



Maine Human Rights Commission

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INVESTIGATOR'S REPORT
MHRC Case Number: E17-0210-A, B, C
August 21 2018

Cynthia L. Moody (Harpwell)

v.

**The Brothers of Christian Instruction (Alfred),
Commissioner Joseph Fitzpatrick/Maine Department of Corrections¹ (Augusta), &
James W. Boddie (Alfred)**

I. Summary of Case:

Complainant, a former inmate, alleged that Volunteer, an individual who volunteered for the Brothers, unlawfully interfered with her rights under the Maine Human Rights Act ("MHRA") by sexually assaulting her. Complainant also alleged that the Brothers, the owner of the premises where the assault occurred, and Department, a department of the State of Maine, subjected her to a hostile work environment based on sex by failing to adequately protect her or respond to Volunteer's harassment. Volunteer denied that he sexually assaulted Complainant; the Brothers and Department argued that Complainant failed to establish a basis for their liability with respect to the alleged harassment. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, issuing requests for additional information to the parties, and holding a Fact Finding Conference ("FFC"). Based upon this information, the Investigator recommends a finding that there are reasonable grounds to believe that Volunteer unlawfully interfered with Complainant's rights under the MHRA, but no reasonable grounds to believe that the Brothers or Department subjected Complainant to a hostile work environment.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: April 2016 to July 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): May 5, 2017.

¹ Complainant named the second respondent as "Commissioner Joseph Fitzpatrick/Maine Department of Corrections" ("Department"); Department stated that its legal name is "State of Maine, Department of Corrections". Complainant did not include any allegations specific to Commissioner Fitzpatrick ("Commissioner") in his individual capacity, nor did she provide any facts to indicate he was involved with the events at issue in this case. Accordingly, the Investigator believes Complainant intended only to name the entity – Department – and not the Commissioner as a party. Because Complainant did not amend her complaint, the name she used for Department has been retained. For ease of reading, the Investigator will refer to "The Brothers of Christian Instruction" as the "Brothers", "James W. Boddie" as the "Volunteer", and all three respondents collectively as, the "Respondents".

- 3) Respondents are subject to the MHRA.
- 4) Complainant is represented by Donald S. Lawson-Stopps, Esq. The Brothers are represented by Frederick F. Costlow, Esq. Department is represented by Kelly L. Morrell, Esq. Volunteer is not represented by counsel.

III. Development of Facts:

- 1) Complainant provided the following in support of her claim:

While in custody, Complainant participated in a program organized by Department that permitted female inmates to volunteer in the community (the "Program"). Complainant volunteered at a property owned by the Brothers (the "Property"), where she gardened and engaged in other outdoor activities under the supervision of Department. Volunteer was a member of the community who volunteered on the Property; the guards that supervised the inmates were aware of Volunteer's reputation for engaging in sexually suggestive conduct with the inmates. In July 2016, Complainant was alone at Property and Volunteer sexually assaulted her. Complainant reported the incident to Department, but they failed to adequately respond to her report and pressured her to return to the Property.²

- 2) The Brothers provided the following in support of its position:

Volunteer was not an employee of the Brothers and the Brothers had no knowledge of any prior incidents of inappropriate behavior from Volunteer. While the Brothers own Property, they lease it to a local shelter program ("Shelter") which was the party responsible for communicating with Department about the Program. Members of the Brothers live at the premises but do not have control over inmates or over Department; the inmates are not volunteers or employees of the Brothers. When the Brothers learned of the incident at issue, the Brothers prohibited Volunteer from returning to the Property.

- 3) Department provided the following in support of its position:

Though Complainant was in the custody of Department, she was not an employee of Department; neither the employment nor the public accommodation provisions of the MHRA apply to Department under such circumstances. Nonetheless, Department took immediate action to protect Complainant once it received her report about the alleged assault. Department contacted local law enforcement authorities and Shelter, both of which took prompt action. Department offered Complainant additional assistance pursuant to its policies and did not require her to return to the Property. Complainant voluntarily chose to return to the Property after she received assurances that Volunteer was not allowed on the Property.

- 4) Volunteer provided the following in support of his position:

On the date of the alleged assault, Volunteer showed Complainant pictures from a recent ocean cruise he had been on. Complainant stated that she wanted to go on a cruise and that she would go with him. Complainant and Volunteer then kissed; the remainder of Complainant's allegations are false. Further,

² Complainant also alleged that Respondents discriminated against her based on disability. However, the only information Complainant provided that might be related this claim is that her disability was alcoholism and that Volunteer allegedly encouraged other female inmates to consume alcohol; it is unclear how, or why, Complainant believes these allegations form the basis of a disability discrimination claim. Accordingly, the Investigator will not analyze a separate claim of disability discrimination in this Report.

Volunteer would not have been able to engage in some of the acts Complainant alleged he participated in because of a medical condition.

- 5) The Investigator made the following findings of fact based on the information in the record:
- a) At all relevant times, Complainant was in the custody of Department and was an inmate of an all-female reentry center operated by Department (“Center”). Department had various agreements with outside organizations near Center that permitted inmates to volunteer to contribute to the local community and learn skills for when they were released. Brothers owned the Property located near Center; the Property included several gardens, an apple orchard, a store that sold apples (“Store”), housing for the Brothers, and other facilities. Department had an informal arrangement with the Brothers that permitted inmates to volunteer at the Property as part of the Program.
 - b) Volunteer assisted the Brothers for over 20 years by mowing grass around the Property, operating the Store for nearly 10 years, gardening, and performing other tasks. At the FFC, Volunteer stated that he asked the Brothers what tasks they wanted him to complete and then attempted to complete said tasks. Additionally, Volunteer stated that the Brothers were not involved in the day-to-day management or maintenance of the Property or operation of Store but did collective revenue from Store. The Brothers denied they operated or derived income from Store in 2016. Based on this information, the Investigator finds that for the purposes of this case Volunteer was an employee of the Brothers, as defined under the MHRA.³
 - c) Inmates who volunteered on the Property were permitted to grow vegetables in a garden; it is apparent that the inmates were able to bring the vegetables back to the Center for consumption. Inmates worked in Store, pickled apples, and did other similar tasks around the Property. There is some evidence in the record to indicate that the inmates picked apples on behalf of local businesses in the area. It is also apparent that Complainant and other inmates received reduced time in custody if they participated in the Program. Based on this information, the Investigator finds that for the purposes of this case Complainant was an employee of Department, as defined under the MHRA.
 - d) While on the Property, an employee of Department (“Guard”) was responsible for monitoring most inmates. Guard directed which tasks the inmates would perform at the Property. While Volunteer often interacted with Guard and the inmates, it is undisputed that he did not direct which tasks they performed – he only offered occasional advice about the best way to perform tasks.
 - e) Around March 2016, Complainant began participating in the Program at the Property. Complainant stated that during her first week, she became aware that Volunteer’s nickname was “Woody” and/or “Uncle Woody”. It is undisputed that the inmates, Guard, and Volunteer all used these nicknames. At the FFC, Volunteer stated that the nicknames originated from the inmates a few years prior to 2016; Volunteer stated the nicknames referred to a penis. At the FFC, Guard disputed that the nicknames had sexual connotations and stated that his own children referred to Volunteer as “Uncle Woody”.
 - f) On July 9, 2016, Department dropped Complainant off at Property without Guard or any additional

³ Unlike some federal laws, the MHRA does not require an individual to receive compensation or remuneration in order to for that individual to be considered an employee. *See* Commission Counsel Memo, “Gratuitous Employees” (June 11, 2012), https://www.maine.gov/mhrc/guidance/memo/20120611_g.pdf.

supervision.⁴ Complainant was alone in Property's greenhouse gardening, when Volunteer initiated a conversation with her about a recent ocean cruise he had been on. Complainant alleged that Volunteer showed her pictures of the cruise and asked her if she wanted to go with him. Complainant stated that Volunteer then grabbed her head, forcibly pressed his lips onto hers, and then forced her hand down his loose shorts onto his erect penis before she was able to get away. Complainant further alleged that Volunteer then followed her around Property attempting to talk to her. Volunteer denied Complainant's allegations. Volunteer stated that he showed Complainant pictures of his cruise and that she stated she wanted to go on a cruise with him. Volunteer stated that he then spontaneously kissed Complainant and that the kiss ended their interaction. Volunteer disputed that he grabbed Complainant's hand and put it in his shorts; Volunteer further asserted that Complainant's account was inaccurate because he had not had an erection in 15 years at the time of the event.⁵

- g) Complainant continued to work at Property after the alleged assault until she was picked up by an employee of Department later that day. Complainant alleged she had no ability to contact Department or other authorities while she was at Property. Department disputed this allegation, stating that Complainant had access to a phone in a building near the greenhouse; Complainant stated that inmates were prohibited from accessing the building with the phone.
- h) Around 10:00 p.m. on the night of the alleged assault, Guard noticed that Complainant appeared upset and asked her if Volunteer had done something to her at Property. Complainant then reported that Volunteer had assaulted her. Guard took Complainant to an office and obtained her statement about the assault; Complainant then returned to her cell for the night. The following morning, at around 8:30 a.m., Complainant informed her son about the alleged assault; her son then called Center and stated that Department should do something about Complainant's reports.
- i) Sometime shortly thereafter, Center's Unit Manager arrived at Center; Unit Manager had already been notified of the alleged assault. Upon her arrival, Unit Manager contacted local law enforcement ("Law Enforcement") and offered Complainant medical treatment and the services of a victim's advocate. Complainant refused medical treatment and the assistance of the victim's advocate. Unit Manager also notified Department's criminal investigator of the alleged assault pursuant to Department policies. Later that day, Law Enforcement interviewed Complainant with Unit Manager present. Law Enforcement also interviewed Volunteer, issued him a summons, and referred the matter to the appropriate district attorney. Law Enforcement also spoke to Shelter about not letting Volunteer back on Property.⁶
- j) Unit Manager also interviewed two other inmates about their interactions with Volunteer. Department stated that neither inmate reported any "safety concerns" about Volunteer. Two days later, Shelter contacted Unit Manager to report Volunteer would not be allowed on Property in the future. At some point, the Brothers became aware of the alleged assault and Volunteer's involvement in the incident.

⁴ It is undisputed that inmates could obtain the privileged status of "Community Custody" which permitted them to travel outside Center without supervision for several hours at a time. In this instance, Complainant chose to travel to the Property to perform additional gardening tasks – it was her first time at the Property without Guard or another Department employee present.

⁵ Volunteer provided medical documentation that stated he suffered from erectile dysfunction on and around the time of the alleged assault. The medical documentation did not indicate the severity of Volunteer's condition. At the FFC, Volunteer reiterated that he had not had an erection for almost two decades.

⁶ It is apparent that Brothers leased much of Property to Shelter, and Shelter operated a number of programs at Property.

- k) Neither Complainant nor the other inmates returned to Property for approximately three weeks. Department then held a meeting with the inmates to discuss a possible return to Property. It is undisputed that Complainant was reluctant to return to Property; it is also undisputed that the other inmates desired to return to Property to continue raising vegetables for Center in their garden. In her written submissions, Complainant alleged that Unit Manager and Guard informed the inmates that no inmates could return to Property unless Complainant agreed to return. Complainant further alleged that, because of this statement, she felt pressured by Department to return to Property despite her strong desire to avoid Property. At the FFC, Complainant provided contradictory information. Specifically, Complainant stated that Unit Manager and Guard asked the inmates if they wanted to return; Complainant stated that the other inmates were unanimous in their desire not to return unless Complainant returned. Complainant further stated that she felt pressured to return because the inmates had put so much effort into the garden; Complainant stated that she was aware Volunteer was no longer allowed at Property. At some point, Complainant and the other inmates returned to Property.
- l) It is apparent that Volunteer subsequently pleaded guilty to a criminal conviction related to the alleged assault based on the advice of his lawyer. There is no additional information in the record about the nature of the plea agreement or the type of conviction to which Volunteer agreed to plead guilty.
- m) In her written submissions, Complainant alleged that Guard – and therefore Department – were aware that Volunteer had a reputation of acting inappropriately with the inmates prior to the alleged assault. In support of this argument, Complainant pointed to the nicknames used for Volunteer; Complainant also alleged that Volunteer made sexual comments to the inmates, made an inmate sit on his lap, and told inmates that he had planted a garden at Property to get sexual favors from local women. At the FFC, Complainant stated that she did not witness some of the alleged comments or the incident with an inmate sitting on Volunteer’s lap; she explained she heard about the incidents from other inmates. Complainant did allege that she reported some inappropriate comments from Volunteer to Guard but did not provide specific examples of the comments she reported. Both Volunteer and Guard admitted that Volunteer may have made one or two jokes of a sexual nature but denied the remaining allegations about inappropriate sexual behavior. Unit Manager stated that she was unaware of any prior inappropriate behavior from Volunteer. There is no indication that Complainant – or anyone else – made the Brothers aware of Volunteer’s purported misconduct before the alleged assault.

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 provides that it is unlawful to discriminate on the basis of sex with respect to the terms, conditions, or privileges of employment. 5 M.R.S. § 4572(1)(A).

Interference Claim – Volunteer

- 3) The MHRA also provides, as a standalone provision, 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)(emphasis added). The MHRA’s definition of “person” in the MHRA “includes one or more individuals”. 5 M.R.S. § 4553(7).

- 4) An individual whose conduct constitutes unlawful employment discrimination may be liable in his individual capacity for interfering with Complainant’s right to be free from that discrimination. *See* 5 M.R.S. § 4633(2). *Cf. Lopez v. Com.*, 978 N.E.2d 67, 77 (Mass. 2012) (interpreting similar provision of Massachusetts law); *Martin v. Irwin Indus. Tool Co.*, 862 F.Supp.2d 37, 40-41 (D. Mass. 2012) (same). Conduct that “interferes” with Complainant’s rights must be intentional. *See Lopez*, 978 N.E.2d at 78-79.
- 5) Here, Complainant has established that Volunteer interfered with her ability to be free from sex discrimination and/or harassment in an employment setting, with reasoning as follows:
 - a) At the FFC, Complainant provided a credible, step-by-step description of how Volunteer forcibly kissed her and then grabbed her hand, forcing it down his shorts. This testimony is consistent with the account Complainant provided in her signed, sworn Complaint and appears to be consistent with her previous statements to Department and Law Enforcement. Additionally, while Volunteer denied parts of Complainant’s account, he admitted to discussing his cruise with her and spontaneously kissing her. Volunteer’s conduct amounts to intentional conduct that meets the standard for unlawful sexual harassment (described in detail before): it was severe conduct based on sex, created an abusive working environment, and was both subjectively and objectively offensive.
 - b) This is a case is essentially one that pits Complainant’s account of an incident against Volunteer’s account, which makes it an inherently close case. However, given the standard applied by the Commission – and the absence of any compelling exculpatory information regarding Volunteer – it is difficult to conclude that Complainant would not have at least an even chance of prevailing with her interference claim.⁷
- 6) It is found that Volunteer unlawfully interfered with Complainant’s right to be free of sexual harassment in employment under the MHRA.

Hostile Environment Claim – The Brothers & Department

- 7) As noted above, the MHRA provides that it is unlawful to discriminate on the basis of sex with respect to the terms, conditions, or privileges of employment. 5 M.R.S. § 4572(1)(A).
- 8) The Commission’s Employment Regulations provide, in part, that: “[h]arassment on the basis of protected class is a violation of Section 4572 of the Act. Unwelcome advances because of protected class (e.g., sexual advances or requests for sexual favors), comments, jokes, acts and other verbal or physical conduct related to protected class (e.g., of a sexual, racial, or religious nature) or directed toward a person because of protected class constitute unlawful harassment when . . . [s]uch conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working or union environment.” Me. Hum. Rights Comm’n Reg. Ch. 3, §10(1)(C).

⁷ It must be noted that there is some evidence in the record which undercuts Complainant’s claims regarding the assault. Volunteer was consistent in his position that he has been unable to get an erection for nearly two decades; he also provided medical records which tend to corroborate this argument. Additionally, it is apparent that Complainant provided arguments in her written statements that contradict the information she provided at the FFC (e.g. her shifting position about who allegedly pressured her into returning to Property). While not dispositive to her claim against Volunteer, such facts tend to suggest that Complainant’s account of the assault may not be entirely accurate.

9) “Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive working environment.” *Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57. In determining whether an actionable hostile work environment claim exists, it is necessary to view “all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Id.* (citations omitted). It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the workplace to become hostile or abusive. *Id.*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996). “The standard requires an objectively hostile or abusive environment--one that a reasonable person would find hostile or abusive--as well as the victim’s subjective perception that the environment is abusive.” *Nadeau*, 675 A.2d at 976.

10) Accordingly, to succeed on such a claim, Complainant must demonstrate the following:

(1) that she (or he) is a member of a protected class; (2) that she was subject to unwelcome sexual harassment; (3) that the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff’s employment and create an abusive work environment; (5) that [the] objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that some basis for employer liability has been established.

Watt v. UniFirst Corp., 2009 ME 47, ¶ 22, 969 A.2d 897, 902-903.

11) When unlawful harassment is committed by a coworker (not a supervisor), “an employer is responsible for acts of unlawful harassment in the workplace where the employer, or its agents or supervisory employees, knows or should have known of the conduct unless it can show that it took immediate and appropriate corrective action. Me. Hum. Rights Comm’n Reg. Chapter 3, §10(3). “The immediate and appropriate corrective action standard does not lend itself to any fixed requirements regarding the quantity or quality of the corrective responses required of an employer in any given case. Accordingly, the rule of reason must prevail and an employer’s responses should be evaluated as a whole, from a macro perspective.” *Watt v. UniFirst Corp.*, 2009 ME 47, ¶ 28, 969 A.2d 897, 905.⁸

12) Here, Complainant showed that she was subjected to subjectively and objectively offensive conduct based on her sex while working at Property. However, Complainant could not sustain a claim of hostile work environment, with reasoning as follows:

- a) Complainant failed to provide sufficient evidence to establish a basis for the Brothers’s liability regarding Volunteer’s sexual harassment. It is undisputed that the Brothers were unaware of any of the alleged prior incidents of Volunteer’s misconduct. Similarly, it is undisputed that the Brothers and/or their partners – the Shelter – banned Volunteer from Property as soon as they learned of the assault. Accordingly, there are simply no grounds to believe that the Brothers failed to take immediate and appropriate corrective action to protect Complainant (and other inmates) in this case.
- b) Similarly, Complainant failed to provide sufficient evidence to establish a basis for employer liability with respect to Department. Complainant’s argument that Department was aware of prior, sexualized

⁸ The coworker standard is being applied in this case because there is not sufficient information to conclude that Volunteer managed or had the ability to direct Complainant’s work at Property.

misbehavior from Volunteer is not convincing. The support Complainant provided for this argument was generalized, vague, and partially based on secondhand information. Guard and Unit Manager were credible when stating they were unaware of Volunteer's purported reputation. Additionally, the facts that Volunteer was referred to as "Woody" or "Uncle Woody" and may have made a couple of sexualized jokes over the course of many years are too attenuated to place Department on notice that Volunteer was a threat to Complainant or other inmates.

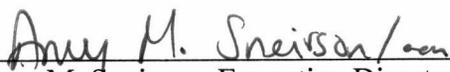
- c) Further, there is no real dispute that Department took immediate, corrective action to protect Complainant from further harm. Complainant's argument that she had to enlist the aid of her son to convince Department to respond to her report is unconvincing, particularly given the time of day Department received her report and the fact that Department took action within less than 12 hours of her report. Additionally, there is no dispute that Department contacted Law Enforcement, took steps to ensure Volunteer was banned from Property, and stopped sending any inmates to Property for three weeks. There is also no reliable evidence that Department pressured Complainant to return to Property; in fact, Complainant stated it was her fellow inmates who caused her to feel like she needed to return to Property – and this occurred after all parties were aware that Volunteer was banned from Property. Overall, the record shows that Department took immediate steps to address the harm that occurred to Complainant and to prevent similar harm from happening in the future.

13) It is not found that Department or Brothers are liable for subjecting Complainant to a hostile work environment based on sex.

V. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that James W. Boddie interfered with the right of Cynthia L. Moody to be free from sexual discrimination and/or harassment in employment, and this claim should be conciliated in accordance with 5 M.R.S. § 4612(3).
- 2) There are **No Reasonable Grounds** to believe that The Brothers of Christian Instruction or Commissioner Joseph Fitzpatrick/Maine Department of Corrections discriminated against Cynthia L. Moody based on her sex, and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2).
- 3) There are **No Reasonable Grounds** to believe that The Brothers of Christian Instruction, Commissioner Joseph Fitzpatrick/Maine Department of Corrections, or James W. Boddie discriminated against Cynthia L. Moody based on disability, and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2).



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