



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT

MHRC No. H17-0240-A, B; HUD No. 01-17-7285-8

August 9, 2017

Elizabeth Thompson¹ (Dedham, MA)
and Tennyson Martin (Dedham, MA)

v.

J.G.Q. Property Management, Inc.² (Bangor)
and Joe Quinn (Bangor)

I. Summary of Case:

Complainants alleged that Respondents, a property management company and one of its employees, discriminated against them in housing by conditioning the use of an assistance animal on unlawful terms and conditions. Respondents denied discrimination and stated that Complainants were permitted to use an assistance animal after coming to an agreement with Respondents. The Investigator conducted a preliminary investigation, which included reviewing all documents submitted by the parties and holding an Issues and Resolution Conference ("IRC"). Based upon this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondents subjected Complainant 2 to disability discrimination by conditioning the use of an assistance animal on unlawful terms and conditions, but no reasonable grounds to believe Respondents did the same to Complainant 1.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: August 12, 2016 to September 14, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): May 18, 2017.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA"), 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 The Investigator will refer to Elizabeth Thompson as "Complainant 1" and Tennyson Martin as "Complainant 2".

² Complainant named Respondents as "J.G.Q. Property Management, Inc." ("Management Company") and "Joe Quinn" ("Manager"); Respondents stated that the correct legal name of the Management Company is "JGQ Property Management Inc". Because Complainants did not amend their complaint, the names they used have been retained. The Complainants did not name the owner of the subject property as a Respondent in this case.

1) Complainants provided the following in support of their claim:

Complainants have disabilities and require an assistance animal to afford them equal use and enjoyment of their housing accommodation. Shortly after they moved into an apartment that was managed by Respondents (the "Unit"), Complainants requested that they be permitted to live with an assistance animal. Complainants presented notes from medical providers when they made their request. Respondents did not reply to their request; when Complainant 1 followed up with Manager via phone, Manager accused Complainants of "trying to pull a fast one". Respondents indicated that they would not grant Complainants' request until Respondents heard back from the government and received a signed, notarized note from Complainant 1's medical provider. Respondents did not permit Complainants to use an assistance animal until Complainants retained legal representation.³

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

When Complainants moved into the Unit, they were aware that pets were not permitted on the premises. Complainants' initial request for use of an assistance animal was denied because the notes they provided were vague and did not indicate an assistance animal was necessary for their treatment. Additionally, the note provided by Complainant 1 was unsigned. After the initial denial, Complainant 1 obtained a modified and signed note, which Respondents accepted. Respondents informed Complainants' legal counsel that Complainants could use an assistance animal approximately one month after the initial request. Complainants lived in the Unit for the next year without incident and voluntarily moved out at the end of their lease, though Respondents would have extended their lease again.

3) The Investigator made the following findings of fact based on the parties' documentation and the IRC:

- a) Complainant 1 had certain disabilities as defined by the MHRA.⁴ At the IRC, Complainant 1 testified that living with an assistance animal helped her mental health and helped her get through the day. Complainant 1 stated that she had previously utilized an assistance animal based on her medical provider's recommendation and that the animal had mitigated the effects of her disabilities.
- b) Complainant 2 had medical conditions that he stated interfered with his major life activities, including eating and leaving his home; he testified that living with an assistance animal helped mitigate the effects of his disabilities because, among other reasons, he is forced to take care of himself so he can take care of the animal. He stated that he sought to obtain an assistance animal upon the recommendation of his medical provider. Respondents did not dispute that Complainant 2 had a disability under the MHRA.
- c) In July 2016, Complainants signed a lease and moved into the Unit, which was in a building that did not permit pets. On August 12, 2016, Complainants requested that Respondents grant them a reasonable accommodation for their disabilities; specifically, they asked that they be permitted to have an assistance animal in the Unit. Complainants enclosed medical providers' notes with their request. Complainant 1

³ Complainants also included allegations related to what they perceived as unlawful contact between Manager and Complainant 1's sister regarding Complainant 1's medical conditions. The Commission does not enforce medical privacy or other related laws. Accordingly, the Investigator will not further address these allegations in this Report.

⁴ At the IRC, Complainant 1 expressed her concern about the release of her medical information to Respondents and other parties. Among other conditions, Complainant 1 stated that she suffered from a disorder that is a *per se* disability (disability without regard to severity) under the MHRA. Respondents did not dispute that Complainant 1 had disabilities, so the Investigator will not provide any additional details related to Complainant 1's conditions.

provided a note from a licensed mental health counselor; this note was unsigned. Complainant 2 provided a signed note from a physician that stated that Complainant 2 would “benefit from being allowed to have a therapy pet as part of his plan of care which would improve his well being [*sic*]”.

- d) Complainants did not receive a response to their request, so on or about August 24, 2016, Complainant 1 called Manager to follow up on it. Complainants alleged that during the phone call, Manager accused Complainant 1 of “trying to pull a fast one.” At the IRC, Manager stated he could not remember what was said during the call, but stated he had not been happy because he felt that Complainants had not been frank about their need for an assistance animal.
- e) After the call, Complainant 1 emailed Manager and reiterated Complainants’ request for an assistance animal. Manager sent an email in response saying he would not grant the request until he heard back from the government and until he received a signed, notarized note from Complainant 1’s medical provider. At the IRC, Manager explained that he sought verification from a governmental agency that the wording of Complainant 1’s medical note was sufficient to comply with legal requirements. He also stated that because Complainant 1’s initial medical note was unsigned, he requested that she produce a signed and notarized note to verify its validity. Manager confirmed that approval of the request was contingent upon his receipt of a response from the governmental agency and a signed, notarized medical note for Complainant 1. Manager further stated that he did not consider Complainant 2’s note because he felt its wording was even more vague and because he was communicating solely with Complainant 1. Complainant 1 responded to Manager’s email, stating that his request for a notarized letter was illegal.
- f) Approximately three days later, Complainant 1 obtained a signed letter from her licensed mental health counselor; the content of the letter remained unchanged. Shortly thereafter, Complainants obtained legal counsel; Complainants’ counsel communicated with Respondents in the following weeks. Around September 14, 2016, Respondents granted Complainants’ request for an assistance animal; they obtained an assistance animal and lived with the animal in the unit until their lease expired in 2017.

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) Under the MHRA, 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.” 5 M.R.S. § 4582-A(3). The use of an assistance animal may not be conditioned on the payment of a fee or security deposit, even when a fee or deposit is charged for keeping a pet on the premises. *Id.*
- 3) An assistance animal for housing purposes is 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

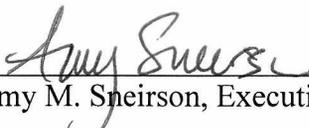
or licensed social worker” or that has been “individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability”. 5 M.R.S. § 4553(1-H).

- 4) Here, Complainant 2 established that Respondents unlawfully conditioned the use of an assistance animal on unlawful terms and conditions, while Complainant 1 did not, with reasoning as follows:
 - a) There is no dispute that Respondents initially refused to permit Complainants’ use of an assistance animal. Further, there is no dispute that Manager told Complainants that they could not have an assistance animal unless Respondents heard back from a governmental agency. The use of an assistance animal is not permitted to be conditioned upon such a requirement. The Respondents’ subsequent decision to grant the Complainants’ request does not undo their unlawful conduct, though it may mitigate damages at a later stage. However, it is troubling that it took repeated requests and the retention of legal counsel by Complainants to force Respondents to grant their accommodation request.
 - b) Based on the plain wording of the MHRA, only a physician, psychologist, physician assistant, nurse practitioner or licensed social worker can make a determination that an individual requires the use of an assistance animal. Here, Complainant 1 provided a note to Respondents and the Investigator from a licensed mental health counselor, but did not provide a note from a person authorized to make such an assessment under the MHRA. For this reason only, Complainant 1 cannot show she required the use of an assistance animal and, therefore, cannot sustain her claim.
 - c) With respect to Complainant 2, Manager’s lack of regular contact with him and belief that the note from his medical provider was too vague did not relieve Respondents of their obligation to comply with applicable law. People with disabilities who make requests for accommodations, such as a request to use an assistance animal, are not required to articulate legal terminology in order to have their requests granted. Here, it was sufficiently clear from the note provided that Complainant 2 required the use of an animal as an accommodation for his disabilities. If Manager had genuine concerns about the wording of the note, the proper response was not simply to ignore (and thus effectively deny) the request.
- 5) It is found that Respondents discriminated against Complainant 2 on the basis of his disability and did not discriminate against Complainant 1 on the basis of her disability.

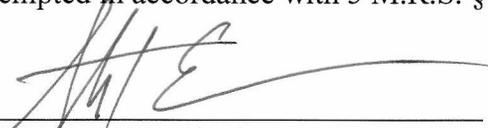
V. Recommendation:

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

- 1) There are **No Reasonable Grounds** to believe that J.G.Q. Property Management, Inc. and Joe Quinn discriminated against Elizabeth Thompson by conditioning her use of an assistance animal in housing on unlawful terms/conditions, and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2); and
- 2) There are **Reasonable Grounds** to believe that J.G.Q. Property Management, Inc. and Joe Quinn discriminated against Tennyson Martin by conditioning his use of an assistance animal in housing on unlawful terms/conditions, and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sheirson, Executive Director



Stuart W. Evans, Investigator