



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

Senator Inn - BOARDROOM

284 Western Ave ~ Augusta, Maine 04330

June 17, 2019

Commissione Chair Arnold Clark called the meeting to order at 8:30 AM. Also present were Commissioners Ted Helberg and Fred Oettinger.

AGENDA

Commissioner Helberg moved, seconded by Commissioner Oettinger, to adopt the Agenda and to accept the Investigator's recommended decision in each of the cases listed on the Consent Agenda (see listing on page 5). 3 in favor | 0 opposed.

MINUTES

Commissioner Oettinger moved, seconded by Commissioner Helberg, to adopt the May 13, 2019 Commission meeting minutes. 3 in favor | 0 opposed.

ADMINISTRATION

Monthly reports: Executive Director Sneirson discussed reporting on Commission activities from May:

- Personnel: All positions are staffed at present.
- Compliance: Since the last meeting, there were 0 unsuccessful conciliations and 0 successful conciliations. 8 reasonable-grounds cases remain in active conciliation.
- New Charges: 54 new complaints filed in May 2019.
- Administrative Dismissals: 35 administrative dismissals issued in May 2019.
- There were 13 predetermination settlement agreements totaling \$120,700 in benefits to complainants.

NEW BUSINESS

The Commission's proposed 2020 meeting schedule was reviewed. Commissioner Helberg moved, seconded by Commissioner Oettinger, to approve the proposed 2020 Commission Hearing schedule. 3 in favor | 0 opposed.

The Office of the Governor has appointed a new Commissioner for the seat held by John Norman, the term for which ended in August 2018. Jefferson Ashby, the appointee, is an attorney in Presque Isle. His hearing before the Legislature's Judiciary Committee is scheduled for tomorrow.

With respect to new administrative determinations to be approved (see listing on page 5), Commissioner Oettinger moved, seconded by Commissioner Helberg, to approve the administrative dismissal of 11 cases listed on the Commission agenda with a "no reasonable grounds" determination in each. 3 in favor | 0 opposed.

There were two administrative determinations made at the last Commission meeting that were erroneous. Commissioner Helberg moved, seconded by Commissioner Oettinger, to reconsider the vote to dismiss the cases of Chapman v Maine Care Member Services (PA18-0387) and Chapman v City of Portland/City Hall PA18-0396); 3 in favor | 0 opposed..

The Commission's three agency bills at the Legislature remain pending after successful hearings before the Judiciary Committee; it is unclear if or when they will be voted out of committee, or if they may be carried over to the next session. With respect to the Biennial Budget for 20-21, the last known action related to the Commission budget proposals was to include one Investigator position, \$4200/year for meeting security, and \$10,000/year to build and maintain a web portal that will allow parties and counsel to check the status of matters and submit documents electronically. Funding for reclassification of the Executive Director position was included in the Governor's Change Package to the Biennial Budget. However, the final status of any budget items related to the Commission will not be known until after the Governor receives and acts on the Biennial Budget proposal approved by the Legislature. A separate bill submitted by Rep. Rachel Talbot Ross to provide resources to the Commission was passed and sits on the Appropriations and Financial Affairs' Committee's "table".

Commission staff will be participating in an in-house training on implicit bias with Professor Sarah Readfield, and hope the Commissioners can attend. The training will hopefully take place in July or August.

The Commission's Third Party Neutral Mediation Program has been in place for approximately six years, and has offered mediators on our roster the same \$350/per case stipend since the program began. We will be issuing a call for new mediators shortly, and think it is long past time to offer a slight increase in the mediator's per-case stipend to \$400. This would mean that the Commission would charge each party \$225 toward the mediation fee, with the remaining \$50 from each case to go toward covering indigent parties' share of mediation fees. Commissioner Oettinger moved, seconded by Commissioner Helberg, to increase the mediation stipend to \$400/case. 3 in favor | 0 opposed.

At 8:45 AM Commissioner Clark began the case hearing agenda.

CASES VOTED ON

E18-0046-AB: Holly Carter (Sanford) v. Avita of Wells (Northbridge Company) and Nicole Doyer (Wells). Holly Carter restated her position as the Complainant. Attorney Joshua Scott restated the position of the Respondent. Investigator Jane O'Reilly restated the facts of the case. Commissioner Helberg moved,

seconded by Commissioner Oettinger, to find there are No Reasonable Grounds to believe that Avita of Wells and/or Nicole Doyer discriminated against Holly Carter on the basis of disability (discharge; denial of a reasonable accommodation) and No Reasonable Grounds to believe that Avita of Wells and/or Nicole Doyer retaliated against Holly Carter for engaging in MHRA- or WPA-protected activity. 3 in favor | 0 opposed.

PA17-0127*: Stacy Venable (Newton Square, PA) v. State of Maine Department of Corrections (Warren, ME). Assistant Attorney General James Fortin restated the position of the Respondent. Complainant was not present. Chief Investigator Alice A. Neal restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Oettinger, to find there are No Reasonable Grounds to believe that State of Maine Department of Corrections subjected Stacy Venable to unlawful disparate treatment on the basis of sex (hostile environment), and No Reasonable Grounds to believe that State of Maine Department of Corrections retaliated against Stacy Venable for engaging in MHRA-protected conduct. and no reasonable grounds. 3 in favor | 0 opposed. Commissioner Helberg moved, seconded by Chair Clark, to find Reasonable Grounds to believe that State of Maine Department of Corrections discriminated against Stacy Venable on the basis of sex (disparate impact). 1 in favor | 2 opposed. (Clark, Oettinger opposed); the motion did not pass. With no other motion made or voted on, the finding by default was no reasonable grounds to believe that the State of Maine Department of Corrections discriminated against Stacy Venable on the basis of sex (disparate impact).

E17-0246-AB*: Dana Comeau (Kennebunkport, ME) v. CVS Health (Kennebunk, ME) & Tracy Sullivan (Woonsocket, RI). Attorney Jordan Payne Hay restated the position of the Complainant. Attorney Desiree Murphy restated the position of the Respondent. Chief Investigator Alice A. Neal restated the facts of the case. Commissioner Clark moved, seconded by Commissioner Oettinger, to find there are No Reasonable Grounds to believe that Respondent CVS Health discriminated against Complainant Dana Comeau on the basis of disability by denying her a reasonable accommodation. 2 in favor | 1 opposed (Helberg opposed). Commissioner Helberg moved, seconded by Commissioner Oettinger, to find **Reasonable Grounds** to believe that Respondent CVS Health retaliated against Complainant Dana Comeau in violation of the MHRA because she engaged in protected activity. 3 in favor | 0 opposed. Commissioner Helberg moved, seconded by Commissioner Oettinger, to find No Reasonable Grounds to believe that Respondent Tracy Sullivan retaliated against Complainant Dana Comeau in violation of the MHRA because she engaged in protected activity. 3 in favor | 0 opposed.

E18-0052: Keith Hafford (Carmel) v. The Getchell Agency, Inc. (Bangor). Keith Hafford restated his position as the Complainant. Attorney Ben Wahrer restated the position of the Respondent. Investigator Robert D. Beauchesne restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Oettinger, to find No Reasonable Grounds to believe that The Getchell Agency, Inc. retaliated against Keith Hafford for engaging in WPA-protected activity. 3 in favor | 0 opposed.

E18-0121: Kenneth Lloyd (Caribou) v. City of Caribou (Caribou). Kenneth Lloyd restated his position as the Complainant. Attorney Frederick Costlow restated the position of the Respondent. Chief Investigator Alice A. Neal restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Oettinger, to find No Reasonable Grounds to believe that the City of Caribou retaliated against Kenneth Lloyd for engaging in WPA protected activity. 1 in favor | 2 opposed (Clark, Oettinger opposed); the motion did not pass. Commissioner Oettinger moved, seconded by Commissioner Helberg, to find **Reasonable Grounds** to

believe that the City of Caribou retaliated against Kenneth Lloyd for engaging in WPA protected activity. 3 in favor | 0 opposed.

E18-0432: Tim Scheele (Bath) v. Bath Iron Works (Bath). Tim Scheele restated his position as the Complainant. Attorney Laura M. O’Hanlon restated the position of the Respondent. Investigator Jane O’Reilly restated the facts of the case. Commissioner Oettinger moved, seconded by Commissioner Helberg, to find No Reasonable Grounds to believe that Bath Iron Works discriminated against Tim Scheele on the basis of sex. 3 in favor | 0 opposed.

At 12:10 Chair Clark called for a 5 minute break.

H18-0379-ABC: Mark Chapman (Portland) v. MaineLy Property Management, MRA Management LLC, & Sands Mauritius Holdings, LLC (Portland). Mark Chapman restated his position as the Complainant. Attorney Wendy Paradis restated the position of Respondent MRA Management LLC and Sands Mauritius Holdings, LLC. Respondent MaineLy Property Management was not present. Chief Investigator Alice A. Neal restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Oettinger, to find No Reasonable Grounds to believe that MaineLy Property Management, MRA Management LLC, and/or Sands Mauritius Holdings, LLC discriminated against Mark Chapman based on his disability in the terms and conditions of his housing. 3 in favor | 0 opposed.

EXECUTIVE SESSION

At 12:33 PM, Commissioner Helberg moved, seconded by Commissioner Oettinger, to go into executive session to discuss pending or contemplated litigation and the Commission’s legal rights and duties with Commission Counsel pursuant 1 M.R.S. §405(6)(E). 3 in favor | 0 opposed.

At approximately 12:47 AM, Commissioner Helberg moved, seconded by Commissioner Oettinger, to come out of executive session. 3 in favor | 0 opposed.

Commissioner Oettinger moved, seconded by Commissioner Helberg, to not litigate the following reasonable-grounds cases in which conciliation was not successful:

- Jimmy L. Ford v. Home Depot USA (E17-0029)
- Mykayla McCann v. St. Mary’s Hospital (E17-0068)

3 in favor | 0 opposed.

At approximately 12:47 PM, Commissioner Clark adjourned the meeting.

CONSENT AGENDA

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

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| E17-0203 | Sarah J. Ruddy (Chelsea, MA) v. Maine School of Science and Mathematics (Limestone, ME) | NRG |
| E17-0267* | Ernest Michael Ballesteros (Glenburn) v. ALCOM, LLC (Winslow) & Hudson Ferry Capital, LLC | RG |
| A, B | (New York, NY) | |
| E17-0292* | Dawn Rouillard (West Newfield) v. Cumberland County (Portland) | RG |
| E17-0378 | Jack Liu (Qionghai City, Hainan Province, P.R. China) v. Eastern Maine Medical Center (Bangor) | NRG |
| E17-0423 | Dr. Marco Naguib (Kittery) v. The Aroostook Medical Center (Presque Isle) | NRG |
| E17-0539 | William Schreiber (South Portland) v. AAA Northern New England (Costa Mesa, CA) | NRG |
| E18-0083 | Donald Cote (New Sweden) v. Maine Department of Agriculture, Conservation and Forestry (Augusta) | NRG |
| E18-0103 | Lauren Corbett (Old Orchard Beach) v. Lucinda Clark (Biddeford) & Thatcher Brook Center | NRG |
| A, B | (Biddeford) | |
| E18-0398 | Douglas Avery (Windham) v. Northeast Technical Institute (Scarborough) | NRG |
| E18-0407 | Jennifer Hanson (Winthrop) v. Jamie Dunn/Titles section – BMV (Augusta) | NRG |
| E18-0468 | Jill Lamontagne (Kennebunk) v. Regional School Unit 21 (Kennebunk) | NRG |
| H19-0058 | Kelly Thibodeau (Mexico, ME) v. Thomas Bernard (Mexico, ME) | NRG |

TABLED

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| E17-0247 | Delila A. Cloutier (Dixfield) v. Wal-Mart Stores, Inc. (Bentonville, AR) | NRG |
| E17-0407 | Michael Connolly (Kennebunk) v. Postal Fleet Services, Inc. (St. Augustine, FL) | NRG |

ADMINISTRATIVE DETERMINATIONS

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| E18-0366 | Garret Oswald (New Portland) v. Maine Department of Labor (Augusta) & John Butera | NRG |
| A, B | (Augusta) | |
| E18-0375 | Gloria JoRoth (Harrison) v. Village Donut & Bakery (Naples) | NRG |
| E18-0428 | Cece Verrier (Nobleboro) v. MaineHealth D/B/A Penobscot Bay Medical Center (Rockport) | NRG |
| E18-0454 | Daniel Cram (East Millinocket) v. WeConnect LLC (Lincoln) | NRG |
| E19-0073 | Elizabeth Davidson obo minor child (Newport) v. McDonald's (Waterville) | NRG |
| ED/PA19-0088 | Jan Leach (Brooksville) v. Kyle Gray – minor (Harborside) | NRG |
| E19-0115- B | Sean J. Floyd (Swanville) v. Waldo County Sheriff's Department (Belfast) | NRG |
| E19-0176 | Lisa J. Lennan (Limington) v. Healthcare Service Group (Bensalem, PA) | NRG |
| PA19-0180 | Nicholas A. Gladu (Warren) v. Maine Department of Corrections (Augusta) | NRG |
| PA19-0181 | Debbie Silverwolf (Biddeford) v. Dayton Town Office (Dayton) | NRG |
| E19-0190 | Georges Kabongo-Mubalamate (South Portland) v. Ensign-Bickford Industries, Inc. | NRG |
| A, B | (Simsbury, CT) & Envirologix Inc. (Wholly Owned Subsidiary of EBI) (Portland) | |