



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

Senator Inn - BOARDROOM

284 Western Ave ~ Augusta, Maine 04330

March 2, 2020

Chair Clark called the meeting to order at 8:30 AM. Also present were Commissioners Whitworth, Ashby, and David.

AGENDA

Commissioner Whitworth moved, seconded by Commissioner Ashby, to adopt the Agenda and to accept the Investigator's recommended decision in each of the cases listed on the Consent Agenda (see listing on page 4). 4 in favor | 0 opposed.

MINUTES

Commissioner Ashby moved, seconded by Commissioner Whitworth, to adopt the January 27, 2020 Commission meeting minutes. 4 in favor | 0 opposed.

ADMINISTRATION

Monthly reports: Executive Director Sneirson discussed reporting on Commission activities from January 2020:

- Compliance: Since the last meeting, there were seven unsuccessful conciliations and no successful conciliations. Five reasonable-grounds cases remain in active conciliation.
 - Commissioner Ashby moved, seconded by Commissioner Whitworth, to accept the post-reasonable-grounds settlement agreement in Markwart-Sapienza v. The Drouthy Bear et al. (E18-0132-A/B). 4 in favor | 0 opposed.
 - Commissioner Whitworth moved, seconded by Commissioner Ashby, to dismiss the reasonable-grounds case of Shaw v. Genesis Healthcare (H19-0071-A/B/C/D), as the terms of the Conciliation Agreement have been fully implemented. 4 in favor | 0 opposed.
- Investigation: In January 2020,
 - New Complaints: 99 new complaints were filed.
 - Administrative Dismissals: 27 administrative dismissals were issued, along with 18 right-to-sue letters.

- Settlements: 26 predetermination settlement agreements totaling \$559,850 in benefits to complainants.

At 8:43 AM, Chair Clark called for a 3 minute recess.

NEW BUSINESS

Executive Director Sneirson welcomed new Commissioner Edward David to his first meeting, and noted that Chair Clark had given notice to the Office of the Governor that the Commission's April meeting would be his last.

E.D. Sneirson reported on the Commission's recent activity in this short Legislative session, including: continuing discussion about the Commission's agency bill to improve consistency in the MHRA (LD 1703); a recently-enacted and -signed bill directing the Commission to begin a pilot project receiving and assessing complaints based on homeless status (LD 1294); a recently-enacted bill amending the MHRA to require all state agencies (including quasi-independent ones) to assess their parking facilities' compliance with the MHRA and Americans with Disabilities Act by June 2020 (LD 2018); public budget hearings on supplemental budget items; and a Judiciary Committee review of the Commission's required quasi-independent agency reporting on contributions, expenses and procurement.

E.D. Sneirson also reported that the U.S. Department of Housing and Urban Development would be conducting on-site assessment of the Commission and MHRA as part of a routine review pursuant to the worksharing agreement with that agency.

At 8:45 AM Chair Clark began the case hearing agenda.

CASES VOTED ON

E18-0092*: Rose Hall on behalf of Dameon Crouse (Augusta) v. Walmart Stores, Inc.; Walmart Stores East, L.P.; Walmart Supercenter (Bangor). Attorney Jonathan Rue restated the position of the Respondent. Attorney Kristin Aiello restated the position of the Complainant. Chief Investigator Alice A. Neal reviewed the investigation and recommended decision(s). Commissioner Ashby moved, seconded by Commissioner Whitworth, to find there are **Reasonable Grounds** to believe that Walmart Stores, Inc., Walmart Stores East, L.P., and Walmart Supercenter discriminated against Rose Hall on behalf of Dameon Crouse on the basis of Dameon's disability by denying a request for a reasonable accommodation, **and Reasonable Grounds** to believe that Walmart Stores, Inc., Walmart Stores East, L.P., and Walmart Supercenter discriminated against Rose Hall on behalf of Dameon Crouse on the basis of Dameon's physical or mental disability in the terms and conditions of his employment, including constructively discharging him. 4 in favor | 0 opposed. Commissioner David moved to find Reasonable Grounds to believe that Walmart Stores, Inc., Walmart Stores East, L.P., and Walmart Supercenter retaliated against Rose Hall on behalf of Dameon Crouse for engaging in a protected activity when it constructively discharged Dameon from his employment; for lack of a second, the motion failed. Commissioner Ashby moved, seconded by Commissioner Whitworth to find no reasonable grounds to believe that Walmart Stores, Inc., Walmart Stores East, L.P., and Walmart Supercenter retaliated against Rose Hall on behalf of Dameon Crouse for engaging in a protected activity when it constructively discharged Dameon from his employment. 3 in favor | 1 opposed (David opposed).

E18-0345: Joel Hundley (Kennebunk) v. Volunteers of America (Brunswick). Attorney Andrew Cotter restated the position of the Complainant. Attorney Tara Walker restated the position of the Respondent. Investigator Jane O'Reilly reviewed her investigation and recommended decision(s). Commissioner Whitworth moved, seconded by Commissioner Ashby, to find there are No Reasonable Grounds to believe that Volunteers of America retaliated against Joel Hundley for engaging in WPA- or MHRA-protected activity. 4 in favor | 0 opposed.

ED/PA18-0419: Joan Gramer (Augusta) v. Kennebec Valley Community College (Fairfield). Attorney Kristin Aiello restated the position of the Complainant. Attorney Melissa A. Hewey restated the position of the Respondent. Investigator Alexandra R. Brindley reviewed her investigation and recommended decision(s). Commissioner Ashby moved, seconded by Commissioner Whitworth, to find there are **Reasonable Grounds** to believe that Kennebec Valley Community College discriminated against Joan Gramer on the basis of disability. 3 in favor | 1 opposed (Clark opposed).

E18-0422: Eddie Donnell (Augusta) v. Home Depot Store #2404 (Augusta). Complainant Eddie Donnell restated his position as the Complainant. Jennifer Keaton restated the position of the Respondent. Investigator Kit Thomson Crossman reviewed their investigation and recommended decision(s). Commissioner Whitworth moved, seconded by Commissioner Ashby, to find No Reasonable Grounds to believe that Home Depot Store #2404 discriminated against Eddie Donnell in employment on the basis of race, color or age. 4 in favor | 0 opposed.

The following case was taken out of order:

H19-0397-ABCD*: Robert Bailey (Portland) v. Avesta Carleton, Ltd. Partnership (Portland), Pinecone Housing Corporation (Portland), Avesta Housing and Development Corporation (Portland), & Avesta Housing Management Corporation (Portland). Attorney Amy Olfene restated the position of the Respondents. Attorney Mark C. Joyce restated the position of the Complainant. Chief Investigator Alice A. Neal reviewed her investigation and recommended decision(s). Commissioner Clark moved, seconded by Commissioner Whitworth, to find No Reasonable Grounds to believe that Avesta Carleton, Ltd. Partnership, Pinecone Housing Corporation, Avesta Housing and Development Corporation, & Avesta Housing Management Corporation discriminated against Complainant Robert Bailey on the basis of disability in the terms and conditions of his housing during the application process or when they refused to rent to him. 4 in favor | 0 opposed. Commissioner Clark moved, seconded by Commissioner David, to find No Reasonable Grounds to believe that Avesta Carleton, Ltd. Partnership, Pinecone Housing Corporation, Avesta Housing and Development Corporation, & Avesta Housing Management Corporation discriminated against Robert Bailey on the basis of disability (disparate impact claim). 4 in favor | 0 opposed. Commissioner Clark moved, seconded by Commissioner Ashby, to find there are **Reasonable Grounds** to believe that Avesta Carleton, Ltd. Partnership, Pinecone Housing Corporation, Avesta Housing and Development Corporation, & Avesta Housing Management Corporation discriminated against Robert Bailey on the basis of disability in the terms and conditions of his housing by denying him a reasonable accommodation. 4 in favor | 0 opposed.

E18-0449: Dana Hurtubise (Portland) v. Maine Medical Center (Portland). Deborah Diamond restated the position of the Complainant. Attorney Michelle Bush restated the position of the Respondent. Investigator Jane O'Reilly reviewed her investigation and recommended decision(s). Commissioner Ashby moved, seconded by Commissioner Whitworth, to find No Reasonable Grounds to believe that Maine Medical Center discriminated against Dana Hurtubise in employment on the basis of age and/or disability. 4 in favor | 0 opposed.

H19-0395-AB: Jessica McEwen (Biddeford) v. Rick Kelley and Margaret Pizzo (Windham). Complainant was not present. Commissioner Whitworth moved, seconded by Commissioner David, to find there are No Reasonable Grounds to believe that Rick Kelley and Margaret Pizzo discriminated against Jessica McEwen on the basis of sex, sexual orientation, disability, and/or familial status by subjecting her to a hostile environment or to believe that Rick Kelley and Margaret Pizzo retaliated against Jessica McEwen for engaging in MHRA-protected activity. 3 in favor | 0 opposed | 1 recused (Ashby).

H/E19-0396: Michael B. Libby (Rockland) v. Area Plumbing & Electric, LLC/Weston Arey, Jr. (Rockland). Complainant was not present. Commissioner Whitworth moved, seconded by Commissioner Ashby, to find there are No Reasonable Grounds to believe that Area Plumbing & Electric, LLC/Weston Arey, Jr. discriminated against Michael B. Libby in employment or housing on the basis of religion. 4 in favor | 0 opposed.

EXECUTIVE SESSION

At 12:51 PM, Commissioner Whitworth moved, seconded by Commissioner Ashby, to go into executive session to discuss pending or contemplated litigation and the Commission's legal rights and duties with Executive Director Sneirson for Commission Counsel pursuant to 1 M.R.S. §405(6)(E). 4 in favor | 0 opposed.

At approximately 1:05 PM, Commissioner Ashby moved, seconded by Commissioner Whitworth, to come out of Executive Session. 4 in favor | 0 opposed.

Commissioner Ashby moved, seconded by Commissioner Whitworth to do the following:

a. To not litigate three reasonable-grounds cases in which conciliation was not successful:

- Edstrom v. Biddeford School Department (E18-0281-A)
- Jana Markwart-Sapienza v. The Drouthy Bear et al (E18-0132-A/B)
- Richardson v. Williams Scotsman Inc. (E18-0029)

AND

b. To litigate two reasonable-grounds case in which conciliation was not successful:

- Schnitzer v. Dunkin Doughnuts (PA18-0433) and
- Sarchi v. Uber Technologies, Inc. and Raiser, LLC (PA17-0424-A/B).

4 in favor | 0 opposed.

At approximately 1:05 PM, Chair Clark adjourned the meeting.

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.

E18-0188-A,B,C:	Jones Okosun (Portland) v. Homer Downs (Portland), Avangrid Company (Orange, CT), Jack Jessop (Orange, CT)	NRG
PA18-0274:	Timothy Damien (Bradley) v. Eastern Maine Medical Center (Bangor)	NRG
PA18-0365:	Amy Verville (Skowhegan) v. Yogi Bear a/k/a Yonderhill Campground (Madison)	NRG
E18-0383:	Mark Lafleche (Swanville) v. Coastal Prosthetics (Searsport)	NRG
E18-0435:	Lisa Goodman (Bath) v. MidCoast Senior Health (Brunswick)	NRG
E18-0465:	James E. Mikkelsen (Portland) v. Shaw's Supermarkets, Inc. (West Bridgewater, MA)	NRG
H19-0412-: A-E	Timothy Beers (Seattle, WA) v. DC Baxter Woods III, LLC (Portland), NRG Motherhouse Associates LP (Portland), Kevin Bunker (Portland), Matt Teare (Portland), and Daphne Pappas (Portland)	

TABLED

E18-0368:	Shawn Metayer (Litchfield) v. Mid Coast Hospital (Brunswick)
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