

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

May 18, 2009

Chair Paul Vestal called the May 18, 2009 Commission meeting to order at 8:31 a.m. Present were Commissioners: Paul Vestal, Chair; Jadine O'Brien; Sallie Chandler; Joe Perry; and Kenneth Fredette.

Paul Vestal called for adoption of the agenda.

- Executive Director Patricia Ryan requested that case E07-0726/E07-0727: Kate Stevens v. MSAD #6 and Saco Valley Teachers' Association be tabled pending settlement.
- Executive Director Patricia Ryan requested that case E07-0717: Linden Buzzell (Bar Harbor) v. Securitas Security Services USA, Inc. (Bangor) be removed from the Agenda due to administrative dismissal at the request of the Complainant, with agreement by the Respondent.
- Executive Director Patricia Ryan requested that case E08-0175: McGlaufflin v. RCC Atlantic be tabled to the June 29th meeting.
- Executive Director Patricia Ryan requested that case E07-0691: Kevin Bouchard (Fort Fairfield) v. Hannaford Bros. Co. (Portland) be moved to the end of the afternoon agenda.
- Executive Director Patricia Ryan requested that case E07-0729: McInnis v. Wal-Mart Stores be removed from the Agenda due to settlement between the parties.

Commissioner Chandler moved, seconded by Commissioner Fredette to adopt the agenda as amended. 5 in favor, 0 opposed

CONSENT AGENDA (see list attached)

Commissioner Fredette moved, seconded by Commissioner Chandler to table E08-0456: Mary Butler v. Capital Pizza Huts, Inc. to the June 29th Agenda. 4 in favor, 1 opposed (Vestal opposed)

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

MINUTES

Commissioner O'Brien moved, seconded by Commissioner Vestal to adopt the Minutes of the April 13th, 2009, Commission Meeting. 5 in favor, 0 opposed

ADMINISTRATION

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

Personnel Report - Commissioners reviewed the report and it was placed on file.

NEW BUSINESS:

Executive Director Patricia Ryan provided a brief legislation update on LD 353: Biennial Budget Appropriations; LD 797: Offensive Names; LD 962 Family Caregivers; and LD 1108: Statute of Limitations under the MHRA.

Commissioners agreed to move discussions on proposed guidance on sexual orientation and MHRA coverage of inmates, prisons and arrests as public accommodation discrimination, to the end of the agenda.

INVESTIGATION

- New Charges: The April report will be provided prior to the next meeting.
- Administrative Dismissals: Commission staff administratively dismissed 13 cases in April.
- Pre-determination Settlements: During the month of April investigators were responsible for obtaining settlements in 13 cases resulting in a total monetary relief of \$66,831.60.

CASES VOTED ON:

E07-0629: Richard Karajin (Auburn) v. Volunteers of America (Brunswick): Richard Karajin restated the position of the Complainant. Attorney John Gleason restated the position of the Respondent. Investigator Michele Dion restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Fredette to find no reasonable grounds to believe that unlawful employment discrimination because of age or sex has occurred. 4 in favor, 0 opposed, 1 abstained. Commissioner Vestal abstained.

E07-0631: Michael Montagna (NY) v. State of Maine/Executive/Planning Office: (Augusta). Complainant was not present. Commissioner Chandler moved, seconded by Commissioner Fredette to find no reasonable grounds to believe that unlawful employment discrimination because of sex discrimination (sexual harassment) has occurred. 5 in favor, 0 opposed. Commissioner Chandler moved, seconded by Commissioner Fredette to find no reasonable grounds to believe that unlawful retaliation has occurred. 5 in favor, 0 opposed.

E07-0697: Donna Van Horn (Augusta) v. Cardiovascular Consultants of Me. (Scarborough). Attorney Kristin Aiello restated the position of the Complainant. Attorney Richard Moon restated the position of the Respondent. Investigator Angela Tizon restated the facts of the case. Commissioner Fredette moved, seconded by Commissioner Perry to find **reasonable grounds** to believe that unlawful employment discrimination and that respondent failed to provide a reasonable accommodation due to disability has occurred. 3 in favor, 2 opposed. Commissioner Vestal and Commissioner O'Brien opposed.

E07-0698: Gregory Brunelle (Augusta) v. Wal-Mart Stores East, LP: Attorney Kristin Aiello restated the position of the Complainant. Attorney Matthew Tarasevich restated the position of the Respondent. Investigator Robert Beauchesne restated the facts of the case. Commissioner Fredette moved, seconded by Commissioner Perry to find no reasonable grounds to believe that unlawful employment discrimination because of disability or constructive discharge has occurred. 4 in favor, 1 opposed. Commissioner Vestal opposed.

E08-0005: Victoria Spaulding (Oakland) v. T-Mobile USA, Inc. (Oakland): Attorney Kristin Aiello restated the position of the Complainant. Attorney Richard Moon restated the position of the Respondent. Chief Field 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 disability (reasonable accommodation) has occurred. 4 in favor, 1 opposed. Commissioner O'Brien opposed.

Commissioners took a 10 minute recess.

E08-0069: Michael Castagna (Saco) v. Volk Packaging Corporation (NJ): Attorney Kristin Aiello restated the position of the Complainant. Attorney Frederick Finberg restated the position of the Respondent. Chief Field Investigator Barbara Lelli restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Perry to find **reasonable grounds** to believe that unlawful employment discrimination because of unlawful medical inquiries, unlawful disability and sexual orientation harassment and constructive discharge has occurred. 5 in favor, 0 opposed.

E08-0070: Michael Castagna (Saco) v. CoWorx Staffing Services, LLC (NJ): Attorney Jeffrey Neil Young restated the position of the Complainant. Attorney Patricia Granger restated the position of the Respondent. Chief Field Investigator Barbara Lelli 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 disability or sexual orientation has occurred. 5 in favor, 0 opposed.

E08-0160: Michael Poto (Greene) v. Fairpoint Communications (NC) & E08-0161: Michael Poto (Greene) v. Verizon (Lewiston): Attorney Kristin Aiello restated the position of the Complainant. Attorney Seth Fairbanks restated the position of the Respondent. Chief Investigator Barbara Lelli 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 reasonable accommodation has occurred. 5 in favor, 0 opposed.

PA08-0212: Brianna Freeman (Lewiston) v. Realty Resources Hospitality., d/b/a Denny's (Auburn): Brianna Freeman restated the position of the Complainant. Attorney Chad Cloutier restated the position of the Respondent. Investigator Angela Tizon restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Chandler to find **reasonable grounds** to believe that unlawful public accommodation discrimination because of sexual orientation for failure to provide full and equal enjoyment of a facility has occurred. 3 in favor, 2 opposed. (Commissioner Perry and Commissioner Fredette opposed) Commissioner O'Brien moved, seconded by Commissioner Chandler to find no reasonable grounds to believe that unlawful public accommodation discrimination because of disability has occurred. 4 in favor, 1 opposed. (Commissioner Perry opposed)

E08-0349: Sandra Homer (Saco) v. Dermatology Associates (Portland): Complainant was not present. Commissioner Fredette moved, seconded by Commissioner Chandler to find no reasonable grounds to believe that unlawful employment discrimination because of disability has occurred. 4 in favor, 1 abstained. Commissioner O'Brien abstained.

E08-0351: Jody Manzer (Anson) v. Town of Anson , E08-0347: Everett Peary (North Anson) v. Town of Anson: Attorney Mark Dunlap restated the position of the Respondent. Jody Manzer and Everett Peary restated the positions of the Complainants. Investigator Paul Pierce restated the facts of the case. Commissioner Fredette moved, seconded by Commissioner Perry to find **reasonable grounds** to believe that unlawful employment discrimination in violation of the Whistleblowers Protection Act and Maine Human Act has occurred. 5 in favor, 0 opposed.

E08-0355: Amanda (Webber) Bowden (Springvale) v. Omnicare of Maine (Westbrook): Amanda Webber restated the position of the Complainant. Richard Legere restated the position of the Respondent. Investigator Paul Pierce restated the facts of the case. Commissioner O'Brien moved, seconded by Commissioner Perry to table case pending further investigation. 5 in favor, 0 opposed.

E08-0358: Joseph Swett (Standish) v. Oakhurst Dairy (Portland): Joseph Swett restated the position of the Complainant. Attorney Alan McCormick restated the position of the Respondent. Commissioner Fredette moved, seconded by Commissioner Chandler to find no reasonable grounds to believe that unlawful employment discrimination in violation of the whistleblowers' Protection Act has occurred. 5 in favor, 0 opposed.

E08-0494: Patti Stanwood o/b/o ST (Millbridge) v. Father's Farm (Columbia Falls): Complainant was not present. Nancy Bailey restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner O'Brien to find **reasonable grounds** to believe that unlawful employment discrimination because of sexual harassment and constructive discharge has occurred. 4 in favor. 0 opposed. 1 abstained. (Commissioner Fredette abstained)

E07-0691: Kevin Bouchard (Fort Fairfield) v. Hannaford Bros. Co. (Portland). Attorney Jeffrey Young restated the position of the Complainant. Attorney Tim O'Brien restated the position of the Respondent. Commissioner Fredette moved, seconded by Commissioner Chandler to find no reasonable grounds to believe that Respondent is an integrated enterprise and therefore there are no reasonable grounds to believe that unlawful employment discrimination in violation of the Whistleblowers' Protection Act has occurred. 5 in favor, 0 opposed.

NEW BUSINESS:

Commission Counsel John Gause reviewed proposed guidance on sexual orientation. and reviewed with Commissioners MHRA coverage of inmates, and prisons and arrests as public accommodation discrimination. Commissioners decided to place both items on the June 29th agenda to conclude discussions.

EXECUTIVE SESSION:

Commissioner Chandler moved, seconded by Commissioner Fredette to move into executive session to discuss litigation with Commission Counsel pursuant to 1 M.R.S.A. §405(6)E. 5 in favor, 0 opposed

Commissioner Chandler moved, seconded by Commissioner Fredette to move out of executive session. 5 in favor, 0 opposed

LITIGATION:

Commissioner Chandler moved, seconded by Commissioner Fredette not to file a complaint in case E07-0532: Donna Rowe v. The Aroostook Medical Center. 5 in favor, 0 opposed

Commissioner Chandler moved, seconded by Commissioner Fredette not to file a complaint in case E07-0320: Joseph Donahue, Jr. V. Clair Car Connection d/b/a Clair Saco Honda. 5 in favor, 0 opposed

Commissioner Chandler moved, seconded by Commissioner Fredette not to file a complaint in case E08-0057, E08-0057-A, Anna B. Carpenter v. PDQ Convenience, LLC and Anthony Seccareccio. 5 in favor, 0 opposed

Commissioner Chandler moved, seconded by Commissioner Fredette not to file a complaint in E08-0088, William Anderson v. Theriault Tree Harvesting, Inc. . 5 in favor, 0 opposed

ADJOURN:

There being no further business to come before the commission, the meetings was adjourned at 3:59 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.

<i>Case</i>	<i>Parties</i>	<i>Result</i>
<i>E07-0441:</i>	<i>Marko Erakovic (Portland) v. Applicator Sales & Service (Portland)</i>	<i>NRG</i>
<i>PA07-0492:</i>	<i>Nancy Hahnel (Pittston) v. State of Maine/DHHS/Riverview (Augusta)</i>	<i>NRG</i>
<i>E07-0626:</i>	<i>Kimberly Dame (Windham) v. State of Maine/Department of Corrections (Augusta)</i>	<i>NRG</i>
<i>E07-0699:</i>	<i>Benjamin Williams (Belfast) v. Bank of America, N.A. (Belfast)</i>	<i>NRG</i>
<i>E08-0132:</i>	<i>Deborah Pinette (Westbrook) v. Sappi Fine Paper (S Portland)</i>	<i>NRG</i>
<i>E08-0147:</i>	<i>Dante Vespignani (Windham) v. Papa John's (KY)</i>	<i>NRG</i>
<i>E08-0172:</i>	<i>Mary Bressette (Freeport) v. Mid-Coast Cardiology (Brunswick)</i>	<i>NRG</i>
<i>E08-0192:</i>	<i>David Seck (Bangor) v. Gagne Precast Concrete Products, Inc. (Veazie)</i>	<i>RG</i>
<i>E08-0282:</i>	<i>Mona Campbell (Caribou) v. State of Maine/Maine Military Authority (Limestone)</i>	<i>NRG</i>
<i>E08-0314:</i>	<i>Joel Anderson (Cornish) v. PALCO Leasing (Saco)</i>	<i>NRG</i>
<i>E08-0388:</i>	<i>Corey Turner (Portland) v. Staples, Inc. (S. Portland)</i>	<i>NRG</i>
<i>PA08-0624:</i>	<i>Pauline Hoffman (Lisbon) v. Paul & Lynae Finley d/b/a Morning Star Inn Lewiston)</i>	<i>RG</i>
<i>PA08-0668:</i>	<i>Robert Vicino (Augusta) v. Maine Pretrial Services, Inc. (Augusta)</i>	<i>NRG</i>