favor, 0 opposed

NEW BUSINESS:

- Legislative Bill update: Executive Director Patricia Ryan provided an update on the current status of bills related to family caregivers, offensive names, racial profiling, Lillie Ledbetter and advised Appropriations voted to recommend the 2010 & 2011 Biennial Budget Change Package.

ADJOURN:

There being no further business to come before the commission, the meetings was adjourned at 4:17 p.m.

CONSENT AGENDA:

The consent agenda is a listing of cases scheduled on the Commission's meeting agenda in which there is no written disagreement to the Investigator's recommendation. Commissioners consider these cases without oral argument by the parties.

E07-0324:	Nicolas Sprague (Palmyra) v. Echostar Satellite, LLC (Augusta)	NRG
E07-0405:	Christopher Elwell (Saco) v. Kohl's Department Stores, Inc. (WI)	NRG
E07-0500:	Michael Afthim (S Portland) v. Alternative Labor Resources, Inc. (S Portland)	RG/NRG
PA07-0507(A-F):	*James Stile (Sangerville) v. Town of Sangerville, Goggin, Young, Gould, Wilson, Emerson & Kane (Sangerville)	NRG
E07-0513:	Jacqueline Daigle (Biddeford) v. St. Andre Health Care Facility (Biddeford)	NRG
E07-0513-A:	Jacqueline Daigle (Biddeford) v. D. Larson-Hurst (Biddeford)	NRG
E07-0628:	Michael Poulin (Caribou) v. City of Caribou	NRG
E07-0661:	*Randy Gravel (Houlton) v. B. Westerdahl d/b/a Westerdahl's Garage (Littleton)	NRG
E07-0669:	David Ford (Portland) v. IDEXX Laboratories, Inc. (Westbrook)	NRG
E07-0690:	*Kevin Bouchard (Fort Fairfield) v. L.J. Paradis, Inc. (Fort Kent)	NRG
E07-0709:	Mary Kittrick (Millinocket) v. Millinocket Regional Hospital (Millinocket)	NRG
E07-0710:	Mary Kittrick (Millinocket) v. Quorum Health Resources (TN)	NRG
E07-0714:	*Trisha Corkins (Ellsworth) v. Downeast Family YMCA (Ellsworth)	NRG
E08-0004:	John Petersen, Jr. (Gorham) v. Portland Water District	NRG
E08-0062:	Cecilia Smith (Portland) v. South Portland Donuts, LLC d/b/a Dunkin Donuts (NH)	NRG
E08-0117:	Robert Grant (Bangor) v. T & P Lumber, Inc. d/b/a Crescent Lumber Co (Orrington)	NRG
E08-0118:	Melissa Strout (Canton) v. Community Concepts, Inc. (S. Paris)	NRG
E08-0155:	George Lees (Portland) v. The Salvation Army (Portland)	NRG
E/PA08-0170:	*Matthew Brannon (Bowdoin) v. Children's Dayhouse (Brunswick)	NRG
PA08-0204:	*Felicia King (Bangor) v. Eastern Me. Health Care d/b/a Acadia Hospital (Bangor)	NRG
PA08-0224:	Mark O'bershaw (Warren) v. State of Maine/Corrections/Maine State Prison	NRG
E08-0327:	Roger Hobbs (Madison) v. Hartt Transportation Systems, Inc. (Bangor)	NRG
H08-0337:	**Theresa Thomas (Rockland) v. Scott Layton (Rockland)	NRG
CE08-0342:	David Daigle, Sr. (Old Town) v. Penobscot County Fed. Credit Union (Old Town)	NRG
E08-0416:	Sherri Chabot (Poland) v. Benway Enterprises d/b/a Victory Lane Quick Lube &	NRG
E08-0429:	Elizabeth Chandler (NH) v. Home Companions Association of New England (York)	NRG