



# Maine Human Rights Commission

# 51 State House Station, Augusta, ME 04333-0051

*Physical location: 19 Union Street, Augusta, ME 04330*

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

**Amy M. Sneirson**  
EXECUTIVE DIRECTOR

**Barbara Archer Hirsch**  
COMMISSION COUNSEL

## INVESTIGATOR'S REPORT MHRC No. H17-0059; HUD No. 01-17-6133-8 May 4, 2017

**Gladys B. Sweeney<sup>1</sup> (Brunswick)**

v.

**Northern New England Conference of Seventh-day Adventists, Inc.<sup>2</sup> (Westbrook)**

### **I. Summary of Case:**

Complainant alleged that Respondent, a religious non-profit organization, discriminated against her in housing by conditioning the use of an assistance animal on the payment of a security deposit and on compliance with additional unlawful terms. Respondent stated that it relied on inaccurate legal advice when it promulgated the policy and that it subsequently retracted the policy. Respondent also argued that Complainant unlawfully misrepresented her cat as an assistance animal. The Investigator conducted a preliminary investigation, which included reviewing all documents submitted by the parties and holding an Issues and Resolution Conference ("IRC"). Based upon this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondent subjected Complainant to disability discrimination by conditioning the use of an assistance animal on unlawful terms and conditions.

### **II. Jurisdictional Data:**

- 1) Dates of alleged discrimination: January 2017 to February 2017.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 21, 2017.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA"), the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) Complainant is represented by Katherine McGovern, Esq. Respondent is not represented by counsel.

---

<sup>1</sup> Based on the information provided by the U.S. Department of Housing and Urban Development ("HUD") when it referred this case to the Commission, "Pine Tree Legal Assistance, Inc." ("PTLA") was initially added as a named complainant in this case. By letter dated April 6, 2017, counsel for Complainant indicated that PTLA should be removed as a named party. Accordingly, the Investigator will not address PTLA as a complainant in this Report.

<sup>2</sup> Complainant listed Respondent's name as "Northern New England Conference of Seventh-day Adventists, Inc."; Respondent provided that the legal name of the owner of the subject premises is "Northern New England Conference of Seventh-day Adventists" and the legal name of the managing agent of the subject premises is "Northern New England Conference of Seventh-day Adventists Inc." Because Complainant has not amended her complaint, the name used by Complainant has been retained.

### **III. Development of Facts:**

1) Complainant provided the following in support of her claim:

Complainant rents a unit in a building owned and managed by Respondent. As a result of a disability, Complainant has symptoms that include [REDACTED] [REDACTED]; she requires the use of an assistance<sup>3</sup> animal to mitigate the symptoms. Beginning in January 2015, Complainant kept a cat as an assistance animal in her unit. When this animal died, Complainant requested that Respondent allow her to keep a new cat as an assistance animal. Shortly thereafter, Respondent sent Complainant a letter enclosing a policy (the "Policy") setting forth certain terms and conditions that a tenant must comply with in order to keep an animal in a unit. The Policy required tenants with animals to pay an extra \$2,500 deposit. Three days later, Respondent sent Complainant a letter stating that she must come into compliance with the Policy or remove the animal from her unit.<sup>4</sup>

2) Respondent provided the following in support of its position:

When Complainant moved into the unit, she was aware that there was a no-pet policy. A few months later, Property Manager noticed a cat in Complainant's window. It was only when confronted with the fact that Respondent intended to enforce its no-pet policy that Complainant first identified her cat as an assistance<sup>5</sup> animal. Complainant falsely identified her first and second cats as assistance animals in an effort to circumvent Respondent's no-pet policy. Further, Complainant's use of inaccurate terminology for her cats added to the parties' miscommunications. After the amendment the MHRA in 2016, Respondent consulted with an attorney to draft an animal policy for the subject premises. Respondent received inaccurate legal advice and, as a result, promulgated the Policy to tenants. When it learned that the Policy was illegal, Respondent retracted the Policy and its request that Complainant remove her cat from the premises.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the IRC:

---

<sup>3</sup> In her communications with Respondent, Complainant referred to her cat as a "service animal". This term accurately described Complainant's cat until July 2016, when the MHRA was amended to add a separate definition for an "assistance animal"; thereafter the cat was an "assistance animal" under the MHRA. Although Complainant continued to use the term "service animal" after the change in law, the Investigator will refer to the animal as an "assistance animal" in order to avoid any confusion about currently-applicable law.

<sup>4</sup> Complainant also included allegations that an employee of Respondent, Property Manager, mistreated her in 2014 because Complainant kept a cat in her unit. There were no allegations that the alleged mistreatment continued beyond 2014. The MHRA provides that complaints must be filed with the Commission "not more than 300 days after the alleged act of unlawful discrimination." See 5 Maine Revised Statutes ("M.R.S.") § 4611. Complainant filed her sworn complaint on February 21, 2017. The 300-day period in this case is considered to have begun on April 27, 2016 and, as such, the allegations of mistreatment from Property Manager will not be analyzed in this Report.

<sup>5</sup> As noted above in Footnote 3, the Investigator will refer to the cats as "assistance animals" in this Report, despite Complainant's use of different terminology. In support of its argument that Complainant falsely represented her cat as a "service animal," Respondent argued that under a plain reading of the MHRA, only a dog can qualify as a service animal after the 2016 amendment. While this is technically true, the definition of "service animal" in the MHRA applies to animals who provide assistance in places of public accommodation; "assistance animals" allowed in housing units include other types of animals.

- a) Complainant has a note from a physician that states Complainant has a disability under the FHA and/or MHRA. Due to her disability, Complainant has symptoms of [REDACTED] [REDACTED] that are mitigated by having an assistance animal in her home.
- b) Complainant rents a unit from Respondent. On or about January 11, 2017, Complainant requested that Respondent grant her a reasonable accommodation for her disability; specifically, Complainant requested that she be permitted to have an assistance animal in her unit. Complainant enclosed the note from her physician with her request.
- c) Complainant did not receive a response to her request. On January 23, 2017, Respondent sent all tenants a letter enclosing a copy of the Policy. The Policy was directed to all tenants who sought to keep an animal in their unit, irrespective of whether the pet was a service or assistance animal. Among other things, the Policy conditioned the use of an animal (assistance or otherwise) on the payment of a \$2,500 deposit.<sup>6</sup>
- d) On January 26, 2017, Respondent sent Complainant a letter stating that it was aware that she was keeping a pet in her unit. Respondent informed Complainant that she must comply with the Policy by February 28, 2017, or remove her cat from the unit.
- e) Sometime in the month thereafter, Respondent became aware that the Policy contained terms and conditions that are illegal.<sup>7</sup> Respondent then retracted the Policy, as well as its request that Complainant remove her cat from her unit.

#### **IV. 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.
- 2) An assistance animal for housing purposes is an animal that “has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician assistant, nurse practitioner or licensed social worker” or that has been “individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability”. 5 M.R.S. § 4553(1-H).
- 3) Under the MHRA, it is unlawful for “any owner, lessor, sublessor, 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 permit the use of an assistance animal or otherwise discriminate against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation unless it is shown by defense that the assistance animal poses a direct threat to the health or safety of others or the use of the assistance animal

---

<sup>6</sup> The Policy also included a number of other onerous terms that include the following: (a) a weight restriction on animals; (b) a requirement that tenants sign, upon request, a medical release so that independent medical providers can evaluate their need for a service or assistance animal; (c) a requirement that the tenant prove that the animal is toilet trained; and (d) a provision allowing Respondent to demand the removal of elderly pets that are physically debilitated. Respondent did not dispute that some of the provisions of the Policy were illegal.

<sup>7</sup> Though not entirely clear, the Investigator believes that the Respondent became aware of the deficiencies in the Policy because the Complainant filed her complaints with HUD and the Commission.

would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others.” 5 M.R.S. § 4582-A(3). The use of an assistance animal may not be conditioned on the payment of a fee or security deposit, even when a fee or deposit is charged for keeping a pet on the premises. *Id.*


- 4) Here, Complainant established that Respondent unlawfully conditioned the use of an assistance animal on unlawful terms and conditions, with reasoning as follows:
- a) There is no dispute that the Policy contained terms and conditions that are unlawful under the MHRA. The requirement for payment of a security deposit to use an assistance animal is, on its own, sufficient to support Complainant’s claim. Further, there is no dispute that Respondent tried to enforce the Policy against Complainant in January and February 2017. The Respondent’s reliance on inaccurate legal advice and subsequent retraction of the Policy does not undo its unlawful conduct, though it may mitigate damages at a later stage.
  - b) Respondent is not relieved of its obligation to comply with applicable law because Complainant erroneously identified her cat as a service animal instead of an assistance animal. People with disabilities who make requests for accommodations, such as a request to use an assistance animal, are not required to articulate legal terminology in order to have their requests granted. Here, it was sufficiently clear that Complainant sought the use of an animal as an accommodation for her disability.
  - c) There is not sufficient evidence to doubt Complainant’s need for an assistance animal. Complainant presented a note from a licensed physician recommending the use of an assistance animal. Respondent argued that the designation of the cat as an assistance animal was disingenuous because it occurred after Complainant initially sought to keep the cat as a pet in her unit.<sup>8</sup> However, other than this argument, Respondent did not present additional evidence to refute the contents of the physician’s note.
- 5) It is found that Respondent discriminated against Complainant on the basis of her disability.

**V. Recommendation:**

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

There are **Reasonable Grounds** to believe that Respondent Northern New England Conference of Seventh-day Adventists, Inc discriminated against Complainant Gladys B. Sweeney by conditioning her use of an assistance animal in housing on a security deposit and other unlawful terms/conditions, and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
\_\_\_\_\_  
Amy M. Sneirson, Executive Director

  
\_\_\_\_\_  
Stuart W. Evans, Investigator

<sup>8</sup> Respondent argued that Complainant had violated the law by misrepresenting her cat as a service animal. The Commission is not the appropriate forum to raise a claim that an individual violated the State of Maine’s prohibition against knowingly misrepresenting an animal as a service or assistance animal.