



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC No: H16-0036

HUD No. 01-16-4101-8

May 6, 2016

Elizabeth Faile (Bangor)

v.

Gerald Doyer (Lewiston)

I. Complainant's Complaint:

Complainant Elizabeth Faile alleged that Respondent Gerald Doyer sexually harassed Complainant and retaliated against her after she rejected his advances by evicting her.

II. Respondent's Answer:

Respondent denied that he sexually harassed Complainant or retaliated against her.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: November 1, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): January 28, 2016.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) Complainant is represented by Patricia Ender, Esq. Respondent is not represented by counsel.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties, an Issues and Resolution Conference ("IRC"), and a phone interview. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

IV. Development of Facts:

- 1) The parties in this case are as follows:

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- a) Complainant resided in an apartment owned and operated by Respondent from September 21, 2013 through November 1, 2015. The apartment, part of a six-unit complex spanning two buildings, is located at 82 Elm Street, Lewiston, Maine (the "Premises").
- b) Respondent owns and operates the Premises.

2) Complainant provided the following in support of her position:

- a) Complainant resided with her adult son ("Son") and her boyfriend ("Partner") at the Premises, part of a two-unit property. Respondent lived in the adjacent four-unit property. The properties shared the same common space.
 - i. Complainant and Son had Respondent's permission to have two additional roommates reside at the Premises. One of the roommates ("Roommate") gave money to Complainant to assist with the rent; the other stayed for a short time towards the end of Complainant's tenancy, slept on the couch, and did not assist with the rent.
 - ii. Occasionally family members, including Complainant's grandsons (ages 13, 10, and 5 or 6), would visit her. They did not reside with her. Respondent told Complainant that he did not want children around and that her grandsons could not visit.
- b) Partner provided a written statement that at first he and Complainant treated Respondent nicely, inviting him to dinner once or twice.
- c) Within a week of moving in, Respondent walked into Complainant's unit unannounced as she exited the shower. Complainant felt that he timed his entry to catch her in the shower. Complainant, who was embarrassed, objected to his presence; her lease required 24 hours' notice for Respondent's entry except in case of emergency. Respondent replied that he could enter the unit at any time. Complainant relayed this information to Partner. Complainant started showering at night when she was not alone.
- d) After the incident with the shower, Complainant and Partner stopped inviting Respondent over.
- e) Complainant discussed her concerns with Son; Son later challenged Respondent about his entry into the Premises without proper notice or in response to an emergency. Respondent gave the same reply as he had to Complainant.
- f) Respondent entered the Premises illegally from time to time; sometimes unlocking the door to enter.
- g) Respondent was often outside wearing only boxer shorts and appeared intoxicated. Partner smelled alcohol on Respondent's breath; Respondent crashed his car into the stairs, and his plow once punctured a brick wall (that was later repaired) on the Premises.
- h) Respondent peered into Complainant's windows at all hours of the day and night making her uncomfortable. Respondent peered into a neighbor's windows also.
- i) Complainant tried to avoid Respondent by using the back stairs into the Premises when possible; during the winter, the back stairs were not accessible since Respondent covered the back door with plastic in the winter. The front stairs were dangerous after Respondent crashed into them.
- j) At some point, Complainant lost a lot of weight. Respondent told Complainant that she was looking good, that she was "yummy," and that she was "delicious". Complainant did not let Respondent come

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close enough to touch her, but he leered at and ogled her. Respondent uninhibitedly stared at Complainant's breasts. Respondent ran his hands up and down his body while looking at Complainant. He backed off if other people were around. Complainant told Respondent he was not her style.

- k) Respondent once entered the Premises and went into Son's bedroom looking for Complainant.
 - l) Partner went into a nursing home in July, 2014. As the result of an error, all of the money in Complainant and Partner's joint bank account was taken to pay for Partner's care. It took some time to resolve the matter. During that time, Complainant was unable to timely pay her rent. A local agency approved Complainant for financial assistance, however, Respondent refused to provide necessary information for a W-9 form so that Complainant could receive the assistance. Complainant felt Respondent reacted this way to make her more vulnerable to his sexual advances.
 - m) Starting in the late summer of 2014, Respondent told Complainant multiple times that if she had sex with him that he would deduct \$100.00/per occurrence off of her rent. Respondent left his back door unlocked after 8:00 p.m. so she could enter the unit. Complainant did not ever have sex with Respondent; she never entered his apartment. Complainant discussed her ongoing concern about Respondent with Partner.
 - n) Respondent's sexual advances continued until July 2015; Complainant rebuffed him. Complainant remained anxious that his advances would resume until she moved out on about November 1, 2015.
 - o) On September 3, 2015, Complainant was served with a notice to quit by Respondent's Manager ("Manager"). Manager called Complainant a "bitch" and a "lousy cunt" as she threw the notice at Complainant. Manager then laughed with Respondent in his unit after serving the notice on Complainant. Respondent never provided a notice related to late payment or non-payment. Respondent did not serve her with a notice to quit due to non-payment.
 - p) On September 9, 2015, Respondent was notified of various municipal code violations related to the units on the Premises.
 - q) On October 14, 2015, Complainant was served with a forcible entry and detainer action; Roommate was a named party to the action. The writ for execution was set for October 30, 2015. Complainant timely quit the Premises on November 1, 2015.
 - r) Complainant paid all of the money owed to Respondent. Respondent never cashed the last rent check.
 - s) Neither of Complainant's roommates observed Respondent harassing her. Complainant believed that Respondent made inappropriate sexual comments to other tenants who later moved away.
- 3) Investigator - Respondent provided the following during the IRC¹:

¹ Respondent did not answer or respond to Complainant's filings, claiming he was too busy; Respondent did not respond to the IRC summaries provided by the Investigator in this matter. Respondent did not attend the scheduled IRC in this matter nor did he answer the phone when called during the conference, claiming he did not receive the notice. The next day, this Investigator called Respondent and he answered the phone. Respondent confirmed his mailing address had not changed.

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- a) All of Complainant's allegations are false and do not make sense; Complainant's statements are ridiculous. Respondent offered to take a lie detector test.
- b) In response to a specific request to respond to Complainant's harassment claim, Respondent said: "It never happened; would not even think about it. No way in hell. It never entered his mind and he never would. Put two and two together. He is 76 years old. Even if we could, he would not. Not with her. There were other women he could be with. Never happened with Complainant at any time whatsoever."
- c) In response to Complainant's retaliation claim, Respondent indicated that Complainant wanted his social security number for a W-9 form and that he does not give out his social security number. The agency never contacted Respondent about any paperwork. Respondent also believed that Complainant would never move out. He felt that she believed she had a good thing with not paying rent and staying in the unit. It took months to get her off the Premises.
- d) Respondent did not enter Complainant's unit without permission. He went into the unit with others about three times to do repair work. Complainant was not present, Son was.
- e) Respondent spoke to Complainant only five times after she moved in; they did not talk on the phone. Respondent did not like Complainant. Complainant came over to pay rent a few times. Respondent saw her a lot, but did not talk to her; Respondent primarily dealt with Son.
- f) Complainant did not pay rent on time. Respondent believed that Complainant rented out rooms to other people and that he was not compensated for the monies she received.
- g) Complainant only used her back door to get in and out of the unit; she did not use the front door.
- h) Respondent did not look into Complainant's windows.
- i) Respondent did not know that Complainant had a boyfriend. Respondent denied making inappropriate comments to other tenants or peering into the neighbor's window.
- j) Manager helped Respondent serve the eviction paperwork on Complainant.

V. 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) Here, Complainant alleged that Respondent sexually harassed her and retaliated against her after she rejected his advances by evicting her. Respondent denied that he sexually harassed Complainant or retaliated against her.

Sex Discrimination - Sexual Harassment/Hostile Environment Claim

- 3) The MHRA makes it unlawful for any owner to discriminate against any individual because of sex in the "price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S. § 4582.

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- 4) The Commission's regulations provide that it is unlawful to "threaten, intimidate, or interfere" with persons in their enjoyment of a dwelling because of the sex of such persons. Me. Hum. Rights Comm'n Reg. § 8.09(B)(2).
- 5) A hostile housing environment claim is analyzed similarly to a hostile work environment claim. *See, e.g., Neudecker v. Boisclair Corp.*, 351 F.3d 361, 364-365 (8th Cir. 2003); *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993).
- 6) Such a claim is actionable when unwelcome behavior because of protected class status unreasonably interferes with Complainant's use and enjoyment of the premises. *See Honce*, 1 F.3d at 1090. Harassment on the basis of sex is a violation of Section 4581-A of the MHRA. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature constitute sexual harassment when:
 - a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's housing; [or]
 - b) submission to or rejection of such conduct by an individual is used as the basis for housing decisions affecting such individual. . . .

Me. Hum. Rights Comm'n Reg. § 10 (1) (September 24, 2014).

- 7) "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive [housing] environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57 (employment case). In determining whether an actionable hostile housing environment 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. . . ." *Doyle*, 2003 ME 61, ¶ 23, 824 A.2d at 57. It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the housing environment to become hostile or abusive. *Id*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996) (employment). "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.
- 8) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st Cir. 1988) (employment).
- 9) Here, Complainant succeeded in establishing a hostile housing environment claim with respect to sex. Reasoning is as follows:
 - a) Complainant provided credible information about specific propositions from Respondent to pay down her rent by having sex with him, gestures and comments made by Respondent to Complainant related to her body (calling her "delicious" and "yummy"), and Respondent entering the Premises while Complainant showered and was naked. Respondent denied the allegations only after he failed to respond to the Commission's initial request for information and failed to appear at the IRC. Complainant has established at least an even chance that she may prevail in a civil suit - her recollection of the events established that for about a year Respondent made sexualized comments to Complainant, walked in on her showering and peered into her windows, and propositioned her for sex as discount for back rent.

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- b) Complainant's allegations regarding Respondent rise to the level of severe harassment. A reasonable person would expect that their landlord who lived on site would not proposition them for sex or make ongoing lewd and sexually suggestive comments for over a year. Complainant acknowledged that she told Respondent that she was not interested multiple times, yet the behavior did not stop. Complainant was uncomfortable and afraid about what Respondent would do until the time she moved out. She changed her showering schedule, changed the door she used for ingress and egress from the Premises, and told Partner about the ongoing harassment when he was hospitalized.
 - c) Respondent's blanket denial of all of Complainant's allegations was not credible. Respondent resorted to a qualitative analysis of Complainant's appearance and suggested that if he sought such companionship, it would be with someone else. Respondent's obfuscation of the issues by making an assessment about Complainant's physical attractiveness lends credence to Complainant's allegation that some sexualized behavior likely occurred.
 - d) Respondent is liable for his own actions as the owner of the Premises.
- 10) It was found that Complainant was subjected to a hostile housing environment based on sex.

Retaliation Claim

- 11) The MHRA provides that "[a] person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act." 5 M.R.S. § 4633(1). The MHRA also provides, in part, 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).
- 12) In order to establish a prima-facie case of retaliation, Complainant must show that she engaged in statutorily protected activity, she was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56 (employment case); *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006) (same). The term "materially adverse action" covers actions that are harmful to the point that they would dissuade a reasonable person from making or supporting a charge of discrimination. *See Burlington Northern*, 126 S. Ct. 2405. One method of proving the causal link is if the adverse action happens in "close proximity" to the protected conduct. *See Id.*
- 13) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 14) Complainant has met her prima-facie case for her retaliation claim. Complainant has shown that she engaged in protected activity by opposing Respondent's discriminatory acts towards her based on her sex. Complainant was also subjected to a materially adverse action, since Respondent refused to cooperate with Complainant when she sought housing assistance by not completing the W-9 and eviction proceedings were commenced against her and she agreed to move out. Finally, Complainant has also shown that there was a causal link between her protected activity and the materially adverse actions she experienced because of the closeness in time of sexual harassment (July 2015) and her eviction (October 2015).

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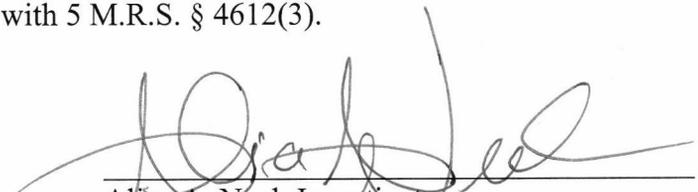
- 15) Respondent stated a legitimate non-discriminatory reason for his actions, that Complainant did not pay the rent on time.
- 16) At the final stage of the analysis, Complainant has shown that she has at least an even chance of success in court with her retaliation claim and that there is a causal connection between her protected activity and the materially adverse action she experienced.
- a) Complainant's protected activity of opposing Respondent's discriminatory acts towards her based on her sex was causally connected to her eviction and the subsequent treatment she received from Respondent. Complainant continued to rebuff Respondent's propositions to reduce her rent in exchange for sex. In the fall of 2014 Complainant sought the assistance of a local agency to help with her rent and Respondent refused to cooperate; having cut off her possible source of funds, Respondent then propositioned Complainant to trade sex for rent. Respondent later began an eviction proceeding against Complainant to force her out. These events happened within only a few months of each other. The closeness in time tends to establish a causal connection between the events.
- 17) Retaliation in housing in violation of the MHRA is found.

VI. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that Gerald Doyer discriminated against Elizabeth Faile on the basis of sex by subjecting her to a hostile housing environment;
- 2) There are **Reasonable Grounds** to believe that Gerald Doyer retaliated against Elizabeth Faile in housing for asserting her rights under the Maine Human Rights Act; and
- 3) Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).


Amy M. Sneirson, Executive Director


Alice A. Neal, Investigator