



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC # H14-0534

HUD # 01-15-0022-8

January 2, 2015

██████████ (Portland)

v.

██████████ (Bangor)

I. Complainant's Complaint:

Complainant ██████████ (██████████) alleged that Respondent ██████████ made discriminatory statements and discriminated in housing on the basis of familial status when Mr. ██████████ refused to show a fair housing tester ("Tester") a third floor unit because Tester told him that she had children.

II. Respondent's Answer:

Mr. ██████████ did not respond to several attempts by the Commission to elicit information from him in response to ██████████ complaint.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: August 25-28, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): October 21, 2014. Complainant's complaint was referred to the Commission from the federal Department of Housing and Urban Development ("HUD") on October 8, 2014.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Complainant is represented by ██████████, Esq. Respondent is not represented by counsel.
- 5) Investigative methods used: A thorough review of the written materials provided by the Complainant.¹ This investigation is believed to be sufficient to enable the Commissioners to make a finding of

¹ Mr. ██████████ did not respond to communications from the Commission regarding the complaint. Respondent refused to accept delivery of a certified letter from the Commission.

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“reasonable grounds” or “no reasonable grounds” in this case.

IV. Development of Facts:

1) The parties in this case are as follows:

- a) Complainant is a legal services organization that receives federal funding to conduct fair housing testing.
- b) [REDACTED] received a complaint from a married woman with children, who said that Mr. [REDACTED] would not show her a two-bedroom apartment on the third floor. Mr. [REDACTED] reason was that he did not want children living on the third floor because there was a balcony. The woman decided not to file a complaint herself.
- c) [REDACTED] hired Tester to inquire about a housing unit owned and managed by Mr. [REDACTED]. The purpose of the test conducted by [REDACTED] was to assess whether Mr. [REDACTED] would discriminate against an applicant based on familial status.
- d) Tester identified herself to Mr. [REDACTED] as woman with two young children.
- e) The subject premise is located at [REDACTED] [REDACTED], Bangor, Maine, and is owned by Mr. [REDACTED].

2) Complainant provides the following in support of its position:

- a) Tester called Mr. [REDACTED] on August 28, 2014, to ask about the two-bedroom apartment advertised in the local newspaper. Mr. [REDACTED] answered Tester's questions until Tester mentioned that she had two young children.
- b) Mr. [REDACTED] then told Tester that he refused to rent third floor apartments to families with children. He stated that he was worried about liability and safety issues related to children and balconies with sliding doors.
- c) Mr. [REDACTED] would not set up an appointment for Tester to view the apartment. Mr. [REDACTED] told Tester to call back in the future because he may have other two bedroom units available.
- d) Complainant's Fair Housing Test Coordinator then called Mr. [REDACTED] and suggested that he show Tester the apartment so that she could see how the apartment was set up and make a decision about the apartment herself.
- e) Mr. [REDACTED] refused to show Tester the apartment because he knew she had children, and he was concerned about liability.
 - i. During the conversation, Mr. [REDACTED] told Complainant's Fair Housing Test Coordinator that the balcony was in good repair and had railings. Mr. [REDACTED] also stated that he would not have a problem showing or renting the apartment to prospective adult tenants.

- 3) Mr. [REDACTED] did not provide any information in response to Complainant's allegations.

V. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Discriminatory Statements in Housing

- 2) The MHRA provides that it is unlawful to, "[m]ake, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of ... physical or mental disability ... or familial status" 5 Maine Revised Statutes ("M.R.S.") § 4581-A(1)(C).
- 3) Discriminatory statements include "[e]xpressing to agents, brokers, Property Managers, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of . . . familial status . . . of such persons." 94 Code of Maine Regulations ("C.M.R.") 348, Ch.8, § 8.04(E)(3)(b).
- 4) "Familial status" means a family unit that has one or more minor children. 5 M.R.S. § 4553(5-A).
- 5) In this case, Complainant alleged that Respondent stated that he refused to show Tester a unit because she had children. Complainant also alleged that Mr. [REDACTED] stated that he would not rent to families with children because he was worried about liability and safety issues related to children and balconies.
- 6) Respondent made statements regarding not renting to children and families to Tester and also to Complainant's Fair Housing Test Coordinator. Respondent also told Fair Housing Test Coordinator that he would be willing to show and rent the unit to adult tenants. Respondent failed to provide any response to the complaint.
- 7) Respondent's statements express a limitation in housing on the basis of familial status. Respondent's statements in this instance are discriminatory against families.
- 8) Discrimination on the basis of stating a discriminatory preference in housing is found in this case.

Disability and Familial Status Discrimination Claims

- 9) The MHRA provides, in part, that any person has the right to rent an apartment without discrimination on the basis of disability and familial status. 5 M.R.S. § 4581-A(1)(B); 94 C.M.R. Ch. 8, § 8.04(a)(1).
- 10) The MHRA also provides, in part, that it is "unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act". 5 M.R.S. § 4633(2).

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11) The Commission's housing regulation, which interprets § 4633(2), provides that:

A. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any person in the exercise or enjoyment of, any right granted or protected by this part.

B. Conduct made unlawful under this section includes, but is not limited to...

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the disability or familial status ... of such persons...

94-348 C.M.R. Ch. 8, § 8.09.

12) In this case, Respondent stated that he did not want to show or rent the subject premises to families with children.

13) The statements are direct evidence of a discriminatory bias on the basis of disability and familial status.

14) A mixed-motive analysis applies in cases involving "direct evidence" of unlawful discrimination. *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment case); *Texas v. Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d 722, 730 (D. Tex. 2000) (Fair Housing Act). "Direct evidence" consists of "explicit statements by [Respondent] that unambiguously demonstrate [Respondent's] unlawful discrimination. . . ." *Doyle*, 2003 ME 61, ¶ 14, n.6. Where this evidence exists, Complainant "need prove only that the discriminatory action was a motivating factor in an adverse [housing] decision." *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1st Cir. 2002) (employment); *Doyle*, 2003 ME 61, ¶ 14, n.6. Upon such a showing, in order to avoid liability, Respondent must prove "that it would have taken the same action in the absence of the impermissible motivating factor." *Id.*; *Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d at 730. *Cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O'Connor, J., concurring).⁵

15) Respondent refused to show Tester the subject premises because she had children. Tester was denied the opportunity to rent housing due to her familial status. Additionally, Complainant's testing was based on an actual complaint it received from an individual who did not want to file a complaint herself. Further supporting Respondent's discriminatory actions is the fact that he told Complainant's Fair Housing Test Coordinator that he would not rent to families with children, but would show and rent the apartment to prospective adult tenants.

16) The evidence supports the conclusion that Respondent discriminated in this instance on the basis of familial status.

⁵ The continued application of the mixed-motive analysis has been called into question as a result of the U.S. Supreme Court's decision in *Gross v. FBL Financial Services, Inc.*, 129 S.Ct. 2343, 2348 (2009), in which the Court held that the burden of persuasion does not shift to defendant even with "direct evidence" of unlawful discrimination in a federal Age Discrimination in Employment Act case. That decision did not interpret the Maine Human Rights Act, however, and the guidance from the Maine Supreme Court in *Doyle* will continue to be followed.

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17) Familial status discrimination in housing is found.

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 Respondent [REDACTED] discriminated against Complainant [REDACTED] [REDACTED]'s Tester by stating a discriminatory preference in housing;
2. There are **Reasonable Grounds** to believe that Respondent [REDACTED] discriminated against Complainant Pine Tree [REDACTED]'s Tester in housing on the basis of familial status; and
3. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Victoria Ternig, Chief Investigator