



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC No. H14-0063/A/B

HUD No. 01-14-0238-8

July 3, 2014

██████████ (Gray)

v.

██████████ Inc.
██████████ and
██████████ (Richmond)

I. Complaint:

Complainant ██████████ alleged that Respondents ██████████ Inc. ("REC"), ██████████ ██████████ and ██████████ (collectively "Respondent"¹) discriminated against him on the basis of disability by denying him a reasonable accommodation and by involuntarily discharging him from his housing accommodation.

II. Respondent's Answer:

Respondent denied discrimination and alleged that Complainant never requested a reasonable accommodation for his disability, and stated that he was discharged from his housing accommodation because he posed a safety risk to Respondent and could not be accommodated.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: June 27, 2013.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): March 25, 2014.
- 3) Richmond ██████████ Inc. is an assisted living facility for people with physical and mental disabilities. ██████████ is the Administrator of the facility and ██████████ is the Residential Care

¹ Complainant named Ms. ██████████ and Ms. ██████████ individually, but throughout the investigation of this matter, the parties have treated the three named Respondents as a single entity. Complainant has not pointed to any separate individual action taken by either of the named administrators, and their actions have been treated by Complainant and Respondents as actions of Respondent REC, taken in their capacities as employees. The parties have not developed any separate theories or evidence regarding the potential liability of the individual Respondents, which has therefore not been investigated.

Director. All are subject to the Maine Human Rights Act (“MHRA”), the federal Fair Housing Act (“FHA”), and state and federal housing regulations.

- 4) Complainant is represented by Mark Joyce, Esq. Respondent is represented by Alice Knapp, Esq.
- 5) Investigative methods used: A thorough review of the materials submitted by the parties, requests for further information and documents. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of “reasonable grounds” or “no reasonable grounds” in this case.

IV. Development of Facts:

- 1) The relevant parties, issues, documents, and facts in this case are as follows:
 - a) Complainant has mental disabilities including post-traumatic stress disorder (“PTSD”), major depressive disorder, and alcoholism. He was admitted to Respondent REC’s living facility as a resident from May 1, 2013 until June 27, 2013, when he was evicted and discharged from the program.
 - b) Respondent REC operates an assisted living facility for persons with physical and mental disabilities.
 - c) ██████████ ██████████ is the Administrator of the facility and interacted with Complainant during his stay.
 - d) ██████████ ██████████ is the Residential Care Director of the facility and interacted with Complainant during his stay.
 - e) “Case Manager” is Complainant’s mental health case manager and interacted with Complainant throughout his stay at REC.
- 2) Complainant provided the following:
 - a) On or around June 1, 2013 Complainant was approached by staff and told that ██████████ ██████████ would like him to consider changing rooms and living with another roommate because they wanted his room for other patients. He told Ms. ██████████ that he would consider it, but would need to speak with Case Manager first. Complainant never agreed to switch rooms. He was moved involuntarily to a different room 2 or 3 days later.
 - b) When Complainant first met his new roommate, he did not anticipate problems and felt that living together could be a good fit. However, soon after he moved he realized that he could not live with the new roommate. His roommate was allowed to drink as much alcohol as he wanted, which triggered Complainant’s PTSD, since Complainant is a recovering alcoholic and grew up with an abusive alcoholic father. His roommate also kept open containers of urine in the room.
 - c) At some point, Ms. ██████████ asked him how it was going with his new roommate, and he informed her that it was going badly, and that due to his roommate’s drinking, his living situation was triggering his PTSD. Ms. ██████████ stated, “I’m not going to go there.” Complainant told her that he wanted to go back to his old room, but Ms. ██████████ stated that he had made the agreement to move and now he had to live with it.

- d) At some point Complainant also asked other staff members to move him from the room. They told him that they did not have the authority to move him, and that he would have to speak with Ms. [REDACTED]. He told [REDACTED] and other staff members that he felt unsafe in his current room and that his roommate was triggering his PTSD. He was continually told that he could only go through Ms. [REDACTED] despite his inability to access her.
 - e) Case Manager also asked if Complainant could move rooms. Case Manager testified at an administrative hearing through the Maine Department of Health and Human Services (“DHHS”) challenging REC’s discharge of Complainant that Case Manager told Ms. [REDACTED] that he felt that Complainant needed to move from his room, and that Ms. [REDACTED] told him that his old room had already been promised to another resident (see file).
 - f) Complainant’s request to move rooms was a necessary reasonable accommodation for his disability which he was denied. Progress notes recorded by Respondent’s staff on June 16, 2013, show that Complainant stated to staff that he felt unsafe with his new roommate because of his PTSD (see file).
 - g) Complainant was also unlawfully evicted and discharged from the assisted living facility due to his disabilities. On or around June 27, 2013, [REDACTED] made the decision to discharge him even though the hospital had stated that it was safe for him to return to the facility provided he was given the accommodation of a private room or an alternate roommate (see hospital records in file). Respondent chose to deny him this request and discharge him.
 - h) [REDACTED] testified at the DHHS administrative hearing that although she communicated to hospital staff that no resident was willing to live with Complainant (other than the roommate who had triggered his PTSD), she had not asked any resident if he or she would be willing to do this.
- 3) Respondent provided the following:
- a) Complainant never asked Respondent either formally or informally to switch rooms for any reason. The facility also has a grievance policy which Complainant signed and acknowledged that he had received. He could have filed a grievance at any time and did not. Respondent does not have any recollection of Case Manager ever requesting a room transfer on Complainant’s behalf. Ms. [REDACTED] was unaware of the June 16, 2013, progress note made by a staff member, and was only made aware of it after Complainant’s emergency discharge on June 27, 2013.
 - b) Complainant never disclosed that he was suffering from PTSD prior to his emergency discharge. This is not included in the medical paperwork that was submitted when he was admitted to the facility.
 - c) On June 18, 2013, Complainant was taken by [REDACTED] to a regularly scheduled therapy appointment. Ms. [REDACTED] intended to return Complainant to the facility after the appointment, but decided not to after Case Manager informed her that Complainant was expressing homicidal thoughts toward his roommate. Ms. [REDACTED] felt her own safety was at risk, and decided that she did not feel comfortable driving Complainant back to the facility. As a result, Complainant was admitted to the emergency department.
 - d) Complainant was transported to the emergency room where he was hospitalized. After his treatment, the hospital advised REC that Complainant could safely return to the facility as long as he

was either given a private room or a different roommate. Since neither of these accommodations were available, Ms. [REDACTED] discharged Complainant and helped him secure placement elsewhere.

V. Analysis:

- 1) The MHRA requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 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.

Reasonable Accommodation

- 2) The MHRA makes it unlawful:

For any owner, lessee, sublessee, 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 make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give a person with physical or mental disability equal opportunity to use and enjoy the housing.

5 M.R.S. § 4582-A(2).

- 3) To establish a prima-facie case of failure to accommodate, Complainant must show that:

- (1) He has a “physical or mental disability” as defined by the MHRA;
- (2) Respondent knew or reasonably should have known of the Complainant's disability;
- (3) Complainant requested a particular accommodation;
- (4) The requested accommodation is necessary to afford Complainant an equal opportunity to use and enjoy the housing;
- (5) The requested accommodation is reasonable on its face, meaning it is both efficacious and proportional to the costs to implement it; and
- (6) Respondent refused to make the requested accommodation.

See 5 M.R.S. § 4582-A(2); *Astralis Condominium Ass'n v. Secretary, U.S. Dept. of Housing and Urban Development*, 620 F.3d 62, 67 (1st Cir. 2010) (interpreting similar provision in Fair Housing Amendments Act, but seemingly placing burden on Complainant to show accommodation was reasonable); *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002) (plaintiff's burden is only to show reasonableness “on its face”). *Compare Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (interpreting ADA) (holding that plaintiff need only show requested accommodation was feasible “on the face of things”).

- 4) If Complainant makes this showing, Respondent can defeat the claim by showing that the proposed accommodation was unreasonable, meaning “it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program.” *Oconomowoc Residential Programs*, 300 F.3d at 784.
- 5) Here, Complainant has established a prima-facie case of failure to accommodate. Reasoning is as follows:

- a) It is undisputed Complainant has a disability and that Respondent knew he had a disability. Complainant was in an assisted living facility specifically for persons with disabilities. While Respondent denies knowing that Complainant had the specific diagnosis of PTSD, the evidence supports the fact that Complainant told Respondent that he had PTSD when he asked to change rooms. Moreover, Respondent does not deny that it knew Complainant had mental disabilities; for example, Respondent's intake information reflects that Complainant had depression and anxiety disorder, and that he was taking at least one related medication (see file).
 - b) Complainant requested an accommodation for his disability. While Respondent denies this, it is clear from the record that Complainant vocalized to Respondent and staff that he did not feel safe with his new roommate and that he needed to switch rooms due to his PTSD. This is evidenced by a progress note recorded by staff on June 16, 2013 (see file).
 - c) The record also reflects that Case Manager requested that Complainant be moved from his room. This is evidenced by Case Manager's testimony at the DHHS administrative hearing, where he stated that he spoke with [REDACTED] and asked if Complainant could move rooms.
 - d) Complainant also showed that the requested accommodation of a different room or roommate was necessary for him to have an equal opportunity to use and enjoy his housing. This is evidenced by these facts: (i) Complainant repeatedly expressed the fact that his PTSD was exacerbated by his roommate's alcohol use in the facility; (ii) Complainant repeatedly told Respondent that he could not use and enjoy DEC's services without a room change because of his PTSD; (iii) Complainant was hospitalized after making homicidal statements about his roommate; and (iv) the hospital informed Respondent that he could safely return to the facility under the condition that he be given a private room or a different roommate.
 - e) The requested accommodation was reasonable on its face and did not cost Respondent any money to grant it.
 - f) Respondent refused to accommodate Complainant with a different room or roommate.
- 6) Respondent could not show that the proposed accommodation was unreasonable in that it presented an undue financial burden, or required a fundamental alteration in the nature of the program. Reasoning is as follows:
- a) It is undisputed that the request for a room change would not pose a financial burden on Respondent, as there is no cost associated with the request.
 - b) Respondent alleges that Complainant's accommodation was unreasonable because it would interfere with the enjoyment of other residents at the facility by displacing a resident from a room and forcing a resident to have a different roommate. Records from the hospital where Complainant was treated show that Respondent stated that no rooms were available because no resident was willing to live with Complainant, and it was the right of the residents to decide this. Ms. [REDACTED] testified at the DHHS administrative hearing, however, that she had not asked any residents whether they would live with Complainant. Without asking residents, Respondent would have no knowledge of whether a resident was willing to live with Complainant.

- c) If Respondent could ask Complainant if he was willing to move rooms and live with a different roommate, there is no apparent reason why Respondent could not ask another resident if he or she was willing to live with Complainant.
- 7) It is found that Respondent unlawfully denied Complainant a reasonable accommodation for his disability.

Eviction

- 8) Because this case does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination by proving (1) he was a member of a class protected under the MHRA; (2) Respondent was aware of Complainant's membership in that class at the time of the eviction; (3) Complainant was willing and qualified to continue [in the housing accommodation]; and (4) Respondent refused to permit Complainant to continue to [remain in the housing accommodation]. See *Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997).
- 9) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondent to articulate a legitimate, nondiscriminatory reason its action. See *United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. See *id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. See *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet his overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.
- 10) In order to prevail, Complainant must show that he would not have suffered the adverse action but for membership in the protected class, although protected-class status 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).
- 11) Here, Complainant establishes a prima-facie case of housing discrimination by showing that he was disabled, Respondent knew he was disabled, he was qualified to remain in the housing accommodation (it is undisputed that the hospital stated upon his release that he could be safely returned to the facility provided he be given a different room or roommate), and that Respondent refused to allow him to return.
- 12) Respondent provided a legitimate, nondiscriminatory reason for discharging Complainant from its housing facility, namely that he could only be returned to the same room and roommate because no other resident would live with him, and therefore he was not qualified to remain in the housing accommodation.
- 13) Complainant was able to show that Respondent's reason was false, and that the real reason Complainant was not returned to the facility was because Respondent did not want to accommodate Complainant's disability. As stated above, Respondent admitted that no residents were asked if they were willing to live with Complainant, so Respondent had no legitimate basis for determining that Complainant could

not be accommodated due to the fact that no one would live with him. It appears that no attempt was made to accommodate Complainant, resulting in his discharge from the housing facility.

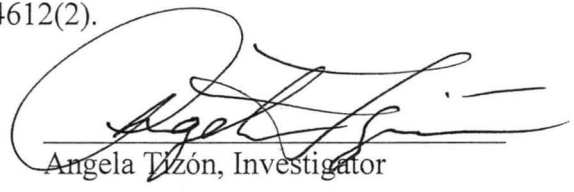
14) It is found that Respondent discriminated against Complainant when it evicted him from its housing facility because of his disability.

VI. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that [REDACTED] Inc. discriminated against [REDACTED] on the basis of disability by refusing to accommodate his disability, and conciliation on this claim should be attempted in accordance with 5 M.R.S. § 4612(3); and
- 2) There are **Reasonable Grounds** to believe that [REDACTED] Inc. discriminated against [REDACTED] on the basis of disability by discharging him from the housing facility and conciliation on this claim should be attempted in accordance with 5 M.R.S. § 4612(3); and
- 3) There are **No Reasonable Grounds** to believe that [REDACTED] and [REDACTED] discriminated against [REDACTED] on the basis of disability, and the complaints against these individual Respondents should be dismissed in accordance with 5 M.R.S. § 4612(2).


Amy M. Sneirson, Executive Director


Angela Tizon, Investigator