



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

19 Union Street ~ Augusta, Maine

November 4, 2013

Commissioner Vestal called the November 4, 2013 Commission meeting to order at 8:35 a.m. Present were Commissioners Paul Vestal, Sallie Chandler, Deborah Whitworth, A. Mavourneen Thompson.

AGENDA

Executive Director Amy Sneirson requested that the following cases be tabled to the December 16th agenda at the request of the parties.

- H13-0301: Randy Belanger (Oakland) v. Ewing Partners (Belgrade)
- H13-0302: Randy Belanger (Oakland) v. Dino Cacioppo (Belgrade)
- H13-0303: Randy Belanger (Oakland) v. Amy & Jeff Veilleux

- PA12-0430: Kenneth Stanhope (Dennysville) v. Town of Machias, Police Dept. (Machias)
- PA12-0470: Kenneth Stanhope (Dennysville) v. JH & B, Inc. d/b/a Blue Bird Ranch Family Restaurant (Machias)
- PA12-0473: Kenneth Stanhope (Dennysville) v. L.L. Bean, Inc. (Ellsworth)
- PA12-0475: Kenneth Stanhope (Dennysville) v. U.S. Cellular (Machias)
- PA12-0537: Kenneth Stanhope (Dennysville) v. R. H. Foster Energy, LLC d/b/a Fosters on the Run (Hampden)
- PA13-0271: Kenneth Stanhope (Dennysville) v. Pineo Hardware, Inc. (Machias)
- PA12-0502: Kenneth Stanhope (Dennysville) v. Town of Machias, Police Dept. (Machias)
- PA12-0538: Kenneth Stanhope (Dennysville) v. Town of Machias, Police Dept. (Machias)
- PA13-0272: Kenneth Stanhope (Dennysville) v. Town of Machias, Police Dept. (Machias)

Commissioner Vestal called for adoption of the agenda as amended. Commissioner Whitworth moved, seconded by Commissioner Chandler, to adopt the agenda. 4 in favor | 0 opposed.

CONSENT AGENDA (see detailed listing on page 6)

Commissioner Chandler moved, seconded by Commissioner Whitworth, to accept the Investigator's recommendations in each of the cases on the amended Consent Agenda. 4 in favor | 0 opposed.

MINUTES

Commissioner Chandler moved, seconded by Commissioner Whitworth, to adopt the September 23, 2013 Commission Meeting Minutes. 4 in favor | 0 opposed.

QUARTERLY PROGRAM REVIEW

- Inventory Status Report & Resolutions: There were 639 open cases at the end of July. The Commission closed 163 cases during the preceding quarter.
- Training/Education: Commissioners reviewed the quarterly report indicating that staff presented at 2 training sessions and attended 6 training sessions.
- Litigation - Commissioners agreed to move this item to another part of the agenda when the Commission could go into Executive Session.
- Financial: Commissioners reviewed the quarterly financial report and it was placed in the file.

ADMINISTRATION

Personnel Report: Executive Director Amy Sneirson reported that John Gause left the Commission as Commission Counsel on October 4th, Barbara Archer Hirsch began as our new Commission Counsel on October 7th. There were no other significant personnel changes.

COMPLIANCE

Commissioners reviewed the compliance report and it was placed on file, showing two successful conciliations, three unsuccessful conciliations, and six conciliations in progress.

Commissioner Chandler moved, seconded by Commissioner Thompson, to accept the Conciliation Agreement, and to approve withdrawal of the complaint, in H13-0148: Pine Tree Legal Assistance, Inc. (Augusta) v. Dennis Moreau (Poland). 4 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Thompson, to accept the Conciliation Agreement, and to approve withdrawal of the complaint, in E11-0494, Boylan V. Washington Hancock Community Agency. 4 in favor | 0 opposed.

INVESTIGATION

New Charges: Commission staff opened 51 new cases in September.

Administrative Dismissals: The Executive Director administratively dismissed 13 cases in September.

Pre-determination Settlements: Since November 4, 2013, 21 cases resulted in settlements with total monetary relief in excess of \$465,850 for complainants.

NEW BUSINESS

The Commission has received no public comment on the proposed rule repeal and replacement of Chapter 3, Employment Regulations, or on the proposed amendment of Chapter 2, the Commission's Procedural Rule, to allow the Commission to receive payment by parties for mediations. After Consideration of Public Comment, decision for adoption of the proposed rules will be on the December 16th Agenda.

At 8:40 a.m. Commissioner Vestal called for a five minute recess.

CASES VOTED ON 8:45 A.M.:

E11-0638: Donna Chapman (Windham) v. Operation Homefront, Inc. (San Antonio, TX). Commissioner Chandler moved, seconded by Commissioner Thompson, to table the hearing on this case to the December 16th Commission Meeting. 4 in favor | 0 opposed.

E11-0729: Malcolm Carey (Newcastle) v. University of Maine System (Farmington). Attorney Phillip Johnson restated the position of the Complainant. Brenda Haskell restated the position of the Respondent. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondent University of Maine System discriminated against Complainant Malcolm Carey on the basis of his age. 4 in favor | 0 opposed.

E12-0022: Jessie K. Pendleton (Pittsfield) v. Delta Ambulance (Waterville). Attorney Tina Nadeau restated the position of the Complainant. Attorney Katherine Hart Smith restated the position of the Respondent. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondent Delta Ambulance subjected Jessie “Kim” Pendleton to a hostile work environment based on sex and find no reasonable grounds to believe that Respondent Delta Ambulance retaliated against Complainant Jessie Pendleton. 4 in favor | 0 opposed.

E12-0469: Rodney Bell (Cape Elizabeth) v. Sterling Jewelers, Inc. d/b/a Jared Galleria of Jewelry (South Portland). Complainant was not present. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent Sterling Jewelers, Inc. d/b/a Jared Galleria of Jewelry discriminated against Complainant Rodney Bell on the basis of age by terminating his employment. 4 in favor | 0 opposed.

E12-0585: Carol E. Mulhern (Portland) v. Maine EPM, LLC d/b/a Royal River Grillhouse (Yarmouth). Attorney Phillip Mancini restated the position of the Respondent. Carol Mulhern restated the position of the Complainant. Investigator Robert Beauchesne restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Complainant was subjected to disability discrimination and constructively discharged by Respondent. 2 in favor | 2 opposed (Chandler and Vestal opposed); the motion did not pass. Commissioner Chandler moved, seconded by Commissioner Vestal, to find reasonable grounds to believe that Complainant was subjected to disability discrimination and constructively discharged by Respondent. 2 in favor | 2 opposed (Whitworth and Thompson opposed); the motion did not pass. Because no reasonable grounds finding was made, the ruling was that there were no grounds to believe that discrimination on the basis of disability occurred. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Complainant Carol E. Mulhern was subjected to unlawful retaliation or age discrimination in employment by Respondent Maine EPM d/b/a Royal River Grillhouse. 4 in favor | 0 opposed.

At 10:32 a.m. Chair Vestal called for a 10 minute recess.

H13-0259: Pine Tree Legal Assistance, Inc. V. Princeton Properties Management, Inc. (Augusta). Attorney William Leete, Jr. restated the position of the Respondent. Attorney Elyse Apantaku restated the position of the Complainant. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Chandler, to find **reasonable grounds** to believe that Respondent’s application form contains written inquiries concerning physical or mental disability that violate the Maine Human Rights Act. 4 in favor | 0 opposed. Commissioner Chandler moved, seconded by Commissioner Thompson, to find no reasonable grounds to believe that Respondent Princeton Properties Management, Inc. made unlawful oral inquiries based on disability, sexual orientation, or familial status, or that Respondent discriminated in the terms and conditions of rental based on race, color, national origin or ancestry, or that

Respondent's application form contains unlawful written inquiries concerning familial status of sexual orientation. 4 in favor | 0 opposed.

EXECUTIVE SESSION:

At 11:25 a.m. Commissioner Chandler moved, seconded by Commissioner Whitworth, to move into executive session to discuss litigation with Commission Counsel pursuant 1 M.R.S. §405(6)(E). 4 in favor | 0 opposed.

At approximately 12:04 p.m. Commissioner Chandler moved, seconded by Commissioner Thompson, to come out of executive session. 4 in favor | 0 opposed.

LITIGATION:

Commissioner Thompson moved, seconded by Commissioner Whitworth, not to file a complaint in the "reasonable grounds" case E11-0554, Thompson v. Town of Limington (sexual harassment) 4 in favor | 0 opposed.

Commissioner Thompson moved, seconded by Commissioner Whitworth, to defer the decision to file or not to file, in the "reasonable grounds" case E11-0651, Farnsworth v. KVCAP (disability discrimination) to the December Commission Meeting.. 4 in favor | 0 opposed.

ADJOURN:

There being no further business to come before the Commission, Commissioner Chandler moved, seconded by Commissioner Whitworth, to adjourn the case hearing portion of the meeting. 4 in favor | 0 opposed.

At 11:48 Commissioner called for a recess until 2:00 PM.

PUBLIC HEARING:

At 2:00 PM Chair Vestal called the afternoon session to order.

Executive Director Amy Sneirson and Commission Counsel Barbara Archer Hirsch reviewed the proposed rule changes in Chapters 2 and 3 of the Commission's regulations, opening session for public comment.

Kristin Aiello, Managing Attorney at the Disability Rights Center in Augusta, presented comments orally and stated her intent for her agency to submit written comments on the proposed employment regulations. She supported the Chapter 2 amendments to allow the Commission to accept payments from parties for Third Party Neutral Mediation Program mediations.

David Webbert, private attorney at Johnson & Webbert in Augusta, presented comments and stated his intent to submit written comments on the proposed employment regulations. Mr. Webbert noted several procedural issues the Commission could handle better than it does, and stated his general feeling that the Commission should not automatically adopt federal regulatory language that conflicts with Maine's regulatory language where Maine intentionally offered greater protections in its employment laws than the federal government did.

Being that no further public comment was received; the meeting was adjourned at 2:26 PM.

The consent agenda is a listing of cases scheduled on the Commission's meeting agenda in which there was no written disagreement to the Investigator's recommendation. Commissioners considered these cases without oral argument by the parties.

CONSENT AGENDA

E11-0642:	Mark McLean (Cape Elizabeth) v. PepsiCo, Inc. d/b/a Frito-Lay (Plano, Tx.)	NRG
E11-0665:	Danielle Hackett (Biddeford) v. Providence Service Corporation of Maine (Portland)	NRG
E11-0690:	Arthur Thibodeau (Waterville) v. Mount St. Joseph Holistic Care Community (Waterville)	NRG
E11-0708:	Maurice Rideout (Richmond) v. Oceanside Builders, LLC (Bailey Island)	NRG
E12-0026:	Kelli Shannon (Houlton) v. Houlton Band of Maliseet Indians (Littleton)	NRG
E12-0030:	Lindsay Zaccaro (Portland) v. MAS Homecare of Maine (Westbrook)	NRG
E12-0126:	Diane Nau (North Berwick) v. Maine Turnpike Authority (Portland)	NRG
E12-0168:	Theresa Lavigne (Buxton) v. Deb's Variety (Lyman)	RG
E12-0170:	George Mason (Fayette) v. Darling's d/b/a Darling's Chrysler Dodge (Augusta)	NRG
E12-0180:	Roland White (Portland) v. Seaside Healthcare, LLC d/b/a Seaside Nursing Home (Portland)	NRG
E12-0378:	Raymond Fenderson (Windham) v. Mastoran Corp. d/b/a Burger King (Windham)	NRG
E12-0389:	Janet Enos (Turner) v. Shan Teixeira & Orthopedic & Spine Physical Therapy of LA, Inc. (Lewiston)	NRG
E12-0419:	Mary Toussaint (Arundel) v. Peoples Choice Credit Union (Saco)	NRG
E12-0432:	Joyce Strout (South Portland) v. Dr. Newton's Naturals (South Portland)	NRG
E12-0455:	Daniel Hill (Ellsworth) v. H.O.M.E Inc. d/b/a Emmaus Homeless Shelter (Orland)	NRG
E12-0484:	Lydia Carr (Saint Albans) v. Paris Farmers Union (South Paris)	NRG
E12-0535:	Ashley Yates (Mechanic Falls) v. The Village Inn Restaurant (Auburn)	NRG
H13-0125:	Sarra Sabiel (Portland) v. Portland Housing Authority (Portland)	NRG
H13-0228:	Paula & William Caskey (Ave Maria, FL) v. Birchaven Homeowners Ass'n (Brunswick)	NRG