



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

19 Union Street ~ Augusta, Maine

October 24, 2016

Commission Chair Arnold Clark called the meeting to order at 8:30 AM. Present were Commissioners John Norman, Deborah Whitworth, Theodore Helberg, and Frederick Oettinger.

AGENDA

Commission Chair Clark called for adoption of the Agenda and Consent Agenda, as amended.

- Executive Director Amy Sneirson tabled the case of Elizabeth L. Hudson v. SOM/Ethics Commission (E15-0084) to the November meeting.

Commissioner Helberg moved, seconded by Commissioner Whitworth, to adopt the Agenda as amended and to accept the Investigator's recommendations in each of the cases on the Consent Agenda. 5 in favor | 0 opposed (see detailed listing on page 4).

MINUTES

Commissioner Whitworth moved, seconded by Commissioner Oettinger, to adopt the September 12, 2016 Commission Meeting Minutes. 4 in favor | 0 opposed | 1 abstained (Norman abstained).

ADMINISTRATION

Monthly reports: Executive Director Sneirson next discussed monthly reporting on Commission activities:

- Personnel: The Commission has two investigator vacancies, after the departures of Investigator Audrey Gillespie and Stephanie Hampton. The Commission received permission from the Office of the Governor to advertise/fill two vacant investigator positions.
- Compliance: Since the last Commission meeting, there are two reasonable-grounds cases pending in conciliation, and have been five unsuccessful conciliations. There were four successful conciliations.
 - Commissioner Helberg moved, seconded by Commissioner Whitworth, to approve the conciliation agreements in these cases: E15-0369, Davis v. Sears; H16-0072, Tremblay and Stevens v. Tucci; and E15-0370, Davis v. Home Depot. 4 in favor | 0 opposed | 1 abstained (Oettinger abstained).
- Investigation
 - New Charges in September: 40
 - Administrative Dismissals in September =19
 - Pre-determination cases resolved since last meeting: 7, with benefits of \$96,000 to complainants.

New business:

- There was a change in the MHRA to separate definitions of service and assistance animals; it became effective July 29, 2016. Updated pamphlets are on the Commission's website.
- The Commission received a HUD grant to do outreach about service animal issues in the form of an informational video and a public service announcement. The Commission has issued a request for proposals for this, and it should be available shortly on the Commission's website and on that of the Maine Division of Purchases.
- The Commission has drafted its Annual Report, which should shortly be sent to the Legislature and be on the Commission's website.
- The Review Panel established by the Office of the Governor issued its report pursuant to Executive Order; the report concluded that the Commission is not biased against companies/respondents and that everyone involved in cases at the Commission believes the Commission is biased against them due to lack of information. The Review Panel's report recommends that the State of Maine increase resources and staff to the Commission. The Commission hopes that the Office of the Governor will include many of the recommended resources in its budget proposal to the Legislature.

At 8:39 AM The Commission took a six-minute break.

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

CASES VOTED ON 8:45 A.M.

E14-0459: Lorraine Farris (Auburn, ME) v. Nouria Energy Corp., and the J&S Division of Nouria Energy (Worcester, MA). Executive Director Sneirson began by noting that the claims in this case against Nouria Energy Corp. and the J&S Division of Nouria Energy were heard at the Commission's September 2016 meeting, but that after the meeting it became apparent from the file that Nouria Energy Corp. and the J&S Division of Nouria Energy had not properly received notice of the Investigator's Report and an opportunity to respond, as is required under principles of constitutional due process. Commission Counsel Barbara Archer Hirsch noted that these two Respondents were properly notified of the complaints against them and did have appropriate opportunities to participate in the investigation but chose not to do so. The sole issue causing the case to be presented again at today's meeting was the failure to send the Investigator's Report and provide opportunity to object to it. Respondents were not present. Commissioner Whitworth moved, seconded by Commissioner Norman, to affirm the Commission's September 12, 2016 vote finding (a) **reasonable grounds** to believe that Nouria Energy Corp., and the J&S Division of Nouria Energy discriminated against Complainant Lorraine Farris in violation of the MHRA based upon her sex when it subjected her to a hostile work environment, (b) **reasonable grounds** to believe Nouria Energy Co., and the J&S Division of Nouria Energy discriminated against Complainant Lorraine Farris in violation of the MHRA based upon her sex when it discharged her from employment, and (c) **reasonable grounds** to believe that Nouria Energy Corp., and the J&S Division of Nouria Energy retaliated against Complainant Lorraine Farris in violation of the MHRA and WPA because she engaged in protected activity. 4 in favor | 1 opposed (Clark opposed).

E14-0539: Christopher Elwell (Westbrook) v. B & B Towing/Gateway Auto, LLC (Westbrook). When the case was called, Complainant was not present. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that B & B Towing I Gateway Auto, LLC retaliated against Christopher Elwell by discharging him after he reported unlawful activity. 5 in favor | 0 opposed. After

Complainant and his counsel appeared late to the meeting and requested to be heard, Commissioner Clark moved, seconded by Commissioner Helberg, to reconsider the Commission vote deciding/dismissing the case. 3 in favor | 2 opposed (Whitworth, Norman opposed). When the case was re-called for hearing, Attorney Kelly Hoffman restated the position of the Complainant. Brian Beaulieu and Victoria Buzzell restated the position of the Respondent. Investigator Tizon restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe B & B Towing I Gateway Auto, LLC retaliated against Christopher Elwell by discharging him after he reported unlawful activity. 5 in favor | 0 opposed.

E14-0564: Richard Thorp (Holden) v. The Lane Construction Corporation (Ellsworth). Attorney David Bondanza restated the position of the Respondent. Attorney John Gause restated the position of the Complainant. Investigator Angela Tizon restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Norman, to find no reasonable grounds to believe that The Lane Construction Company discriminated against Richard Thorp on the basis of age in the terms and conditions of employment. 5 in favor | 0 opposed. Commissioner Norman, moved, seconded by Commissioner Oettinger to find **reasonable grounds** to believe that the Lane Construction Company discriminated against Richard Thorp on the basis of disability in the terms and conditions of employment. 3 in favor | 2 opposed (Helberg, Clark opposed).

H16-0116: Deiga M. Mohamed & Marc Rodrigue (Poland, ME) v. Warren R Knight (Loxahatchee, FL) & Smiling Hill Farm Land Company, LP (Westbrook, ME). Respondent Warren Knight restated the position of both Respondents. Complainant Marc Rodrigue restated the position of both Complainants. Chief Investigator Alice Neal restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondents Warren Knight and Smiling Hill Farm Land Company, LP discriminated (i) against Complainant Deiga Mohamed on the basis of race, color, national origin, or religion by refusing to rent to her, (ii) against Complainant Marc Rodrigue on the basis of race, color, national origin, or religion in the terms and conditions of his housing, and (iii) against Complainant Marc Rodrigue on the basis of race, color, national origin, or religion when it evicted him. 5 in favor | 0 opposed. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Respondents Warren Knight and Smiling Hill Farm Land Company, LP retaliated against Complainant Marc Rodrigue for asserting his rights under the Maine Human Rights Act. 4 in favor | 1 opposed (Norman opposed).

EXECUTIVE SESSION:

At 11:45 AM Commissioner Whitworth moved, seconded by Chair Clark, to move into executive session to discuss pending or contemplated litigation and the Commission's legal rights and duties with Commission Counsel pursuant 1 M.R.S. §405(6)(E). 5 in favor | 0 opposed.

At approximately 12:15 AM Commissioner Whitworth moved, seconded by Commissioner Norman, to come out of executive session. 5 in favor | 0 opposed.

LITIGATION:

Commissioner Whitworth moved, seconded by Commissioner Clark, to adopt Commission Counsel's recommendations (i) not to proceed with litigation in the reasonable-grounds case of *Caron v. Cascade Auburn Fire* (E15-0012), and (ii) to proceed with litigation in the reasonable-grounds cases of *Walsh et al v. Kathy Bagley and Vernon Bagley* (H15-0527) and *Faile v. Doyer* (H16-0036). 5 in favor | 0 opposed.

Commissioner Norman moved, seconded by Commissioner Whitworth, to authorize Executive Director Amy Snerison to execute on behalf of the Commission agreements resolving litigated cases for 30 days from the date of this meeting. 4 in favor | 0 opposed | 1 abstained (Clark abstained).

At approximately 12:40 AM, Commissioner 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.

PA14-0523:	Gordon Robbins (Norridgewock) v. Ferris, Gurney, Crook, P.C. (Waterville)	NRG
PA14-0535:	Gordon Robbins (Norridgewock) v. Scott Gurney, Esq.	NRG
PA14-0536:	Gordon Robbins (Norridgewock) v. Charles Ferris, Esq.	NRG
E14-0525:	Gretchen Crawford (Rockland) v. Kno-Wal-Lin (Newcastle)	NRG
E14-0526:	Gretchen Crawford (Rockland) v. Pen Bay Healthcare (Rockport)	NRG
E14-0528:	Pamela L. Griffin (Rumford) v. Tri-County Mental Health (Rumford)	NRG
E14-0538:	Charles R. Jarrett (Westbrook) v. City of Westbrook (Westbrook)	NRG
E14-0541:	Sally L. Gagne (Randolph) v. Sam's Club – Augusta (Augusta)	NRG
E14-0557:	Darren Johnson (Biddeford) v. York Hospital (York)	NRG
E15-0248:	Gae V. Harding f/k/a Toothaker (Lewiston) v. Dubois Café (Lewiston)	NRG
E15-0566:	Danielle E. Hennessy (Sanford) v. 7-Eleven (Springvale)	NRG
PA16-0066:	Madeleine Perreault (Auburn) v. St. Mary's Regional Medical Center (Augusta) & Kathleen Martin, MD/Women's Health Associates (Lewiston)	NRG
H16-0073:	Jamie Merrill and Dwayne Labrecque (Livermore Falls) v. Patrick Duffy (Livermore Falls)	RG
H16-0179:	Elizabeth L. Davidson (Unity) & Douglas Davidson (Unity) v. Gerald Davidson, Owner (Unity) & Nancy Davidson (Unity)	NRG
H16-0212:	Kyra L. Pardue & O/B/O minor children (South Portland) v. State of Maine (Portland), Avesta Brickhill Heights, LP (Portland), David B. Chamberlain (Portland), Nicolas Kjeldgaard (Portland), Georges Budagu (Portland), Tammy Thibodeau (South Portland), Tianna McInnis (South Portland)	NRG
H16-0277	Andrea Philbrick (Portland) v. CMRS IV, Inc. (Crotched Mountain Residential Services) (Greenfield, NH), Michael Davis (Portland), Peter Abate (Portland)	NRG