

Maine Human Rights Commission

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INVESTIGATOR'S REPORT H16-0438A&B; HUD No.: 01-17-4912-8 January 19, 2017

Jonathan Parsons (South Portland)

v.

**The Grand Beach Inn (Old Orchard Beach) &
Portland Avenue Associates (Old Orchard Beach)**

I. Summary of Case:

Complainant Jonathan Parsons, a prospective tenant of The Grand Beach Inn ("Inn")¹, alleged that Respondents (the Inn's owner and managers) discriminated against him based on his disability when they refused to allow him the use of his assistance animal and when they refused to rent to him. Respondents denied discriminating against Complainant based on his disability, and stated that Complainant's credit score prevented him from renting a room. The Investigator conducted a preliminary investigation, which included reviewing all of the documents submitted by the parties, holding an Issues and Resolutions Conference ("IRC"), and requesting additional information. Based upon all of this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondents discriminated against Complainant based on his disability by stating that they would not accept his assistance animal, and also find that there are no reasonable grounds to believe that Respondents discriminated against Complainant by refusing to rent to him.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: September 19, 2016 through October 1, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): October 11, 2016.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) None of the parties is represented by counsel.

III. Development of Facts:

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

¹ Complainant named The Grand Beach Inn and Portland Avenue Associates as Respondents in his Complaint. Respondents provided that "Portland Avenue Associates" is the Inn's legal name; it does business under the name Grand Beach Inn. The Inn and Portland Avenue Associates are referred to collectively as Respondents in this report.

Complainant suffers from a disability and requires the use of an assistance animal. On September 1, 2016, Complainant and his girlfriend ("Girlfriend") saw an advertisement for a long-term, off-season rental of a room at the Inn; they sought a room to use as their primary residence for the off-season. When they inquired about a room, Respondents stated that they did not offer rooms to persons with "emotional support animals". Complainant and Girlfriend pursued the rental, submitting an application on September 9, 2016 that was later denied.

2) Respondents provided the following in support of their position:

The Inn is a place of lodging, not a residence; guests cannot receive mail there or call it their primary residence. Off-season rentals are weekly. Respondents rent to guests who have assistance and service animals.² Respondents accept service animals as a matter of policy. Respondents have accommodated former and current guests by allowing the use service and assistance animals. Respondents were recognized recently for allowing animals to stay at their property after a fire burned down an apartment building in the area. Respondents decided not to rent to Complainant based on his poor credit score.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the IRC:

- a) Complainant suffers from a disability and requires the use of an assistance animal.
- b) On September 6, 2016, Complainant emailed Respondents to ask if they accepted guests with pets. A front desk clerk emailed Complainant back that Respondents only allowed service animals. Complainant sent another email stating that his dog was a "registered"³ service animal and offered to provide - and later provided - proof of his dog's registration. The parties exchanged information about pricing and availability of rooms for rent.
- c) On September 9, 2016, Complainant and Girlfriend submitted their application to the Inn and were told it would take seven days for review. Respondents require an application, including a credit check, for all long-term stays as normal business practice.
- d) On October 1, 2016, Complainant called the Inn to follow up on his application. A front desk clerk told Complainant that the Inn did not allow assistance animals and that their application had been denied.⁴
- e) Later the same day, Complainant went to the Inn and provided additional documentation for his dog stating that it was illegal for the Inn to refuse him the ability to rent based on his assistance animal. In response, a front desk clerk emailed Respondents' management ("Management"), referencing the

² There is a critical distinction between assistance and service animals. An assistance animal is, for housing purposes, 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 that has been "individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability" and includes animals providing emotional support. 5 M.R.S. § 4553(1-H). A service animal is a dog that has been individually trained to perform work or tasks for an individual with a disability; this term does not encompass animals that solely provide emotional support. 5 Maine Revised Statutes ("M.R.S.") § 4553(9-E)(B).

³ There is no legally recognized or required registry for service or assistance animals.

⁴ Complainant recorded the conversation with an automatic phone recorder that creates an electronic file when a call is placed from a phone, and includes a time stamp and the phone number that was called.

paperwork presented, and asked Management to state the reason for the denial. Management quickly replied that low credit scores were the reason for the refusal to rent. A half-hour after Complainant's follow-up inquiry, after receiving Management's reason for the denial, the clerk called Complainant telling him that the reason for his failed rental application was his low credit score, not his animal.

- f) The Inn was recognized for taking in animals of all kinds in response to a local fire that displaced residents. The Inn did not inquire about the status of the animals and housing the residents was not Respondents' routine business practice.
 - i. Respondents submitted two applications from November 2016 for current guests. The first provides that the guest has a service dog. However, Complainant's dog is not a service animal; it is an assistance animal. Respondents submitted a second application for another guest, but it only states the guest has a "small black chiuha [sic]". An accompanying statement from the guest stated their dog is an assistance animal and Respondents waived a pet fee. However, this evidence, produced post facto and not in the regular course of business, does not change the fact that these applications were later in time than Complainant's application.

IV. Analysis:

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 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 disability in the "price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S. § 4582.
- 3) As an initial matter, Respondents contend that the Inn is a place of public accommodation, not a housing provider, and therefore the Inn does not have to permit assistance animals. While the Inn is a public accommodation for transient lodging, during the off-season it provides long-term housing for individuals who intend to remain for an extended period and who, like Complainant, have no other residence to return to. The Inn is considered a covered dwelling under the MHRA, and the case will be analyzed as a case of housing discrimination.

Refusal of an Assistance Animal

- 4) 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). The definition of "assistance animal" is provided above (see footnote 2).

- 5) Here, Complainant has shown that Respondents discriminated against him in the housing application process because of Complainant's use of an assistance animal. Reasoning as follows:
- a) Complainant submitted his initial email with the Inn in which a front desk clerk stated that Respondents accepted "service animals" only. The clerk's statement could be interpreted to mean Respondents would accept service animals, but would not accept assistance animals.
 - b) Complainant provided that a front desk clerk told him that Respondent did not accept assistance animals ("emotional support animals") at the Inn. Respondent alleged that no Inn front desk clerk would have stated this, but Complainant provided an audio recording of a conversation confirming that a clerk made the statement that Respondents did not accept assistance animals and that she could say no more. While Respondents stated this was not the voice of one of their front desk clerks, Respondents acknowledged that the number Complainant called was the Inn's, and conceded they had not asked their staff to admit or deny making the statement. Even if Management understood—at the time the statement was made or at some later time—that it was a violation to deny an application based on an applicant having an assistance animal, that does not change the fact that a clerk told Complainant they do not accept assistance animals. The violation occurred when the statement denying the use of an assistance animal was made.
 - c) Respondents argued that Complainant's allegations are not credible because they have guests currently residing with them who have both service animals and assistance animals; Respondents contend that this undermines Complainant's claim that a clerk would refuse to permit Complainant's assistance animal. This is not persuasive. These guests applied and were accepted after Complainant filed his housing discrimination charge with the Commission; Respondents' actions after the fact of receiving Complainant's complaint are largely irrelevant to what Respondents' actions/practices were prior to Complainant's charge. Respondents produced no evidence of guests with assistance animals that stayed with them prior to receiving Complainant's complaint. Additionally, the situation with one of the guests is not comparable, because that guest has a service animal and Complainant has an assistance animal.
 - d) Respondents also argued that it is not credible they would make a discriminatory statement because they were recognized for taking in animals after a major fire. The fact Respondents generally allowed animals (with no evidence they were assistance animals) to reside with them in the context of a natural disaster does not rebut Complainant's claim that his assistance animal was refused.
 - e) Respondents did not argue that Complainant's assistance animal was a direct threat or a public safety concern, or would damage property or interfere with others' enjoyment of the premises.
- 6) Disability discrimination based on refusal to permit the use of an assistance animal is found.

Refusal to Rent

- 7) Because this case does not involve direct evidence, Complainant can establish a prima-facie case of unlawful housing discrimination in the refusal to rent by showing that (1) he is a member of a protected class; (2) he applied for and was qualified to rent the housing; (3) Respondents rejected him; and (4) the housing accommodation remained available thereafter. *See United States v. Grishman*, 818 F. Supp. 21, 23 (D.Me. 1993); *HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990).

- 8) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondents to articulate a legitimate, nondiscriminatory reason their 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, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. *See id.* Complainant's burden may be met either by the strength of Complainant's 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, Complainant can meet his 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. In order to prevail, Complainant must show that he 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).
- 9) Complainant has not established his prima-facie case. Complainant has established that he belongs to a protected class, that he applied, and that Respondents rejected him, but not that he was qualified to rent the housing. This is because Respondents stated that they perform credit checks on all long-term renters, and that Complainant did not meet their requirements; Complainant conceded that his credit is poor.
- 10) Even assuming Complainant met his prima-facie case, Respondents have articulated a legitimate, nondiscriminatory reason for not renting to Complainant, namely, that Complainant was not qualified because of his credit score.
- 11) At the final stage of the analysis, Complainant has not demonstrated that Respondents' reason was false or irrelevant and that unlawful discrimination was the reason for the refusal to rent, with reasoning as follows:
- a) Complainant argued that Respondents refused to rent to him because of his assistance animal, relying on the clerk's statement that assistance animals were not permitted. However, front desk clerks have no authority to accept or reject guests applying for long-term stay and the clerk Complainant spoke with had no role in the decision to reject Complainant's application.
 - b) Even if Complainant did not know this, and believed the clerk had authority to reject his application, the record here does not indicate that the assistance animal was the reason that Respondents determined not to rent to Complainant. Instead, the record indicates that Respondents did not rent a room to Complainant based on his very low credit score. Respondents submitted to the Investigator Complainant's rental application, which required him to produce credit references. Respondents provided that running credit checks is their standard practice when they consider applications for long-term rentals.
 - i. Respondents produced an October 1, 2016 email exchange between Management and a front desk clerk wherein the front desk clerk asked Management whether Complainant was denied because of a service dog. Management replied that it had nothing to do with a service animal, but rather was a "CREDIT ISSUE" (capitalization as in original). That same day, Management sent a letter to Complainant stating that poor credit was the reason his application was denied.⁵ There is nothing in the record to suggest that this letter was false, rather than written follow-up to Complainant's inquiry about his application.

⁵ Complainant denied receiving this letter.

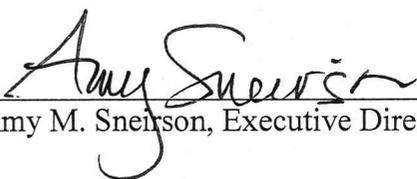
- c) Complainant has not established that Respondents' reason is false and pretextual. Complainant pointed out that the only credit report Respondents could produce was not run contemporaneously with his application and its denial. Respondents agreed that the printed version was not the originally-run report, but this is largely irrelevant, since Complainant admitted that he has a very poor credit score and that he had been denied housing most other places for reasons other than his assistance animal.
- d) Complainant argued that the real reason why his application was denied was because of his assistance animal. The application stated that Complainant has an "ESA – yellow lab".⁶ Management knew at the time the application was denied that Complainant had an assistance animal. Complainant stated that "ESA" was circled on the application, and that this was evidence Respondent's decision was based on his dog. However, the copy of the application produced by Respondents had no special markings, and Complainant produced no evidence in support of his argument.
- e) Even without his assistance animal, it is likely that Respondent would have denied Complainant's application based on his credit score. Given the reasonable grounds standard here, Complainant has not shown that it is at least as likely as not that Respondents would have rented him a room "but for" his assistance animal.

12) Discrimination based on disability is not found.

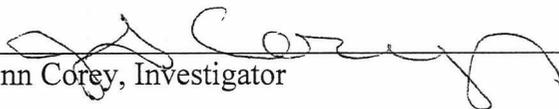
VI. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that Respondents The Grand Beach Inn and Portland Avenue Associates discriminated against Complainant Jonathan Parsons based on his disability when they refused his assistance animal, and the claim should be conciliated in accordance with 5 M.R.S. § 4612(3); and
- 2) There are **No Reasonable Grounds** to believe Respondents The Grand Beach Inn and Portland Avenue Associates discriminated against Complainant Jonathan Parsons based on his disability when it refused to rent to him, and the claim should be dismissed in accordance with 5 M.R.S. § 4612(2).



Amy M. Snelson, Executive Director



Jenn Corey, Investigator

⁶ "ESA" is an abbreviation for emotional support animal.