



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

**MHRC Case No.: E15-0154**

March 23, 2017

**Peter Hyatt (Old Town)**

v.

**Getchell Agency, Inc.<sup>1</sup> (Bangor)**

### I. Summary of Case:

Complainant Peter Hyatt, who worked for Respondent Getchell Agency, Inc. as the Chief Operating Officer from August 2014 through October 2014, alleged that Respondent retaliated against him when it terminated Complainant's employment for reporting unsafe or illegal behavior in the workplace. Respondent, a business that provides residential support services to disabled individuals, denied retaliating against Complainant; his employment was terminated when his services were no longer needed. The Investigator conducted a preliminary investigation, which included reviewing all of the documents submitted by the parties and requesting additional information<sup>2</sup>. Based upon this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondent retaliated against Complainant for engaging in protected activity.

### II. Jurisdictional Data:

- 1) Dates of alleged discrimination: October 9, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): March 30, 2015.
- 3) Respondent has approximately 160 employees and is subject to the Maine Human Rights Act ("MHRA") and the Whistleblowers' Protection Act ("WPA"), as well as state employment regulations.
- 4) Complainant is represented by Edward W. Gould, Esq. Respondent is not represented by counsel.

### III. Development of Facts:

- 1) Complainant provided the following in support of his claims:

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<sup>1</sup> Complainant's complaint listed Respondent's name as Getchell Agency, Inc. Respondent provided that its legal name is "The Getchell Agency, Inc." Because Complainant has not amended his complaint to use Respondent's legal name, the name used by Complainant has been retained.

<sup>2</sup> The Investigator sent requests for additional information to Complainant and Respondent; neither responded, apparently because Respondent filed a bankruptcy action.

Complainant worked for Respondent and performed his job duties satisfactorily. One of Complainant's primary duties was to bring Respondent into compliance with the regulations governing Respondent's programs. Complainant identified several practices that he considered to be unsafe or illegal in the workplace and reported those concerns to the Chief Executive Officer ("CEO") and Respondent's attorney ("Attorney"). Complainant reached out to CEO's son ("Son") about concerns about illegal drug use in the workplace; Complainant's employment was terminated the next day.

2) Respondent provided the following in support of its position:

Complainant was toxic, polarizing, and disruptive as a manager in addition to being intolerant and prejudiced. Complainant's employment was terminated based on his inadequate job performance and actionable improprieties by him against Respondent. Respondent investigated Complainant's activities and believed Complainant engaged in widespread wrongdoing. Complainant filed his Commission complaint after Respondent requested that he cease and desist in his wrongdoing.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties:

- a) During the summer of 2014, CEO sought managerial assistance to run the agency and spoke to Attorney regarding the position. Attorney recommended bringing Complainant on board. Attorney, CEO, and Complainant discussed various deficiencies that Complainant should correct as part of his duties. Complainant's job duties included bringing Respondent into compliance with applicable rules and regulations, employee relations, communications with state agencies, and other duties. Complainant worked for Respondent from August 2014 through October 9, 2014 as the Chief Operating Officer<sup>3</sup>.
- b) Three days after he started, CEO believed she made a mistake in hiring Complainant. CEO believed that Complainant began behaving erratically; Complainant told CEO that he had inside connections with state agencies and governmental offices and to let him run the agency "or else", and Complainant made homophobic and ableist statements. Respondent claimed that Complainant began firing and disciplining staff without CEO's knowledge or consent, and that he interfered with customer relationships.
- c) After Complainant began his job, he observed concerns about billing practices (including fraud), staff training, and purported illegal drug use by CEO and the Program Manager ("Program Manager"), CEO's boyfriend. Staff members reported CEO's and Program Manager's drug use to Complainant. Complainant spoke to CEO and Program Manager about his concerns related to their drug usage. Respondent denied that Complainant engaged in this conversation.
- d) Mandatory background checks were run on the employees. Program Manager's background check revealed a prior domestic assault that could pose an issue in his working with certain of Respondent's clients. Complainant was instructed not to act on the information.
- e) Complainant informed CEO that Program Manager was not always working and that he was concerned that Program Manager received a salary for times he did not work in violation of state law. CEO did not address Complainant's concerns.
- f) Complainant told CEO and Program Manager that Respondent was not in compliance with applicable regulations, and expressed concern that it could suffer serious consequences if it was not in compliance.

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<sup>3</sup> Respondent claimed that Complainant took the title of Chief Operating Officer, though he was hired as a general manager. However, on September 3, 2014, CEO wrote a letter describing Complainant as the Chief Operating Officer.

- g) Complainant attempted to bring Respondent into compliance with all applicable regulations, yet CEO and Program Manager resisted Complainant's efforts and their behavior became more erratic. At one point, Program Manager was raging in the office and Complainant gave employees permission to work at home because they felt unsafe.
- h) Complainant developed increasing concerns regarding CEO's and Program Manager's drug use and spoke to Attorney about his concerns; Complainant was instructed to be patient.
- i) On about October 7 or 8, 2014, Complainant spoke to Son about CEO and her drug usage, urging CEO to enter rehabilitation.
- j) On October 9, 2014, Complainant's employment was terminated. Respondent sent a termination letter on Complainant stating that "this to inform you [Complainant] that the [Respondent] no longer needs your services as of day 9<sup>th</sup> month of October this year 2014". Complainant asked for the reason(s) for his discharge; Respondent's answer provided that Complainant's employment was terminated because of inadequate job performance and actionable improprieties against Respondent.
- k) From 2013 through early Summer 2015, Respondent has discharged approximately 59 employees; some for policy violations and others because their services were no longer needed.

#### IV. 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 Maine Revised Statutes ("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 prohibits retaliation against employees who, pursuant to the WPA, make good faith reports of what they reasonably believe to be a violation of law or a condition jeopardizing the health and safety of the employee or others in the workplace. *See* 5 M.R.S. § 4572(1)(A); 26 M.R.S. § 833(1)(A)&(B).
- 3) In order to establish a prima-facie case of retaliation in violation of the WPA,<sup>4</sup> Complainant must show that he engaged in activity protected by the WPA, he was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; One method of proving the causal link is if the adverse job action happens in "close proximity" to the protected conduct. *Id.* at 1998 ME 227, ¶ 16, 719 A.2d at 514-15.
- 4) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1<sup>st</sup> Cir. 1995). Respondent must then "produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes that

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<sup>4</sup> In order to determine whether Complainant has met the reasonable grounds standard, the Commission must determine whether the Complainant has at least an even chance of succeeding *at trial*. Accordingly, the Law Court's decision in *Brady v. Cumberland County*, 2015 ME 143, ¶39, holding that the burden-shifting analysis used here is unnecessary when a court is deciding a motion for summary judgment, is inapplicable. *Id.* at ¶ 39, n.9 (expressly not considering applicability of burden-shifting structure at trial).

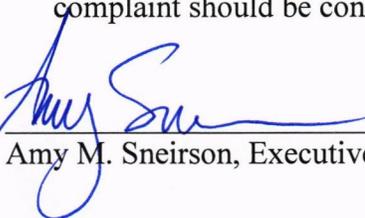
showing, the Complainant must carry his overall burden of proving that “there was, in fact, a causal connection between the protected activity and the adverse employment action.” *Id.* In order to prevail, Complainant must show that Respondent would not have taken the adverse employment action but for Complainant’s protected activity, although protected activity 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).

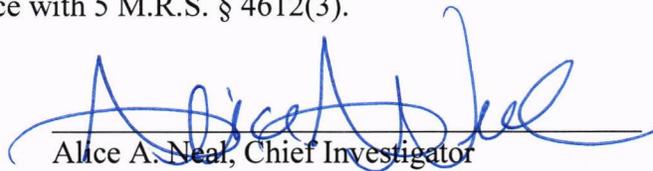
- 5) Complainant has established a prima-facie case: he engaged in protected activity (reporting concerns about on-site drug usage, billing practices, and other areas of deficiencies), his employment was terminated after less than two months, and the closeness in time between the events infers a causal connection.
- 6) Respondent provided a legitimate, nondiscriminatory reason for its actions: Complainant’s employment was terminated because his services were no longer required.
- 7) At the final stage of the analysis, Complainant has demonstrated that Respondent’s reason was false or irrelevant and that unlawful retaliation was the reason for his discharge, with reasoning as follows:
  - a) Complainant was discharged less than two months after he began working for Respondent. The record is devoid of any evidence that Complainant was counseled or disciplined during his employment. During Complainant’s time working for Respondent, he informed CEO, Program Manager, and Attorney about a variety of concerns related to unlawful or illegal activity in the workplace. Complainant was told to be patient and not act on the information he reported.
  - b) Respondent offered shifting reasons for Complainant’s discharge from employment. These inconsistent statements could indicate that Respondent’s actions are pretextual or irrelevant and ultimately that their actions were discriminatory.
  - c) Complainant has proven a causal link between the purported whistleblowing and the adverse actions that he experienced based on the timing. Further, Respondent took no steps to terminate Complainant’s employment even after CEO believed she made the wrong decision in hiring Complainant. His discharge occurred when Complainant kept reporting concerns about CEO and Program Manager’s drug usage and the impact on the agency.
- 8) Retaliation in violation of the WPA is found.

**V. Recommendation:**

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

There are **Reasonable Grounds** to believe that Respondent Getchell Agency, Inc. retaliated against Complainant Peter Hyatt in violation of the WPA because he engaged in protected activity, and the complaint should be conciliated in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Alice A. Neal, Chief Investigator