



Maine Human Rights Commission  
# 51 State House Station | Augusta ME 04333-0051

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Amy M. Sneirson  
Executive Director

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**INVESTIGATOR'S REPORT**  
**E11-0180, E11-0180-A, and E11-0181**

October 11, 2012

██████████ (Portland)

v.

██████████ ██████████ ██████████ ██████████ (Portland)

**I. Complainant's Charge:**

Complainant ██████████ alleged that Respondent<sup>1</sup> ██████████ ██████████ ██████████ ██████████ ("██████████") violated the Maine Whistleblowers' Protection Act ("WPA") by retaliating against him for engaging in protected activity when it terminated him as Bar Manager.

**II. Respondent's Answer:**

Respondent denied that any whistleblower retaliation occurred and stated that the Complainant was terminated as Bar Manager after he showed he did not possess the management skills required to perform in the position successfully.

**III. Jurisdictional Data:**

- 1) Date of alleged discrimination: 9/15/10.
- 2) Date complaint filed with the Maine Human Rights Commission: 2/28/11.

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<sup>1</sup> The Complainant also named as additional Respondents both the ██████████ Department of Maine (E11-0180-A) and the ██████████ National Service Organization (E11-0181), alleging that they may have been an integrated enterprise with ██████████ because they may have had interrelated operations, common management, centralized control of labor and employment relations and decisions and/or common ownership. It was subsequently determined that the proper Respondent on the national level actually was "██████████ National Headquarters," which was named as a Respondent and received a copy of the MHRC charge in June 2012. ██████████ National Headquarters and ██████████ Department of Maine each requested dismissal of the complaint against them, arguing that each exercises minimal control over operations of local Posts and therefore was not the Complainant's "employer" under controlling law. Based on the information provided by ██████████ National Headquarters and ██████████ Department of Maine, and on prior precedent in a MHRC case (E08-0159) in which a complaint against ██████████ National Headquarters was dismissed on the same basis, it is found that neither ██████████ National Headquarters nor ██████████ Department of Maine was Complainant's "employer" for purposes of this investigation.

- 3) Respondent [REDACTED] is subject to the Maine Human Rights Act and the Whistleblowers' Protection Act, as well as state employment regulations.
- 4) The Complainant is represented by Attorney Roberta L. de Araujo. The Respondent is not represented.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and responses to requests for additional information.

#### **IV. Development of Facts:**

- 1) The parties and undisputed issues in this case are as follows:
  - a) Respondent [REDACTED] is non-profit Veteran's Service Organization located in Portland, Maine. It is governed by a Constitution and set of By-Laws, which mandates the number of elected officers and number of elected members needed for the Board of Trustees. The responsibilities of the elected officers are to run [REDACTED] under the Constitution and By-Laws mandated by [REDACTED] Department of Maine Constitution and By-Laws, and [REDACTED] National Headquarters Constitution and By-Laws. The Board of Trustees of the local Post have general authority over funds and property belonging to that Post, including responsibility for hiring employees necessary to run the Post bar.
  - b) The Complainant was first hired to work as a full-time bartender at [REDACTED] in 1989. In May 1997, Mr. "TH" became the "Bar Manager." Around that same time, the Complainant became the "Assistant Bar Manager," which entailed covering for the Bar Manager on his days off.

#### *Complainant's MHRC charge*

- 2) (Complainant, hereinafter "C") In order to perform Bar Manager duties, I was trained on how to operate the Post's three sealed ticket<sup>2</sup> machines, cash out at the end of the shift, and do cash receipts and band deposits. Many [REDACTED] customers play games on the sealed ticket machines and they are a source of revenue for the Post.
- 3) (C) I worked on 8/4/10 and remained at work until about 2:00 AM on 8/5/10 in order to cash out. When I cashed out, I saw the profit earned on each of the individual sealed ticket machine games. However, when I returned to work later on 8/5/10, I saw that the paper record of the bank deposit made by Bar Manager TH that morning (for the prior night's games) indicated the profit from one of the games (game 6), was \$100 less than the profit shown when I cashed out. In addition, I saw that the record from the previous night was in the trash. I reasonably concluded that TH had taken the "missing" \$100.
- 4) (C) On 8/6/10, I reported this theft by TH to the Chairman [REDACTED]'s Board of Trustees, Mr. "NO," who convened a special meeting of the Board of Trustees on 8/18/10. At that meeting, I reported to the Trustees that TH was stealing from the Post, and I explained how I knew this, showing them the cash register receipts which documented everything I had observed.

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<sup>2</sup> "Sealed ticket" means a card with tabs which, when pulled, expose pictures of various objects, symbols or numbers and which entitles the holder of the ticket to receive a prize if the combination of objects, symbols or numbers pictured matches what is determined to be a winning combination.

- 5) (C) The Board of Trustees also questioned TH during that meeting but he was unable to explain the discrepancy in the records or what happened to the missing money from game 6. The Board decided to terminate TH's employment immediately.
- 6) (C) After TH was terminated from his position, the Board of Trustees asked me to take his job. The Post could not leave the Bar Manager position open because one of the largest events of the year was scheduled to be held just four days later (8/22/10).
- 7) (C) I informed the Trustees that I would take the job on two conditions: that I would be provided with a job description for the Bar Manager position, and that I would be able to return to my bartender/ Assistant Bar Manager position if things did not work out as Bar Manager. I took the job based upon the understanding that the Board of Trustees had accepted these conditions.
- 8) (C) On 9/15/10, at a regular meeting of the Board of Trustees, the Post's Judge Advocate, Mr. "SO," informed the Board that HT had told him that, if he was to return as Bar Manager, I would have to be fired. The Board of Trustees then voted to terminate my employment, effective immediately, and to rehire former Bar Manager TH the next day.
- 9) (C) I performed my job duties satisfactorily throughout my tenure with the Post, as a bartender for more than 20 years (including 14 years as Assistant Bar Manager), and as Bar Manager for the last month prior to my termination. I believe that my employer discriminated against me because I engaged in activity protected under the WPA.

*Respondent's Answer to Complainant's MHRC Charge*

- 10) (Respondent, hereinafter "R") At a meeting of the Board of Trustees on 9/15/10, by a majority vote, the Board removed the Chairman of the Board of Trustees, Mr. NO, and terminated the Complainant's employment. The decision to remove of the Chairman NO and the Complainant was because they were alleged to have acted in a fashion that went against our Constitution and By-Laws, and because of their unprofessionalism.
- 11) (R) Chairman NO and the Complainant had entered into an agreement to allow the latter to retain his employment as a bartender in lieu of not being hired to be the Bar Manager by the Board of Trustees. This was done without the majority vote of the Board of Trustees. The Complainant was also training NO as Assistant Bar Manager in order to cover the Complainant on his days off. These actions violated Article VII (Trustees)<sup>4</sup> and were also made without the majority vote of the Board of Trustees.
- 12) (R) The Complainant also failed to give a lounge report at a Board of Trustees meeting on 9/15/10, which is a requirement as stated in the Bar Manager's list of responsibilities. On 8/28/10, he left Post property without securing the sealed ticket machines. He left the keys in the locking mechanism, leaving them unsecure and vulnerable to possible theft.

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<sup>4</sup> At a Trustees meeting on 9/15/10, the Post's Judge Advocate SO stated that under Article 7 a Trustee could not be a Bar Manager because it also entailed making bank deposits, opening and closing, and accessing the checking account.

- 13) (R) In addition, the Complainant hired two bartenders without telling the Board of Trustees details about their compensation. At the 9/15/10 Board of Trustees meeting, the Complainant also admitted to rectifying cash drawer shortages by using [his] personal money to correct them because he could not find the reason why the cash drawer was short to begin with, even though he was the one who was making up the daily cash drawer.
- 14) (R) The Complainant also compensated members with comp drink chips, a practice against Post policy since January 2010, a policy Complainant knew because he had been a bartender both before and after that policy change. He also had two verbal confrontations with two separate female bartenders, in the lounge, in front of customers, which led one of the females to quit because of the confrontation with the Complainant. His actions were unprofessional, and we were concerned about potential liability for harassment. Shortly after the Complainant assumed the interim Bar Manager position, he also had a verbal altercation with the tenant of our rental property, instructing her on who she can have on her property. It was not in his responsibilities as Bar Manager to manage the rental property.
- 15) (R) The Board of Trustees for Respondent [REDACTED] is fully aware of the difficulties associated with taking on the added responsibilities of the Bar Manager's position. However, during the period of adjustment and transition, through the Complainant's own actions and his attitude towards members and fellow employees, he showed us that he did not possess the management skills necessary to perform successfully in this position. Therefore, by a majority vote of the Board of Trustees, we felt we needed to make a change for the general welfare [REDACTED] [REDACTED]. Our decision was based solely on the details mentioned in this disclosure.

*Complainant's response to Respondent's Answer*

- 16) (C) After more than 20 years of employment by Respondent [REDACTED] the Complainant was fired less than one month after he reported to the Board of Trustees that his supervisor, TH, had stolen money from the Post. This was protected activity under the WPA and the Respondent's own documents demonstrate that the Complainant's protected activity was at least a factor in the Post's decision to terminate his employment. Additional circumstances reflect that not only was his protected activity a significant factor in his termination, it was the real reason for it.
- 17) (C) Specifically, the Respondent decided to terminate the Complainant rather than returning him to his long-term job as bartender, and there was a close temporal proximity between his protected activity and his termination, and the employer has relied upon shifting and baseless explanations for his termination.
- 18) (C) [REDACTED] National is an organization run by and for veterans, as are its [state] Departments and [local] Posts. In large part, [REDACTED] serves as a social hall for its members, with most of its activities centered around its bar and games, which serves as a diversion to its members and revenue for the Post.
- 19) (C) In August 2010, as part of the Complainant's regular duties in covering for the Bar Manager on his day off, the Complainant discovered and carefully reviewed information which led him to conclude that his boss, TH, has stolen \$100 from the Post by taking profit from one of the sealed ticket machines. The Complainant then reported this information to the Chairman of the Board of Trustees, who convened a special Board meeting wherein the Complainant explained what he had observed. This constituted a "good faith" report, based upon the Complainant's review of the relevant game profits and the bank deposit, that TH had violated state law by his conduct. The "reasonableness" of the

Complainant's belief is underscored by Bar Manager TH's inability to explain the missing \$100 at the Board of Trustees meeting on 8/18/10, as well as by the Board's decision to terminate TH at that meeting, based upon the same information that the Complainant had.

- 20) (C) A mere 28 days after the Complainant reported TH's alleged theft to the Board of Trustees, a Trustee, Mr. "DN," presented a document ("Exhibit A") to the Board at its 9/15/10 meeting in which DN called for "the dismissal of employee [REDACTED] (sic)." In that document, DN charged the Complainant with poor performance as Bar Manager (which the Board promoted him to on 8/18/10), as well as alleging that he:

*"...accused an employee of misappropriation of funds with out (sic) proving that any funds were actually missing. You provided only a cash register receipt showing that a payout was made from a game in the pull tabs."*

... ..

*"I therefore call for an apology to Mr. [TH] and that his employment be reinstated effective immediately."*

- 21) (C) Although DN also leveled charges against Chairman of the Board of Trustees, NO, at that same meeting, the above statements regarding misappropriation of funds could only have referred to the Complainant's conduct, since it was in a document calling for his dismissal. The minutes from that Board of Trustees meeting [in MHRC file] reflect that after DN passed out his letter document calling for the Complainant's dismissal, another Trustee made a motion "based on the letter [DN] presented to the Trustees to remove [Complainant] from employment." The motion was seconded and it passed.
- 22) (C) The minutes from the 9/15/10 meeting also reflect that, before the Board voted to terminate the Complainant and rehire TH as Bar Manager, Post Judge Advocate SO reported to the Board that former Bar Manager TH "stated that [Complainant] had to go if [TH] is coming back as Lounge Manager."
- 23) (C) Therefore, while the Respondent's written Answer to the MHRC charge asserts that its "decisions [were] based solely on the details mentioned in this disclosure," its own documents reveal that the Board voted to terminate the Complainant's employment "based on" a document that called for his dismissal because he had accused TH of misappropriation of funds. At the very least, this demonstrates that the Complainant's protected activity was a substantial motivating factor in the Post's decision to terminate his employment.
- 24) (C) Although the documents described above provide ample proof of the causal connection between the Complainant's protected activity and his termination, several additional factors demonstrate that not only was his protected activity a substantial factor in his termination, it was the real reason for it.
- 25) (R) First, the Respondent has offered shifting and pretextual explanation's for the Complainant's termination. In its filing with the MHRC, it cites new reasons for his termination that were not mentioned in either of the two contemporaneous documents surrounding his termination: the minutes of the 9/15/10 Board meeting and DN's letter calling for the Complainant's termination. Rather, in Respondent's Answer to the MHRC charge, for the first time three new basis for the Complainant's termination are asserted: his alleged agreement with Board Chairman NO regarding retention of his bartender job; his alleged training of NO as Assistant Bar Manager; and his alleged failure to give the Board a "lounge report" at the 9/15/10 Board of Trustees meeting.

- 26) (C) In addition to raising these new explanations for the first time in its MHRC Answer, it is notable that the Respondent omits mentioning some of the reasons for the Complainant's discharge reflected in the minutes of the 9/15/10 termination meeting. In particular, their submission makes no reference whatsoever to DN's request (adopted by the Board) that the Complainant should be fired because he "accused an employee of misappropriation of funds, or to Judge Advocate SO's statement (in the minutes) that TH "stated that [Complainant] had to go if [TH] is coming back as Lounge Manager."
- 27) (C) The Post's alternate explanations are also demonstrably false, or at the very least unfounded. For example, despite Respondent's assertion that one of the reasons why the Complainant was fired was because he "failed to give a lounge report" to the Trustees at the 9/15/10 meeting, the Board minutes reflect that, while the Trustees apparently voted down a motion "to accept the Lounge manger's report as presented," the Respondent's contention in its MHRC filing that the Complainant "failed to give a lounge report" at that meeting is false, as its minutes show unambiguously that he presented the report.
- 28) (C) Further, if the Post's true concern was the performance-related reasons cited in its filing with the MHRC, rather than terminating the Complainant's employment, it would have removed him from the Bar Manager position he had held for a mere 28 days and returned him to the bartender position he had held for the prior 20 years, and the Assistant Bar Manager position had served in for about 13 years. As the Complainant had made clear at the 8/18/10 Board of Trustees meeting, he accepted the Bar Manager position only upon the condition that he could return to his former position if the Bar Manager job did not work out, for whatever reason. Given this background, the employer's explanation for taking the extreme step of terminating such a long-term employee is implausible. Given its failure to return the Complainant to his former position, its claims that he was terminated for performance based reasons are a pretext for the true reason: retaliation for his whistleblower activity.
- 29) (C) The close temporal proximity (less than one month) between the Complainant's protected conduct and his termination is also circumstantial evidence that there is a causal connection between the events.

## **V. Analysis and Conclusions**

- 1) The Maine Human Rights Act requires the Commission in this investigation to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 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. More particularly, "reasonable grounds" exists when there is enough admissible evidence, or there is reason to believe that formal litigation discovery will lead to enough admissible evidence, so that there is at least an even chance of Complainant proving in court that unlawful discrimination occurred. Complainant must prove unlawful discrimination in a civil action by a "fair preponderance of the evidence." 5 M.R.S.A. § 4631.
- 2) The Maine Human Rights Act prohibits termination because of previous actions that are protected under the Whistleblowers' Protection Act ("WPA"). See 5 M.R.S.A. § 4572(1)(A). The WPA protects an employee who "acting in good faith . . . reports orally or in writing to the employer . . . what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States [or] what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual." 26 M.R.S.A. § 833(1)(A, B).

- 3) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that he engaged in activity protected by the WPA, he was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). One method of proving the causal link is if the adverse job action happens in “close proximity” to the protected conduct. *See DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 514-515.
- 4) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1<sup>st</sup> Cir. 1995). Respondent must then “produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action.” *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes that showing, the Complainant must carry his overall burden of proving that “there was, in fact, a causal connection between the protected activity and the adverse employment action.” *Id.*
- 5) In order to prevail, Complainant must show that Respondent would not have taken the adverse employment action but for Complainant’s protected activity, although protected activity 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) In this case, Complainant alleged that Respondent [REDACTED] [REDACTED] [REDACTED] violated the WPA by retaliating against him for engaging in protected activity when it terminated him as Bar Manager.
- 7) The Respondent denies any retaliation occurred and states that the Complainant was terminated as Bar Manager after he showed he did not possess the management skills required to perform in the position successfully.
- 8) Certain facts are not in dispute in this case:
  - a) Both sides agree that, at an Executive Session of the Respondent’s Board of Trustees held on 8/18/10, the Complainant reported to the Board (his employer) his belief that then-current Bar Manager TH had stolen money from the Post by underreporting money (\$100) derived from one of the sealed ticket machine games that occurred on an evening that the Bar Manager had off, and the Complainant had been required to cash out.
  - b) The Complainant reported to the Board that he believed TH had stolen the money based upon the fact that the Complainant had cashed out, had seen the profits from each sealed ticket machine game, including game 6, and that the bank deposit slip made by TH the following day was \$100 less than the profit shown when the Complainant had cashed out the night before. The Complainant also allegedly saw the record from the previous night in the trash.
  - c) While this evidence against Bar Manager TH may have been circumstantial rather than direct evidence that he had stolen the money in question, clearly whatever evidence was presented at the 8/18/10 was sufficient for the Executive Session of the Board of Trustees to make the decision to terminate TH from the Bar Manager position. Certainly the fact that TH was unable to explain the \$100 “adjustment downward” and “could not give an answer...where the \$100 went” was also a factor in the Board’s decision to give credence to the Complainant’s allegations.

- d) Notably, at the time the Board made the decision to terminate TH, no one alleged that the Complainant had fabricated the allegation against TH, that it may have been brought in bad faith, or that the Complainant had any ulterior motive (i.e., seeking to replace TH in the Bar Manager job) in making his report of possible theft.
  - e) Indeed, not only was the Complainant's report treated as genuine, but also he was offered the Bar Manager position. Further, as the minutes from the 8/18/10 meeting reflect, at the time he was offered the position, he "asked for a job description, and if this does not work out he will be able to retain his bartender job."
  - f) It is also undisputed that less than a month later, on 9/15/10, the Board of Trustees voted to remove the Complainant from the Bar Manager position, in the process reneging on its prior agreement to return him to his former bartender position if the Bar Manager position "did not work out."
  - g) Respondent does not contest that the Complainant engaged in protected activity under the WPA when, acting with apparent "good faith," he reported to his employer (the Board of Trustees) what he had reasonable cause (based upon his own observations and financial records from the night he worked and the subsequent morning) to believe had occurred: that TH had stolen money from the Post, which would be a violation of law.
  - h) Respondent also does not contest that Complainant was subjected to an adverse employment action less than a month thereafter, when he was not only terminated from his new position as Bar Manager, but also denied the right to resume his bartender position, despite a prior agreement to let him do so. The relatively short time elapsed between his whistleblower report and these adverse employment actions do give rise to an inference that the events are causally related.
- 9) The undisputed facts noted above establish a prima-facie claim for retaliation in violation of the WPA.
- 10) In order for the Respondent rebut the Complainant's prima-facie case of retaliation, it must produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action. The Respondent has asserted that during the Complainant's short span of employment in the Bar Manager's position that he performed so poorly he had to be removed for the "general welfare of the [REDACTED] [REDACTED]"
- a) In the Respondent's written Answer to the Complainant's charge, the following reasons were advanced in support of the termination decision:
    - i) The Complainant and Chairman NO had entered into an agreement to allow the Complainant to return to his job as a bartender in lieu of remaining a Bar Manager, which Respondent asserted was done without a majority vote by the Board of Trustees.
    - ii) The Complainant was training Chairman NO to be Assistant Bar Manager, which was against one of the Post's Articles, and was also taken without the majority vote of the Board.
    - iii) The Complainant failed to "give a lounge report" at the 9/15/10 meeting of the Board of Trustees.
    - iv) The Complainant left the Post with the keys to the sealed ticket machines in an unsecured location.

- v) The Complainant hired two bartenders without disclosing information to the Board of Trustees details about their compensation or hours worked.
  - vi) The Complainant used his own money to rectify shortages in the cash drawer, without determining what had caused the drawer to be short.<sup>5</sup>
  - vii) The Complainant compensated members with drink chips, which was against policy since January 2010.
  - viii) The Complainant had two verbal confrontations with two female bartenders, in front of customers, which caused one of those employees to quit.
  - ix) The Complainant had a verbal confrontation with a tenant of the Post's rental property.
- b) Some of these alleged performance deficiencies (# iv, vi, vii, viii and ix) are also referred to in Trustee DN's letter seeking removal of the Complainant from the Bar Manager position, and are presumed therefore to be at least contemporaneous performance critiques that were likely factors in the Board's termination decision, even if the Complainant disputes the validity of these claims.
- c) However, other asserted justifications for the termination found in the Respondent's MHRC Answer are suspect.
- i) As the Complainant noted, the Respondent claimed that one of the reasons for the Complainant's termination was that he "failed to give a lounge report" at the 9/15/10 meeting, even though the Respondent's own minutes from that meeting reflect that the Complainant did give a lounge report, albeit one that the Board later voted not to accept.
  - ii) The Respondent also refers to an agreement to allow the Complainant to return to his job as a bartender in lieu of remaining a Bar Manager, which Respondent asserted was done without a majority vote by the Board of Trustees. However, the Respondent's own minutes from the Executive Session held on 8/18/10 indicate that when the Complainant was offered the Bar Manager position, he asked to return to his bartender position if the Bar Manager position did not work out. Given that this "agreement" appeared to be accepted and sanctioned by those who attended the Executive Session on 8/18/10, it appears disingenuous for Respondent to assert that this in essence some secret, *ultra vires* agreement between Chairman NO and the Complainant, and that it was invalid because it was not done with a majority vote by the Board of Trustees.
- d) Some of the alleged performance issues cited (# v, vi & ix) by the Respondent in their MHRC submission could also be related to the fact that there was no current job description for the Bar Manager position, a concern which was the Complainant's second condition in accepting the job.

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<sup>5</sup> It is also seems somewhat hypocritical for DN to criticize the Complainant for using his own money to rectify shortage in the cash drawer while DN praises former Bar Manager TH in his letter for making "numerous payouts to correct mistakes made by other employees as a matter of routine."

- 11) The issue is not whether or not any or all of these reasons may have been factors in the Complainant's termination as Bar Manager, but rather whether his alleged whistleblowing was a controlling factor in his termination. In other words, it is at least as likely as not (the MHRC's "reasonable grounds standard") that the Complainant would not have been terminated "but for" his protected whistleblower activity.
- 12) While it is not uncommon for either party in a MHRC case to deemphasize, or re-characterize, certain events that the party perceives as potentially damaging to their side of the case, for the Respondent [REDACTED] to unequivocally assert in their Answer to the charge that his termination was "based solely on the details mentioned in this disclosure" is simply not found to be credible given the amount of objective evidence that suggests otherwise.
- 13) The document/letter produced by Trustee DN at the 9/15/10 Board of Trustees meeting devotes nearly a third of its total length to reexamining the issue of TH being fired due to the Complainant's protected whistleblower allegation that TH had stolen from the Post. At best, DN accused the Complainant of having insufficient evidence to accuse TH of taking the money. However, even if DN was correct in that regard, clearly the Complainant's prior report of his belief that TH had taken the money was a substantial factor in his termination, especially since DN's letter also called for an apology to be given to TH, and the minutes which state that "[Complainant] had to go if [TH] is coming back as lounge manager."
- 14) In this case it is found that the Complainant's alleged protected whistleblower activity was at least a substantial motivating factor (in addition to, arguably, a number of legitimate performance concerns) that led to Respondent's decision to terminate him from the Bar Manager's position.

**VI. Recommendations:**

Based upon the information contained herein, the following recommendation is made to the Maine Human Rights Commission:

1. That there **REASONABLE GROUNDS** to believe that Respondent [REDACTED] [REDACTED] [REDACTED] unlawfully retaliated against Complainant [REDACTED] for activity protected by the Maine Whistleblowers' Protection Act;
2. That conciliation in E11-0180 should be attempted in keeping with 5 M.R.S.A. § 4612(3);
3. That there are **NO REASONABLE GROUNDS** to believe that Respondent [REDACTED] Department of Maine (E11-0180-A) or Respondent [REDACTED] National Service Organization (E11-0181) unlawfully retaliated against the Complainant [REDACTED] for activity protected by the Maine Whistleblowers' Protection Act; and
4. That cases E11-0180-A and E11-0181 should be dismissed in accordance with 5 M.R.S.A. § 4612(2).

  
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Amy M. Sheirson, Executive Director  
Executive Director

  
\_\_\_\_\_  
Robert D. Beauchesne,  
Investigator, MHRC

BASED UPON THE FOLLOWING ACTIONS I CALL FOR THE DISMISSAL OF  
EMPLOYEE [REDACTED]

V [REDACTED] ALTERICATION WITH TENANTS OF POST PROPERTY, REGARDING  
USE OF SAID RENTAL PROPERTY. (BEYOND YOURE AREA OF  
RESPONSIBILITY)

GIVING OUT DRINK COMP CHIPS FOR SERVICES RENDERED AT POST, NO  
COMP CHIPS ARE ALLOWED TO BE GIVEN TO ANY INDIVIDUAL FOR ANY  
PURPOSE EXCEPT FOR ONE DRINK PER SHIFT WORKED BY CURRENT  
EMPLOYED BAR TENDERS. AS PER VOTE OF THE TRUSTEES AND  
EFFECTIVE JANUARY 2010

LEAVING KEYS TO PULL TAB MACHINE IN MACHINE ON AUUST 29,2010  
AND LEAVING BUILDING KEYS FOUND BY A CUSTOMER AT APPROX.9:00  
P.M. THAT EVENING AND GIVEN TO BAR TENDER ON DUTY

CORRECTING SHORTAGES TO IN HOUSE ACCOUNTS (DAILY CASH  
DRAWERS) BY REPLACING SHORTAGES FROM PERSONAL FUNDS AND NOT  
INVESTIGATING THE REASON FOR THE SHORTAGE. THIS DOES NOT SOLVE  
THE PROBLEM OF WHY DRAWERS WERE SHORT TO BEGIN WITH. WHAT IF  
THE DRAWERS WERE OVER WHAT WOULD BE THE COURSE OF ACTION  
TAKE THE OVERAGE AND PUT IT IN YOUR POCKET???

VERBALLY REPRIMANDING EMPLOYEES FOR MISTAKES IN FRONT OF  
CUSTOMERS. THIS IS UNPROFESSIONAL AND WILL NOT BE TOLERATED BY  
THE TRUSTEES, **YOURE EMPLOYER**, OR THE MEMBERSHIP OF THESE  
POST. THESE ACTIONS IS POTENTIAL GROUNDS FOR AN EMPLOYEE TO FILE  
HARRASSMENT CHARGES BROUGHT AGAINST US..

DISCLOSING TO VENDORS THE REASONS WHY AN EMPLOYEE WAS  
DISMISSED OF EMPLOYMENT IS NOT LEGAL AND IS DIRECTLY  
DICSRIMINATING THAT INDIVIDUAL

WE ALL ARE AWARE OF THE DIFFICULTIES ASSOCIATED WITH TAKING ON  
THE ADDED RESPONSIBILITES OF THE BAR MANAGERS POSITION. BUT IN  
THE FEW SHORT WEEKS THAT YOU HAVE HAD IN THIS TRANSITION  
YOURE ATTITUDE TOWARD FELLOW EMPLOYEES AND CUSTOMERS DO  
NOT SHOW THAT YOU POSSESS THE MANAGEMENT SKILLS THAT THIS  
POSITION REQUIRE. WE FEEL THAT YOURE ACTIONS AS A PERSON IN A  
RESPONSIBLE LEADERSHIP ROLE HAVE DIMINISHED AND NOT IMPROVED  
AND THEREFORE WE MUST MAKE A CHANGE FOR THE GENERAL WELFARE  
OF THE POST.

TRUSTEES MEETING SEPTEMBER 15, 2010

THE ACTIONS TAKEN BY THE TRUSTEES IN RELEASING [REDACTED] WERE IN MY ESTIMATION FOR PERSONAL REASONS THAT I CANNOT EXPLAIN.

YOU WITHHELD VITAL INFORMATION FROM THE TRUSTEES AND HELD A SPECIAL MEETING TO DEAL WITH THIS ISSUE WITHOUT THE COMPLETE COMPLEMENT OF THE BODY

YOU ACCUSED AN EMPLOYEE OF MISAPPROPRIATION OF FUNDS WITHOUT PROVING THAT ANY FUNDS WERE ACTUALLY MISSING. YOU PROVIDED ONLY A CASH REGISTER TAPE SHOWING THAT A PAYOUT WAS MADE FROM A GAME IN THE PULL TABS.

IN THE COURSE OF ACCOUNTING THE GAMES [REDACTED] HAS MADE NUMERIOUS PAYOUTS TO CORRECT MISTAKES MADE IN ERROR BY OTHER EMPLOYEES AS MATTER OF ROUTINE

.BY ACCUSING HIM OF MISAPPROPRIATION OF FUNDS WITHOUT GIVING HIM THE OPPORTUNITY TO RECONCILE THE RECEIPTS FROM THE DAY/NIGHT IN QUESTION WAS NOT JUSTIFIED. I FEEL THAT YOU FAILED THE TRUSTEES THAT SIT ON THIS COMMITTEE AND THE ENTIRE BODY OF THIS POST.

I THEREFORE CALL FOR AN APOLOGY TO [REDACTED] AND THAT HIS EMPLOYMENT BE REINSTATED EFFECTIVE IMMEDIATELY.

PBC/TRUSTEE  
[REDACTED]