



Maine Human Rights Commission

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Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

COMMISSION MEETING MINUTES

19 Union Street ~ Augusta, Maine

September 21, 2015

Commission Chair Arnold Clark called the September 21, 2015 Commission meeting to order at 8:36 a.m. Present were Commissioners Arnold Clark, Sallie Chandler, John Norman, and Deborah Whitworth.

AGENDA

Commissioner Clark called for adoption of the Agenda and Consent Agenda.

Executive Director Amy Sneirson reviewed the following changes/requests for change to the agendas:

Fourteen cases have been tabled to the October 26, 2015 Commission Meeting:

- E14-0309: Lise Theriault (Winslow) v. Alford Center for Health (Augusta)
- E13-0441: Raymond Labbe (Litchfield) v. Bath Iron Works Corporation (Bath)
- E13-0675: Jeanine Daley (Bowdoin) v. Bath Iron Works Corporation (Bath)
- E13-0670: James St. Amand (Durham) v. Bath Iron Works Corporation (Bath)
- E13-0672: Guy Blanchette (Litchfield) v. Bath Iron Works Corporation (Bath)
- E13-0673: Douglas Brunelle (Gardiner) v. Bath Iron Works Corporation (Bath)
- E13-0679: Donald Hersom (Lewiston) v. Bath Iron Works Corporation (Bath)
- E13-0681: Rodney Kates (Lewiston) v. Bath Iron Works Corporation (Bath)
- E13-0682: Andre Laverdiere (Lewiston) v. Bath Iron Works Corporation (Bath)
- E13-0684: Normand Nadeau (Auburn) v. Bath Iron Works (Bath)
- E13-0687: Kenneth Salls (Mechanic Falls) v. Bath Iron Works Corporation (Bath)
- E13-0688: David Smith (Thomaston) v. Bath Iron Works Corporation (Bath)
- E13-0613: Kary Haley (Presque Isle) v. Aroostook Medical Center (Presque Isle)
- H15-0006: Scott Mootrey, and o/b/o Minor (Ellsworth) v. The Housing Foundation (Orono), Straw Way Housing Associates, LP (Bangor), Penquis (Bangor)

Executive Director Amy Sneirson advised that Complainant in one case on the agenda for today seek to withdraw their complaints, which – after a report has been issued – is in the Commission’s discretion. Granting the request for withdrawal will amend the agendas for today. Commissioner Chandler moved, seconded by Commissioner Whitworth, to allow the Complainant to withdraw her complaint in H14-0006, Mootrey v. The Housing Foundation, Straw Way Associates and Penquis. 4 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Norman, to adopt the Agenda as amended and to accept the Investigator’s recommendations in each of the cases on the Consent Agenda. 4 in favor | 0 opposed (see detailed listing on pages 7-8).

MINUTES

Commissioner Whitworth moved, seconded by Commissioner Norman, to adopt the July 13, 2015 Commission Meeting Minutes. 3 in favor | 0 opposed| 1 abstained. (Chandler abstained)

ADMINISTRATION

Executive Director Amy Sneirson reported that the Commission had formally hired Pamela Soisson into the position of Office Associate II.

The Commission is in the midst of interviews for the newly-created Investigator position. Forty applications were received; nine candidates are being interviewed. Once a candidate is identified, the Commission will request permission to hire to the Governor's Office as required by executive order and the Commission will proceed accordingly.

COMPLIANCE

Commissioners reviewed the compliance report showing two successful conciliations, 12 unsuccessful conciliations, and two (2) conciliations in progress. It was placed on file.

Commissioner Chandler moved, seconded by Commissioner Norman, to accept the conciliation agreement and dismiss E14-0140, Blom v Shaners Family Restaurant pursuant to 5 M.R.S. §4612(3). 4 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Norman, to accept the conciliation agreement in E14-0044, Remington v. Lefleurs Restaurant pursuant to 5 M.R.S. §4612(3). 4 in favor | 0 opposed.

INVESTIGATION

New Charges: Commission staff opened 62 new cases in July, and 44 new cases in August.

Administrative Dismissals: The Executive Director administratively dismissed 20 cases in July and 22 cases in August.

Pre-determination Settlements: Since June 29, 2015, 30 cases pending at the Commission were resolved resulting in settlements with total monetary relief in excess of \$400,000 for complainants.

NEW BUSINESS:

Executive Director Amy Sneirson requested that litigation matters and new business be taken after the day's cases are heard on the agenda.

At 8:43 AM Chair Clark called for a 5 minute recess.

CASES VOTED ON 8:45 A.M.:

PA13-0332: Kevin Myshrall (West Bethel) v. Oxford County Sheriff's Department (South Paris). Complainant was not present. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe

Oxford County Sheriff's Department discriminated against Kevin Myshrall on the basis of disability. 4 in favor | 0 opposed.

PA13-0563: Hilary Whitmore (Portland) v. Falmouth Pediatric Dentistry (Falmouth). Attorney Tuck Erwin restated the position of the Respondent. Attorney Kristin Aiello restated the position of the Complainant. Investigator Robert Beauchesne restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find **reasonable grounds** to believe Falmouth Pediatric Dentistry discriminated against Complainant Hilary Whitmore due to her disability by denying her a reasonable modification. 4 in favor | 0 opposed.

Executive Director Amy Sneirson interrupted the hearing agenda to advise that the Complainant in case PA13-0332 (Kevin Myrshrall v. Oxford County Sheriff's Department) had arrived moments after the Commissioners' vote on the case, and was requesting that the Commission reconsider hearing the case with both parties present. Chair Clark moved, seconded by Commissioner Norman, to set aside the vote on the case and hear argument on PA13-0332: Kevin Myrshrall v. Oxford County Sheriff's Department, 2 in favor | 2 Opposed (Chandler and Whitworth opposed); the motion failed.

E13-0352: Robert Hack (Greene) v. Lowe's Home Improvement (Mooresville, NC). Attorney Brian Champion restated the position of the Respondent. Attorney Vernie Paradie restated the position of the Complainant. Investigator Angela Tizon restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find there are no reasonable grounds to believe that Respondent Lowe's Home improvement discriminated against Complainant Robert Hack on the basis of age by failing to hire him. 4 in favor | 0 opposed. Commissioner Chandler moved, seconded by Commissioner Norman, to find **Reasonable Grounds** to believe that Respondent discriminated against Complainant on the basis of age by subjecting him to unlawful pre-employment inquiries, and conciliation on this claim should be attempted. 4 in favor | 0 opposed. Commissioner Chandler moved, seconded by Commissioner Norman, to find that there are **Reasonable Grounds** to believe that Respondent Lowe's Home Improvement discriminated against Complainant Robert Hack on the basis of disability by failing to hire him. 4 in favor | 0 opposed.

E13-0564: Marico Wilson (Bangor) v. Team Prior, Inc., Domino's Pizza (Bangor). Attorney Diane Khiel restated the position of the Complainant. Attorney Darby Urey restated the position of the Respondent. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Norman, to find no reasonable grounds to believe that Complainant Marico M. Wilson was subjected to unlawful race/color, national origin, or ancestry discrimination by Respondent Team Prior, Inc./Domino's Pizza. 4 in favor | 0 opposed.

E13-0608: Jason Brown (Bangor) v. H.E. Murdock d/b/a Day's Jewelers (Waterville). Attorney Stephen Langsdorf restated the position of the Respondent. Attorney Eric Mehnert restated the position of the Complainant. Investigator Robert Beauchesne restated the facts of the case. Commissioner Norman moved, seconded by Commissioner Whitworth, to find that there are **Reasonable Grounds** to believe that Respondent H.E. Murdoch d/b/a Day's Jewelers discriminated against Complainant Jason Brown on the basis of race by subjecting him to a hostile work environment. 3 in favor | 0 opposed | 1 abstained (Chandler abstained). Commissioner Norman moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent discriminated against Complainant Jason Brown on the basis of sex by subjecting him to a hostile work environment. 3 in favor | 0 opposed | 1 abstained (Chandler abstained).

At 11:00 a.m. Chair Clark called for a 5-minute recess.

E13-0647: Stephen Geary (North Yarmouth) v. Turf Products, LLC (Enfield, CT). Respondent was not present. Commissioner Norman moved, seconded by Commissioner Chandler, to find **Reasonable Grounds** to believe that Turf

Products, LLC discriminated against Stephen Geary by terminating his employment on the basis of his age. 4 in favor | 0 opposed.

PA14-0108: Karen Brown (York Beach) v. University of Southern Maine (Portland). Sarah Churchill restated the position of the Complainant. Brenda Haskell restated the position of the Respondent. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that the University of Southern Maine subjected Karen D. Brown to unlawful discrimination (sexual harassment). 4 in favor | 0 opposed. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that the University of Southern Maine unlawfully retaliated against Karen D. Brown for engaging in protected activity in violation of the MHRA. 4 in favor | 0 opposed. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find there are also No Reasonable Grounds to believe that the University of Southern Maine unlawfully discriminated against Karen D. Brown because of her actual or perceived disability or denied her a reasonable accommodation. 4 in favor | 0 opposed.

At 11:21 Chair Clark moved for a 5-minute recess.

NEW BUSINESS

Proposed Rule Changes: Commission Counsel Barbara Archer Hirsch reviewed the proposed rule changes to Commission Rules Chapter 2 (Procedural Rule) and Chapters 4 and 4-A (Education and Education Procedural Rule). The Commission did not complete its discussion, and agreed to return to it after the afternoon hearing agenda was finished.

At 12:51 Chair Clark called for a 10-minute recess.

CASES VOTED ON AT 1 PM:

E14-0144: Robert Folsom, Sr. (Upton) v. B&M Baked Beans (Portland). Robert Folsom restated his position as the Complainant. Attorney Brian Champion restated the position of the Respondent. Investigator Alice Neal restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that B&M Baked Beans retaliated against Robert T. Folsom, Sr. in violation of the MHRA and WPA because he engaged in protected activity. 4 in favor | 0 opposed.

E14-0197: Nathaniel Szurgot (Brunswick) v. L.L. Bean, Inc. (Freeport). Complainant was not present. Commissioner Norman moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that L.L. Bean Inc. discriminated against Nathaniel A. Szurgot based upon his sex when it terminated his employment. 4 in favor | 0 opposed.

E14-0286: Romona Carter (Waldoboro) v. Linda Beans Perfect Maine (Rockland). Complainant was not present. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent Linda Beans Perfect Maine retaliated against Complainant Romona Carter because she engaged in protected activity in violation of the WPA. 4 in favor | 0 opposed.

E14-0297: Marie Grandmaison (Fairfield) v. Local 327 (Augusta). Commissioner Whitworth moved, seconded by Commissioner Norman, to find no reasonable grounds to believe that Respondent Local 327 subjected Complainant Marie Grandmaison to sexual harassment by aiding and abetting harassment in violation of the MHRA. 4 in favor | 0 opposed. Chair Clark, seconded by Commissioner Chandler, moved to find no reasonable grounds to believe that Respondent Local 327 discriminated against Complainant Marie Grandmaison in the terms and conditions of her employment on the basis of sex and/or disability in violation of the MHRA. 4 in favor | 0 opposed. Chair Clark moved, seconded by Commissioner

Norman, to find no reasonable grounds to believe that Respondent Local 327 retaliated against Complainant Marie Grandmaison in violation of the MHRA and WPA because she engaged in protected activity. 4 in favor | 0 opposed.

H15-0199: Melinda Johnson & Rebecca Evans (Searsport) v. Searsport Realty Assoc. Ltd.Part. & Kim Draper (Bangor). Kristin Collins restated the position of the Respondent. Complainant was not present. Investigator Tizón restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Clark, to find no reasonable grounds to believe that Searsport Realty Associates c/o Maine Development Associates and Kimberly Draper discriminated against Melinda Johnson and Rebecca Evans on the basis of sex and sexual orientation by subjecting them to a hostile housing environment. 4 in favor | 0 opposed. Commissioner Norman moved, seconded by Commissioner Whitworth, to find no Reasonable Grounds to believe that Searsport Realty Associates c/o Maine Development Associates and Kimberly Draper discriminated against Melinda Johnson and Rebecca Evans on the basis of disability. 3 in favor | 1 opposed (Chandler opposed). Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Searsport Realty Associates c/o Maine Development Associates and Kimberly Draper retaliated against Melinda Johnson and Rebecca Evans for asserting their rights under the MHRA. 4 in favor | 0 opposed.

H15-0200: Brenda Lamb (York) v. Darren Lee, Victoria Lee, Estate of Shirley J. Lee, Harold L. Lee Revocable Trust, and Shirley J. Lee Revocable Trust d/b/a Caincrest Mobile Home Park (York). Attorney Gregory Orso restated the position of the Respondent. Attorney Mark Joyce restated the position of the Complainant. Investigator Angela Tizon restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find **Reasonable Grounds** to believe that Respondents discriminated against Complainant on the basis of disability. 4 in favor | 0 opposed. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondents retaliated against Complainant for asserting their rights under the MHRA. 4 in favor | 0 opposed.

At 2:24 PM Chair Clark called for a 5-minute recess.

NEW BUSINESS, CONT.

At 2:30, the discussion of **Proposed Rule Changes** continued. Commission Counsel Barbara Archer Hirsch continued reviewing the proposed rule changes to Commission Rules Chapter 2 (Procedural Rule) and Chapters 4 and 4-A (Education and Education Procedural Rule). The Commission had many questions regarding the Chapter 4 proposed changes, and Commission Counsel suggested that she make further revisions to the Chapter 4 proposal and bring the Proposed Rule Changes to the Commission for its October 26 meeting. The Commission agreed.

EXECUTIVE SESSION:

At 3:00 p.m. Commissioner Chandler moved, seconded by Commissioner Norman, to move into executive session to discuss pending or contemplated litigation, and the Commission's legal rights and duties, with Commission Counsel pursuant 1 M.R.S. §405(6)(E). 4 in favor | 0 opposed.

At approximately 3:19 p.m. Commissioner Chandler moved, seconded by Chair Clark, to come out of executive session. 4 in favor | 0 opposed.

LITIGATION:

Commissioner Chandler moved, seconded by Commissioner Norman, that the Commission should not litigate the following cases:

- PA13-0746, Blankenship v. Falmouth Pediatric Dentistry.
- E13-0269, Gray v. YMCA of Southern Maine.
- E13-320, Ackley v. Tambrands.
- E13-0369, Wilson v. Best Western Plus.
- E14-0046, Guevara v. Hartford Installations, LLC.
- E14-0343, Thomas v. Pan Am Railways.
- H14-0462, Townsend v. Blaisdell.

and the Commission should litigate the following cases:

- H14-0572, -0573, -0574, -0575, Syret v. Supportive Housing Assoc., LLP d/b/a Community Concepts, Mike Burke, Jeanne Currie and Bob Vallee
- H14-0642, Johnson v. Bishop

and that the Commission should file a brief as amicus curiae in a pending appeal to the U.S. Court of Appeals for the First Circuit case related to the application of the “job duties exception” to a MHRA retaliation claim in a combined lawsuit pursuing three prior reasonable-grounds cases against Boulevard Motel Corp. (E11-543, -0544 and -0545).

4 in favor | 0 opposed.

ADJOURNMENT:

There being no further business to come before the Commission, Chair Clark adjourned the meeting the meeting at 3:21 PM .

[CONSENT AGENDA PAGE 7-8](#)

CONSENT AGENDA

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.

E13-0244:	Susan McClain (Tulsa, OK) v. H.M. Thomas Associates, Inc. (Brunswick)	NRG
E13-0411:	Cheryl Duke (Durham) v. Casco Bay YMCA (Freeport)	NRG
E13-0430:	Brenda Webber (Sidney) v. Hampton Inn (Waterville)	RG/RG/NRG
E13-0667:	David Brown (Machias) v. Washington County Sheriff's Office (Machias)	NRG
E13-0696:	Louisa Smith (Bangor) v. Bangor Historic Track, Inc. d/b/a Hollywood Ca. & Penn Na. Gam. (Bangor)	NRG
PA14-0053:	Tarrick Peyton (Augusta) v. GameStop, Inc. (Waterville)	NRG
E14-0090:	Alfred Jackson (Eugene, OR) v. Cozy Harbor Seafood, Inc. (Portland)	NRG
E14-0100:	April DeVarney (Rockland) v. Woodland's Memory Care (Rockland)	NRG
E14-0142:	Wilner Dormesil (Fort Pierce, FL) v. Homewood Farm (Blue Hill)	NRG
E14-0201:	Carolyn Rae (Dixmont) v. Walmart Supercenter (Palmyra)	NRG
E14-0230:	Matthew Lang (Searsport) v. Sebasticook Family Doctors (Newport)	NRG
E14-0241:	Melissa Antonucci (Minot) v. St. Mary's Regional Medical Center (Lewiston)	NRG
E14-0252:	Tracey Swett (Dover, NH) v. VFW (Sanford)	RG/RG
E14-0280:	Aimee Porter (Auburn) v. Country Pride Cleaning Services, Inc. (Sebec)	NRG
E14-0288:	Annabelle Lipsett-Gauthier (Houlton) v. Houlton Regional Hospital (Houlton)	NRG
E14-0302:	Johnny Arismendez (Livermore Falls) v. Moark, Land O'Lakes (Turner)	NRG
E14-0367:	Max Slabotzky (Portland) v. Men's Wearhouse (South Portland)	NRG
E14-0373:	Michael Lawson (Auburn) v. The Home Depot (Portland)	NRG
E14-0428:	George Peterson (Dexter) v. State of Maine, Department of Corrections (Augusta)	NRG
E14-0456:	Jennifer Cotter (Portland) v. NorDx (Scarborough)	NRG
E14-0460:	Maayan Lahti (Auburn) v. Delta Air Lines (Atlanta, GA)	NRG

CONTINUED

CONSENT AGENDA, CONT.

E14-0476:	Ernest Fitch (Castine) v. Maine Maritime Academy (Castine)	NRG
E14-0511:	Sheldon Trask (Boothbay Harbor) v. Boothbay Harbor Country Club (Boothbay Harbor)	NRG
E14-0544:	Wayne B. Sherman (Oakfield) v. Smith & Wesson Corp. (Houlton)	NRG
E14-0608:	Daniel Boynton (Casco) v. Scott Construction Corporation (Falmouth)	NRG
E14-0681:	Gartay Yekeh (Windham) v. Woodfords Family Services (Portland)	NRG
E14-0722:	Brian Webber (Dixfield) v. Walmart (Farmington)	NRG
E14-0395:	Edward Burgess (Buckfield) v. Bread of Life Ministries (Augusta)	NRG
E14-0433:	Asher Kendrick (Portland) v. Lake City Exports (Auburn)	RG/RG
E14-0478:	Dawn Giard (West Gardiner) v. Publicover Security (Portland)	NRG
E14-0480:	Nyomi Berube (Lewiston) v. First Atlantic Corp. d/b/a Montello Manor (South Portland)	NRG
H15-0048:	Suhib Abdullah and Khatem Hassan (Westbrook) v. Westbrook Pointe LP (Westbrook)	NRG
H15-0049:	Suhib Abdullah and Khatem Hassan (Westbrook) v. Kimberly Sawyer (Westbrook)	
H15-0050:	Suhib Abdullah and Khatem Hassan (Westbrook) v. Robert Sawyer (Westbrook)	
H15-0051:	Suhib Abdullah and Khatem Hassan (Westbrook) v. Kristin Allaire (Westbrook)	
H15-0052:	Hadi Hamied (Biddeford) & Niran Al Saeedi (Westbrook) v. Westbrook Pointe L.P. (Westbrook)	NRG
H15-0053:	Hadi Hamied (Biddeford) and Niran Al Saeedi (Westbrook) v. Kimberly Sawyer (Westbrook)	
H15-0054:	Hadi Hamied (Biddeford) and Niran Al Saeedi (Westbrook) v. Robert Sawyer (Westbrook)	
H15-0055:	Hadi Hamied (Biddeford) and Niran Al Saeedi (Westbrook) v. Kristen Rodge (Westbrook)	
H15-0056:	Hadi Hamied (Biddeford) and Niran Al Saeedi (Westbrook) v. Kristin Allaire (Westbrook)	
H15-0177:	Joseph Boldiga (Rochester, NH) v. Bruce Staples (Eliot, ME)	NRG
H15-0178:	Debra Leone (Lisbon) v. Realty Resources, J.M.C. Farwell Limited Liability (Rockport)	RG