



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

19 Union Street ~ Augusta, Maine

May 20, 2013

Commissioner Vestal called the May 20, 2013 Commission meeting to order at 8:28 a.m. Present were Commissioners Paul Vestal, Sallie Chandler, Deborah Whitworth, A. Mavourneen Thompson and Arnold Clark.

AGENDA

Commissioner Vestal called for adoption of the agenda. Commissioner Whitworth moved, seconded by Commissioner Chandler, to adopt the agenda. 5 in favor | 0 opposed.

CONSENT AGENDA (see detailed listing on page 6)

Commissioner Chandler moved, seconded by Commissioner Clark, to accept the Investigator's recommendations in each of the cases on the amended Consent Agenda. 5 in favor | 0 opposed.

MINUTES:

Commissioner Chandler moved, seconded by Commissioner Thompson, to adopt the April 8, 2013 Commission Meeting Minutes. 5 in favor | 0 opposed.

QUARTERLY PROGRAM REVIEW:

- Inventory Status Report & Resolutions: There were 645 open cases at the end of March 2013; 397 were assigned to investigators. The Commission closed 167 cases during the preceding quarter.
- Training/Education: Commissioners reviewed the quarterly report indicating that staff presented at four training sessions and attended four 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 there were no significant personnel changes.

Compliance Report: Commissioners reviewed the compliance report and it was placed on file.

COMPLIANCE:

- Commissioners reviewed the compliance report and it was placed on file with one amendment, showing one successful conciliation.
- Commissioner Chandler moved, seconded by Commissioner Clark to accept Conciliation Agreement and to approve withdrawal of the complaint in E11-0700, Brown v. Morin Brick. 5 in favor | 0 opposed.

INVESTIGATION:

New Charges: Commission staff opened 58 new cases in April 2013.

Administrative Dismissals: Commission staff dismissed 17 cases in April 2013.

Pre-determination Settlements: Since April 8th, 2013, staff was responsible for obtaining settlements in 28 cases resulting in total monetary relief in excess of \$247,000 for complainants.

NEW BUSINESS:

Executive Director Amy Sneirson raised the issue of the Third Party Neutral Mediation Program. The program has been paid for using EEOC funds up until now, but the Commission recently learned that the current year's EEOC funds are being cut by 16% due to federal sequestration. This cut will not allow the Commission to utilize EEOC funds to pay for the mediation program at this time. The Commission discussed various options for funding the mediation program, and agreed that staff will investigate grant opportunities.

At 8:34 AM Commissioner Vestal called for an eight-minute recess.

CASES VOTED ON 8:45 A.M.:

PA11-0416: Renee Mayer (Bath) v. James Hitchcock Ochiltree f/k/a John Matt Dorn (Brunswick). Attorney Mark Lavoie restated the position of the Respondent. Attorney Jeffrey Neil Young restated the position of the Complainant. Investigator Robert Beauchesne restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Chandler, to find **reasonable grounds** to believe that Complainant Renee Mayer was subjected to unlawful discrimination in public accommodations due to her sex by Respondent James Hitchcock Ochiltree f/k/a John Matt Dorn. 5 in favor | 0 opposed.

E11-0321: Sierra Perry (Hampden) v. Asbury, LLC (Bangor)

E11-0322: Sierra Perry (Hampden) v. Robert Thomas & John Doe (Bangor & Florida)

E11-0349: Sierra Perry (Hampden) v. Big Guy Enterprises, LLC (Bangor). Attorney James Billings restated the position of the Complainant. Attorney David Van Dyke restated the position of Respondent Asbury and Robert Thomas. Investigator Barbara Lelli restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondent Ashbury, LLC discharged Complainant Sierra D. Perry, in retaliation for protected activity

under the WPA and no reasonable grounds to believe that Respondent Robert Thomas interfered with Complainant's enjoyment of rights granted or protected under the MHRA and no reasonable grounds to believe that Respondents John Doe or Big Guy Enterprises LLC are liable as employers or individuals for any violation of the MHRA or WPA. 5 in favor | 0 opposed.

E11-0337: Ronald Parker (Old Orchard Beach) v. Maine Life Care Retirement Community, Inc. d/b/a Piper Shores (Scarborough). Complainant was not present. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Maine Life Care Retirement Community, Inc. d/b/a Piper Shores discrimination against Ronald Parker on the basis of sex and age by denying him the position of Day Charge Nurse and no reasonable grounds to believe that Maine Life Care Retirement Community, Inc. d/b/a Piper Shores retaliated against Ronald Parker by terminating his employment after he filed a Complainant with the Maine Human Rights Commission. 5 in favor | 0 opposed.

E11-0362: Charlotte Curtis (Norridgewock) v. Town of Norridgewock (Norridgewock). Complainant was not present. Commissioner Thompson moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondent Town of Norridgewock discriminated against Complainant Charlotte Curtis on the basis of age. 5 in favor | 0 opposed.

E11-0382: Denise Nilsen (Randolph) v. Motivational Services, Inc. (Augusta). Attorney Barbara Goodwin restated the position of the Respondent. Attorney Beth Gallie restated the position of the Complainant. Investigator Angela Tizon restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Motivational Services, Inc. discriminated against Denise Nilsen in the terms and conditions of her employment by denying her a reasonable accommodation for her disability. 3 in favor | 2 opposed (Clark, Chandler opposed). Commissioner Clark moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Motivational Services, Inc. discriminated against Denise Nilsen on the basis of disability by terminating her employment. 5 in favor | 0 opposed.

E11-0383: Ashley Mosher (Sabattus) v. Bates College (Lewiston). Attorney Barbara Goodwin restated the position of the Complainant. Attorney Katy Rand restated the position of the Respondent. Investigator Robert Beauchesne restated the facts of the case. Commissioner Thompson moved to find reasonable grounds to believe that Complainant Ashley Moser was subjected to unlawful sexual orientation discrimination in employment by Respondent Bates College. Motion was not seconded; motion failed. Commissioner Thompson moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Complainant Ashley Moser was subject to unlawful sexual orientation discrimination or disability discrimination by Respondent Bates College. 4 in favor | 1 opposed. (Thompson opposed).

E11-0388: Richard Larrabee (Chelsea) v. Employment Specialists of Maine, Inc. (Augusta). Richard Larrabee restated the position of the Complainant. Attorney Elizabeth Olivier restated the position of the Respondent. Investigator Angela Tizon restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Employment Specialists of Maine, Inc. discriminated against Richard Larrabee on the basis of sex by demoting him and terminating his employment. 5 in favor | 0 opposed.

E11-0391: Roxanne Doyer (Mechanic Falls) v. Regional School Union #16 f/k/a School Union # 29 (Poland). Roxanne Doyer restated the position of the Complainant. Attorney Bruce Smith restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondent RSU #16 subject Complainant Roxanne Doyle to harassment, discharged her from

employment, demoted her, failed to hire/rehire her, or retaliated against her for protected activities under the WPA and the MHRA, or because her association with a person with a disability. 5 in favor | 0 opposed.

ED/PA11-0450: Olivia Doyer (Mechanic Falls) v. Regional School Union #16 f/k/a School Union # 29 (Poland). Roxanne Doyer restated the position of the Complainant. Attorney Bruce Smith restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe Respondent RSU #16 denied Complainant Olivia Doyle reasonable modifications she needed to access its educational services and facilities or its public accommodations, or that Respondent retaliated against her for her and/or her mother's protected activities under the WPA and MHRA. 5 in favor | 0 opposed.

At 12:17 Commissioner Vestal called for a 15 minute recess.

CASES VOTED ON 12:30 P.M.

E11-0424: Gregory Witham (Winslow) v. Len Poulin, Inc. (Benton). Attorney Matthew Keegan restated the position of the Complainant. Len Poulin restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Clark moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondent Len Poulin, Inc. terminated Complainant Gregory L. Witham's employment because of whistleblower retaliation. 5 in favor | 0 opposed.

E11-0430: Carol Pavone (Farmingdale) v. Standard Distributors, Inc. (Gardiner). Attorney Elly Burnett restated the position of the Respondent. Attorney Charles March restated the position of the Complainant. Investigator Victoria Sarfo-Kantanka restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find **reasonable grounds** to believe that Respondent Standard Distributor retaliated against Complainant Carol Pavone by terminating her employment for engaging in protected whistleblower activity and **reasonable grounds** to believe that Respondent Standard Distributors terminated Complainant Carol Pavone's employment due to her disability. 4 in favor | 1 opposed (Clark opposed).

E11-0516: Sarah Maddux (Fairfield) v. Littlefield's Gym, Inc. (Oakland). Attorney Mark Kierstead restated the position of the Complainant. Attorney Gregg Frame restated the position of the Respondent. Investigator Michele Dion restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent Littlefield's Gym, Inc. is liable for sex discrimination because its owner subjected Complainant Sarah Maddux to a hostile work environment or terminated her based on sex. 4 in favor | 0 opposed | 1 recused (Clark).

E12-0255: Kelly Roy (Old Orchard Beach) v. Town of Old Orchard Beach (Old Orchard Beach). Attorney Glen Israel restated the position of the Respondent. Attorney Alexander Spadinger restated the position of the Complainant. Investigator Michele Dion restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Clark, to find **reasonable grounds** to believe that Respondent Old Orchard Beach discriminated and retaliated against Complainant Kelly Roy for engaging in protected whistleblower activity. 5 in favor | 0 opposed

EXECUTIVE SESSION:

Commissioner Chandler moved, seconded by Commissioner Whitworth, to move into executive session at 2:15 p.m. to discuss litigation with Commission Counsel pursuant 1 M.R.S.A. §405(6)(E). 4 in favor | 0 opposed (Thompson out of room).

At approximately 2:20 p.m. Commissioner Chandler moved, seconded by Commissioner Whitworth, to come out of executive session. 5 in favor | 0 opposed.

LITIGATION:

Commission Counsel John Gause reviewed a memorandum dated May 13th that reviews the topic of individual liability under the MHRA after *Furmann v. Staples Office Superstore East* and the circumstances under which the Commission will continue to accept and investigate complaints alleging individual liability in employment discrimination cases after that decision. This information has been distributed to staff and has been posted to the Commission website.

Commissioner Chandler moved, seconded by Commissioner Whitworth, not to file complaints in the following “reasonable grounds” cases:

- E11-0380, Brzozowski v. Galt Block Warehouse Company (termination because of disability and retaliation);
- PA11-0237, Archer v. Great Wall Buffet (service animal); and
- E12-0219, Gahagan v. Henrietta Goodall Hospital (failure to hire because of disability).

5 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 meeting. 5 in favor | 0 opposed.

The meeting was adjourned at 2:35 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

E11-0334:	Thomas Ward (Hallowell) v. State of Maine, Department of Health & Human Services (Augusta)	NRG
E11-0411:	Peter Rairdon (Houlton) v. Irving Woodlands, LLC (Houlton)	NRG
E11-0412:	Peter Rairdon (Houlton) v. JD Irving, Ltd. (St. John, New Brunswick)	NRG
E11-0445:	Richard Egan (Old Orchard Beach) v. Benchmark (Westbrook)	NRG
E11-0512:	Tamar Burke (Millinocket) v. Millinocket Regional Hospital (Millinocket)	NRG
E11-0601:	Mindy Braley (Madawaska) v. Northern Maine Medical Center (Fort Kent)	NRG
E12-0162:	Gerard Dumont (Winchester, VA) v. Flight Services & Systems (Portland)	NRG
E12-0220:	Jessica Davis (Thomaston) v. Friendship Trap Company (Friendship)	NRG
E12-0406:	Tyanne Sauvè (South Berwick) v. South Berwick Donuts, Inc. d/b/a Dunkin Donuts (Hampton, NH)	NRG
E12-0407:	Tyanne Sauvè (South Berwick) v. Darren Allen (South Berwick)	NRG
E12-0409:	Betty Packard (Oxford) v. Stephens Memorial Hospital (Norway)	NRG
H12-0565:	Laurie Diggins (Portland) v. Maine Properties, Inc. (Scarborough)	NRG