



# Maine Human Rights Commission

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**INVESTIGATOR'S REPORT**  
**MHRC # H16-0224, HUD # 01-16-4292-8**  
**November 21, 2016**

**Joseph Murray & Alyssa Murray**  
**individually and o/b/o minor children (Hampden)**

v.

**KC Management, Inc. (Orono)**  
**and**  
**Bradbury Apartments<sup>1</sup> (Hampden)**

## **I. Summary of Case:**

Complainants rented an apartment at Hampden Acres owned and managed by Respondents (the "Premises"). Complainants alleged that Respondents discriminated against them and their minor children in the terms and conditions of housing based on race, color, familial status, and disability. Complainants allege that Respondents refused to accommodate Mrs. Murray's disability by allowing her an assistance animal, and retaliated against Complainants by issuing them an eviction notice for requesting an assistance animal. The Maine Human Rights Commission Investigator conducted a preliminary investigation, which included a thorough review of the materials submitted by the parties and an Issues and Resolution Conference ("IRC"). Based on this information, the Investigator recommends that the Commission make a finding that there are reasonable grounds to believe unlawful discrimination occurred based on Complainants' disability and retaliation claims, and no reasonable grounds to believe unlawful discrimination occurred on their remaining claims.

## **II. Jurisdictional Data:**

- 1) Date of alleged discrimination: April 11, 2016 (eviction notice).
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): May 2, 2016.
- 3) Respondent KC Management, Inc. manages 210 apartments (including the Premises) and Respondent Bradbury Apartments owns 54 apartments (including the Premises); both Respondents are believed to be owned by the same owner ("Owner"). Both are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.

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<sup>1</sup> Complainants named Bradbury Apartments as a Respondent in their Complaint; Respondent stated that its legal corporate name is Bradbury Apartments, Inc. As Complainants did not amend their Complaint, Respondent will continue to be named here as Bradbury Apartments.

- 4) The parties in this case are not represented by counsel.

### **III. Development of Facts:**

- 1) Complainants provided the following in support of their claims:
  - a) Respondents discriminated against Complainants and their children on the basis of race, color (mixed Caucasian and Black) and familial status by singling them out for unreasonable complaints made by neighbors and holding them to a higher standard than other tenants. Complainants' landlord (Owner) emailed them about complaints from neighbors regarding toys scattered in their yard, noise levels, their children playing in an unsafe manner in the driveway, cigarette butts on the ground, and trash on their lawn. Complainants responded to each of the complaints, denying them and stating that they were unreasonable, some of which Owner did not seem to dispute. Complainants also feel some of the complaints from neighbors were because they may not have been used to living next to children.
  - b) Mrs. Murray has a disability and her medical provider recommended an assistance animal. Mrs. Murray emailed Owner indicating that she was getting a dog as a companion animal, and offered to provide a note from her doctor. Owner did not respond and issued them an eviction notice several days later. One of the lease violations included in the eviction notice was Complainants' dog. Complainants believe Respondents issued them an eviction notice in retaliation for requesting an assistance animal.
- 2) Respondents provided the following in support of its position:
  - a) Respondents did not hold Complainants to a higher standard than other tenants or single them out. Each time Owner received a complaint from a neighboring tenant, he emailed Complainants to let them know in an attempt to try and resolve the issues. Owner gave them the benefit of the doubt regarding some of the complaints but in the end felt that he had received too many complaints and it was time for Complainants to move. Owner never had problems with tenant complaints in the past. There are other children in the apartment complex, and one of the neighbors that complained about Complainants has lived there for 20 years with families moving in and out and has never complained.
  - b) Owner did not respond to Complainants' email about the assistance dog because he assumed if Complainants were going to pursue it, they would provide a note from a medical provider, which they did not. Owner also received an email from a neighbor that stated that Complainants had a dog living with them, and that Complainants had told the neighbor that they were going to "pull it off as a therapy dog." Owner does have a few tenants in other apartment complexes with assistance animals, and he usually asks for a letter from a medical provider when a tenant requests an assistance animal. Owner issued Complainants an eviction notice because he was tired of complaints from other tenants, not because Mrs. Murray requested an assistance animal.
- 2) The Investigator made the following Findings of Fact:
  - a) Two tenants complained numerous times about Complainants for different reasons and Owner emailed Complainants each time to alert them about the complaints.

- b) Complainants provided no evidence to support their allegations that tenant complaints were due to race, color, or familial status.
- c) There are other minor children in the apartment complex where Complainants live and families with children have previously lived in Complainants' building.
- d) On April 5, 2016 Mrs. Murray emailed Owner the following: "Hi, I wanted to let you know that since we've moved in and I've been without my therapy dog my medical condition has worsened, my doctor suggests I have my dog and I have a letter for you stating that." Owner did not respond.
- e) Complainants were issued an eviction notice on April 11, 2016. One of the lease violations listed as a reason for the eviction was that Complainants had a dog in their apartment.
- f) Complainants provided to the investigation a medical note from a Licensed Clinical Social Worker showing that Complainant has used an assistance animal for her disability for at least six years.

#### **IV. Analysis:**

- 1) The MHRA requires the Commission 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 this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA makes it unlawful for an owner or manager of rental property to discriminate against any individual because of race, color, familial status, or disability in the "price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S. § 4582.

#### *Terms and Conditions – Race, Color, Familial Status*

- 3) Because this case does not involve direct evidence, Complainants establishes a prima-facie case of unlawful housing discrimination with respect to the price, terms, conditions, or privileges of the rental of a housing accommodation by showing (1) that Complainants are members of a protected class, (2) that Complainants were not offered the same terms, conditions or privileges of rental of a dwelling or not provided the same services or facilities in connection therewith made available to others, and (3) that it occurred under circumstances giving rise to a reasonable inference of prohibited discrimination. *See Khalil v. Farash Corp.*, 260 F. Supp. 2d 582, 588 (W.D.N.Y. 2003).
- 4) Once Complainants have established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondents to articulate a legitimate, nondiscriminatory reason for its action. *See United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep't of Human Servs*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. After Respondents have articulated a nondiscriminatory reason, Complainants must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. *See id.* Complainants' burden may be met either by the strength of Complainants' evidence of unlawful discriminatory motive or by proof that Respondents' proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainants can meet their overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.

- 5) In order to prevail, Complainants must show that they would not have suffered the adverse action but for membership in the protected class, although protected-class status 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).
- 6) Here, Complainants were unable to establish any prima-facie case of terms-and-conditions discrimination because they could not show that they were subjected to less favorable terms and conditions of housing than other tenants under circumstances giving rise to a reasonable inference of race, color, or familial status discrimination. Complainants allege that Respondents singled them out and held them to a higher standard than other tenants by subjecting them to unreasonable complaints, but it is undisputed from the record that neighbors complained repeatedly about Complainants, and that Owner responded by alerting Complainants to these complaints in an attempt to resolve the issues. There is no evidence that Respondents treated Complainants less favorably than other tenants and there was no evidence to show that the tenant complaints were due to race, color, or familial status.
- 7) Discrimination on the basis of race, color, and familial status was not found.

*Disability- Assistance Animal*

- 8) The MHRA provides that it is unlawful:

For any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of an assistance animal or otherwise discriminate against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation unless it is shown by defense that the assistance animal poses a direct threat to the health or safety of others or the use of the assistance animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of an assistance animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such an assistance animal.

5 M.R.S. § 4582-A(3).

- 9) For housing, the MHRA defines "assistance animal" as "an animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician assistant, nurse practitioner or licensed social worker" or as "an animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or retrieving dropped items. 5 M.R.S. § 4553(1-H).
- 10) Here, Complainants showed that Respondents discriminated against them based on disability by refusing to consider Mrs. Murray's request for an assistance animal. While Complainants did not submit a note from a medical provider with the request, it is undisputed that Mrs. Murray told Owner that it was a therapy animal and that she could provide a medical note. It also is undisputed that Owner purposely ignored the request despite the fact that he acknowledged that his normal process is to request medical documentation. Deliberately ignoring the request for an assistance animal constitutes a denial in this case. While Owner may have had reason to suspect the legitimacy of Mrs. Murray's assistance

animal, Complainant provided to the investigation medical documentation showing that she has had an assistance animal for at least six years.

- 11) It was found that Respondents discriminated against Complainants on the basis of disability by denying Mrs. Murphy the use of an assistance animal.

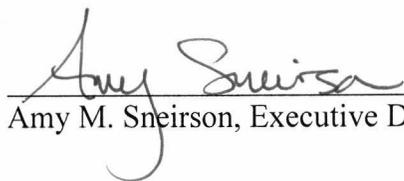
#### *Retaliation*

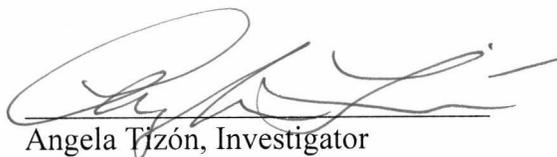
- 12) Under the MHRA, “[a] person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act.” 5 M.R.S. § 4633(1). The MHRA defines unlawful discrimination to include “punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for complaining of a violation of this Act. . . .” 5 M.R.S. § 4553(10)(D).
- 13) In order to establish a prima-facie case of retaliation, Complainants must show that they engaged in statutorily protected activity, they were 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.*
- 14) The prima-facie case creates a rebuttable presumption that Respondents retaliated against Complainants for engaging in statutorily protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1<sup>st</sup> Cir. 1995). Respondents 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 Respondents make that showing, Complainant must carry their overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 15) Here, Complainants established a prima-facie case of retaliation by showing that Mrs. Murray asserted her rights under the MHRA as a person with a disability by requesting an assistance animal, Respondents issued Complainants an eviction notice, and they were issued the notice six days following Mrs. Murray's request. In this instance, the time sequence supplies an inference of retaliation.
- 16) Respondents provided some probative evidence to show Complainants were issued an eviction notice for other nondiscriminatory reasons (complaints from neighbors), but Complainants were still able to show that there was a causal connection between their request for an assistance animal and the eviction notice. While tenant complaints against Complainants were ongoing, and it is likely these played a role in Owner's decision to issue Complainants an eviction notice, it is notable that the notice was issued only six days after Mrs. Murray's request for an assistance animal (which Owner ignored) and that the eviction notice specifically listed Complainants' dog as one of the reasons for the notice. Also, Owner acknowledged he questioned the legitimacy of Mrs. Murray's assistance animal after he received an email from a tenant shortly before issuing the eviction notice. Given all of this information, it appears that Mrs. Murray's request for an assistance animal was a significant factor, if not the “final straw”, leading to Owner's decision to issue Complainants an eviction notice.
- 17) Retaliation was found.

**V. Recommendations:**

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

- 1) There are **No Reasonable Grounds** to believe that KC Management, Inc. and Bradbury Apartments discriminated against Joseph and Alyssa Murray individually and on behalf of their minor children by subjecting them to less favorable terms and conditions of housing based on race, color, and familial status; this allegation should be dismissed in accordance with 5 M.R.S. § 4612(2).
- 2) There are **Reasonable Grounds** to believe that KC Management, Inc. and Bradbury Apartments discriminated against Alyssa Murray on the basis of disability by denying her the use of a service animal, and conciliation of this portion of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).
- 3) There are **Reasonable Grounds** to believe that KC Management, Inc. and Bradbury Apartments retaliated against Joseph and Alyssa Murray for asserting their rights under the MHRA, and conciliation of this portion of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Angela Tizón, Investigator