



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

MHRC No. H/PA18-0049 / HUD Inquiry No. 554490

May 17, 2018

**Kim Norwood (Northport, FL)**

v.

**Bangor Housing Authority<sup>1</sup> (Bangor, ME)**

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

Complainant Kim Norwood resided at 3 Mt. Desert Drive, Bangor, ME (the "Premises"), which is owned and operated by Respondent Bangor Housing Authority, from 2015 through the spring of 2018. Complainant alleged that Respondent discriminated against her based on her disabilities when it denied her reasonable accommodation requests.<sup>2</sup> Respondent denied discriminating against Complainant, and stated that Complainant failed to follow through and provide the requested information for it to act on her requests. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, holding an IRC, and requesting additional information. Based upon this information, the Investigator recommends a finding that there are reasonable grounds to believe that Respondent discriminated against Complainant based her disabilities when it denied her reasonable accommodation requests.

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

- 1) Dates of alleged discrimination: Spring 2017 and ongoing.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 7, 2018. Complainant filed an Amended Complaint on March 26, 2018.<sup>3</sup>

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<sup>1</sup> Complainant's complaint listed Respondent's name as Bangor Housing Authority. Respondent provided that its legal name is the "Housing Authority of the City of Bangor". Because Complainant has not amended her complaint to use Respondent's legal name, the name used by Complainant has been retained.

<sup>2</sup> Complainant filed her claim against Respondent as both a housing provider and a public accommodation. At the Issues and Resolution Conference ("IRC"), Complainant clarified that she was only pursuing a housing discrimination claim. Therefore, any potential public accommodation claims are not analyzed herein.

<sup>3</sup> Complainant amended her complaint to add an allegation that Respondent attempted to intimidate her into dropping her charge. Despite the amendment, this claim is not analyzed here because Complainant explicitly stated at the IRC that she was only looking at a disability/reasonable accommodation claim. As such, the record was not developed to analyze a retaliation claim. Based on the limited information available, it appears that Complainant's allegation relates to an attempt at settlement (which may have been less than clear to Complainant), which does not amount to intimidation, interference, or retaliation prohibited by the Maine Human Rights Act ("MHRA").

- 3) Respondent is subject to the MHRA and the federal Fair Housing Act (“FHA”), as well as state and federal housing regulations.
- 4) Complainant is not represented by counsel. Respondent is represented by Joseph M. Bethony, Esq.

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

- 1) Complainant provided the following in support of her claims:

Complainant, who suffers from [REDACTED], requested several reasonable accommodations to allow her to use and enjoy the Premises. Respondent failed to take Complainant’s personal statements as enough to be a knowledgeable provider. They wanted her to jump through hoops with each new request even though they knew about her disability. Respondent denied Complainant’s requests for reasonable accommodations.

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

Complainant made reasonable accommodation requests and Respondent was prepared to grant those requests if Complainant provided documentation establishing the nexus between her reasonable accommodation request and the disability. Complainant failed to follow through with the requested information.

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

- a) Complainant has [REDACTED], which is a disability without regard to severity under the MHRA. *See* 5 Maine Revised Statutes (“M.R.S.”) § 4553-A(1)(B). Complainant’s daughter requires the use of an assistance animal to mitigate the effects of her disabilities. Respondent previously granted Complainant’s request for the use of an assistance animal.
- b) Respondent’s business structure has its tenants work with designated property managers for their day-to-day concerns about their housing. The property managers have no role in the consideration of a tenant’s reasonable accommodation request. Reasonable accommodation requests are responded to by the Deputy Director (“Deputy Director”) and the Executive Administrative Assistant (“Asst.”). When receiving reasonable accommodation requests, the tenant’s file is not reviewed. It appears the practice is for tenants to submit documentation for each reasonable accommodation request related to their disability with supporting documentation from a knowledgeable provider.
- c) Complainant filled out a reasonable accommodation request form seeking a first-floor apartment and an assistance animal; the date of request is listed as October 2015, but the date of Complainant’s signature is February 4, 2016.<sup>4</sup> This request indicated that Complainant had [REDACTED] and provided contact information for a “professional third party verifier”, as Respondent requested.

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<sup>4</sup> It is not clear from the record when this form was submitted. Complainant had previously requested a first-floor unit in mid-August 2015. Respondent requested a letter from a “knowledgeable provider” to continue processing the request; Complainant did not respond, and Respondent sent a reminder letter on October 8, 2015. Complainant provided a doctor’s note soon thereafter.

- d) On October 22, 2015, Complainant sent her medical provider's letter dated October 13, 2015 to Respondents. The note indicated that Complainant was being treated in a [REDACTED] practice for [REDACTED].
- e) In early March 2017, Complainant exchanged several emails with a property manager ("Property Manager") telling him that she was providing him information about a reasonable accommodation and that her [REDACTED] was part of the reason for the accommodation.<sup>5</sup>
- f) On March 22, 2017, Complainant sent a copy of her application for a handicap placard to Property Manager. The application noted that she had a permanent condition because she is severely limited in her ability to walk due to an [REDACTED] condition, and was signed by her physician.<sup>6</sup> Respondent told Complainant that it required different information and third-party verification.<sup>7</sup> Complainant believed the information in the placard application was enough to establish her disability and for Respondent to be on notice that she was disabled.
- g) On or about April 4, 2017, Complainant requested that she be allowed to leave her daughter's assistance animal tied briefly in the yard to relieve itself because of her physical limitations. On her written accommodation request, Complainant provided that she receives disability income instead of providing the name of a third-party verifier for her information. On April 11, 2017, Respondent informed Complainant that they required information from a knowledgeable provider about the reason for the request. On April 14, 2017, Respondent stated that its next step was "to send a professional third party verifier to verify that your disability prevents you from using a leash as required in our Service Animal Policy".<sup>8</sup> Complainant did not respond or provide additional information.
- h) On April 12, 2017, Complainant sent Property Manger information from the U.S. Office of Housing and Urban Development ("HUD") about disabilities and reasonable accommodation requests. In her email to Property Manager, Complainant noted that her "disability is well known".
- i) In the fall of 2017, Complainant had to have surgery on one of her [REDACTED] because of her disability. In the early winter of 2018, she had [REDACTED] on the second [REDACTED] for the same reasons.<sup>9</sup> In early November 2017, Complainant believed a copy of her physician's certification was sent to Respondent noting her [REDACTED].

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<sup>5</sup> Respondent alleged that it never received any information about Complainant's [REDACTED] in connection with her reasonable accommodation request.

<sup>6</sup> Respondent denied seeing the email and Property Manager did not put it in the file; Complainant provided a full copy of the email string with Property Manager. Respondent did not retain the email because there was no open reasonable accommodation request pending.

<sup>7</sup> It appears that Respondent did not retain information about Complainant's disability it received in connection with her request for a first-floor unit, because it ultimately processed the request as a transfer, rather than an accommodation. Complainant alleged that this violated the MHRA; this claim is untimely.

<sup>8</sup> At the IRC, Respondent noted its inartful wording: it sought third-party verification, not to send its own professional to assess Complainant's needs in relation to her disability.

<sup>9</sup> Complainant also referenced that she needed a grab bar in her bathroom in the fall of 2017, yet she did not want to deal with Respondent's bureaucracy so she did not make an accommodation request.

- j) On December 13, 2017, Complainant asked for help with shoveling her walkway and plowing her driveway while she was recovering from [REDACTED] [REDACTED] and the other [REDACTED] needed [REDACTED]. Complainant did not provide the name of a professional third-party verifier. She indicated: “not needed – known physical disability. See above.”<sup>10</sup> Complainant was unable to perform the snow removal because of [REDACTED] limitations. She provided Respondent with a copy of her Family and Medical Leave Act (“FMLA”) documentation she gave to her employer regarding her restrictions until January 2018. That paperwork stated that Complainant was out of work for a [REDACTED] [REDACTED].
- k) Complainant believed Respondent already knew about her disability based on her history and her communication with them about her [REDACTED] [REDACTED]. Complainant also believed it was unnecessary for her to have to provide a doctor’s note identifying her disability because Respondent had previous knowledge of her disability. In particular, Respondent knew she received federal disability benefits, and Complainant felt that she should not have to continue to prove her disability since a federal agency had decided she met the standard for a “disabled person”.
- l) On January 23, 2018, Deputy Director sent a letter to Complainant acknowledging the December 13, 2017 reasonable accommodation request and further stating that it could not evaluate if the accommodation was necessary because of a disability. Deputy Director said that Respondent required contact information for a third-party professional to whom it would send the verification form.
- m) On January 23, 2018, Complainant responded to Respondent’s request for third-party verification stating that Respondent denied the request and that she was not required to get third-party verification because Respondent had knowledge of her disability. Complainant pointed out that she gets federal disability income, she provided doctors’ letters in the past, she provided paperwork signed by an [REDACTED] [REDACTED] stating her disability,<sup>11</sup> and she provided a copy of her handicap placard application. Complainant specifically referenced her [REDACTED] [REDACTED] as her disability in this response.
- n) On January 29, 2018, Respondent sent another letter to Complainant stating that it did not deny her accommodation request, but that it needed the verification information. Respondent acknowledged that Complainant had a disability, but sought an explanation for the connection between the requested accommodation and her disability. Complainant did not reply to the request. Respondent provided that it did not deny Complainant’s requests, it required additional information and Complainant failed to respond.
- o) In February 2018, Complainant provided additional paperwork regarding her second [REDACTED] [REDACTED] reflecting restrictions at work until May 2018.
- p) Complainant provided an undated letter from a medical provider stating that because of her [REDACTED], the provider recommended that Complainant do no snow removal.
- q) Complainant provided a letter from another resident stating that she has to provide renewed verification documentation with each reasonable accommodation request.

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<sup>10</sup> Respondent has granted similar requests from other tenants in the past.

<sup>11</sup> This paperwork was a request for leave from work under the federal FMLA.

- r) Respondent argued that information sent to the property managers about Complainant's FMLA paperwork was not enough to put it on notice about Complainant's disabilities for the purpose of her reasonable accommodation request.

#### 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) 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).

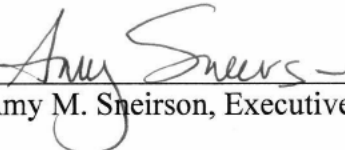
- 3) To establish a prima-facie case of failure to accommodate, Complainant must show that: she has a "physical or mental disability" as defined by the MHRA; Respondent knew or reasonably should have known of Complainant's disability; Complainant requested a particular accommodation; the requested accommodation is necessary to afford Complainant an equal opportunity to use and enjoy the housing; the requested accommodation is reasonable on its face, meaning it is both efficacious and proportional to the costs to implement it; and 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 (1<sup>st</sup> 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 (7<sup>th</sup> Cir. 2002) (plaintiff's burden is only to show reasonableness "on its face"). Compare *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1<sup>st</sup> 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 was able to show that Respondents discriminated against her on the basis of disability by denying her reasonable accommodation requests, with reasoning as follows:
- a) Complainant has a disability, as defined under the MHRA. Respondent knew or reasonably should have known about Complainant's disability based on the documentation she provided and emails with the property managers. Respondent's assertion that its own business model screens the tenant file from the reasonable accommodation request process is unpersuasive when Complainant sent information about her disabilities to the property managers who did not keep the information in Complainant's file, as well as in her specific reasonable accommodation requests.

- b) Complainant requested two particular accommodations related to her [REDACTED] [REDACTED] – the use of a tie out and assistance with snow removal; the accommodations were necessary to afford her the opportunity to use and enjoy her housing. The requests were reasonable. The record reflects that Respondent granted similar requests for snow removal and plowing in the past.
- c) Respondent's inaction on the requests was in itself a denial with the passage of time. Complainant's December 13, 2017 request remained open without even an acknowledgement until over a month later, when Respondent told Complainant that it needed verification. The request was directly related to the winter weather and could have been responded to in a more expeditious fashion. As of the time of this report, Respondent has not granted or denied the April 2017 or December 2017 accommodation requests; they are now moot since Complainant has moved and the winter has ended.
- d) Respondent alleged that the delay was because of the need for third-party verification, but this argument is unavailing. While Respondent did have the right to assess the nexus between the requested accommodation and Complainant's disability, it had no reason to insist on a separate verification when the documents in its possession would have drawn the connection upon review. In particular, Complainant had provided a note indicating that she was being seen for [REDACTED] of the [REDACTED] in a [REDACTED] practice as early as October 2015. Respondent cannot avoid its obligations under the MHRA by segregating information into different files. When viewed as a whole, with Complainant's tenant file and the additional documentation that was sent to Respondent, Complainant's need for the tie out and the snow removal assistance were readily understandable and related to her ability to use and enjoy her housing.
- e) This was a close case because Complainant's failure to engage in the interactive process in good faith made Respondent's ability to respond to the accommodation requests more difficult. That said, Respondent had enough information to know what Complainant's disability was and to connect that to her requests if they had not isolated each item of documentation and each accommodation request from the others.
- 6) It is found that Complainant was unlawfully denied a reasonable accommodation for her disability.

**V. Recommendation:**

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

There are **Reasonable Grounds** to believe that Bangor Housing Authority discriminated against Kim Norwood based on her disability when it denied her a reasonable accommodation, and the complaint should be conciliated in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Alice A. Neal, Chief Investigator