



## Maine Human Rights Commission

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EXECUTIVE DIRECTOR

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COMMISSION COUNSEL

### COMMISSION MEETING MINUTES

#### Senator Inn - Boardroom

*19 Union Street ~ Augusta, Maine*

September 18, 2017

Commission Chair Arnold Clark called the meeting to order at 8:32 AM. Present were Commissioners Arnold Clark, Deborah Whitworth, John Norman, Ted Helberg, and Fred Oettinger. Chair Clark began the meeting by calling for a moment of silence to recognize the recent death of the Commission's former Chair, Paul Vestal, who provided the Commission with distinguished service for 24 years.

#### AGENDA

Commissioner Whitworth moved, seconded by Commissioner Helberg, 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 6). 5 in favor | 0 opposed.

#### MINUTES

Commissioner Norman moved, seconded by Commissioner Whitworth, to adopt the August 14, 2017 Commission meeting minutes. 4 in favor | 0 opposed | 1 abstained (Oettinger abstained).

#### ADMINISTRATION

Quarterly: Executive Director Sneirson next discussed FY2017's fourth quarter agency performance:

- Training & Education: Commission staff attended/presented at 13 trainings/presentations.
- Financial Report: Presented and placed on file.
- Pending inventory: The Commission has 772 cases pending; the average age of cases in the agency is 246 days; for cases assigned to an investigator, the average number of days is increased by 125 days.

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

- Personnel: No new activity, other than that the Commission received from the Office of the Governor approval to fill the vacant Investigator position.
- Compliance: Since the last meeting, there were three unsuccessful conciliation and three successful conciliations. Three reasonable-grounds cases remain in active conciliation.
- The following cases were successfully conciliated.
  - Commissioner Helberg moved, seconded by Commissioner Norman, to approve the conciliation agreement and monitor the agreement's implementation in LaPlante v. Ramada (PA15-0472). 5 in favor | 0 opposed.
  - Commissioner Helberg moved, seconded by Commissioner Whitworth, to approve the conciliation agreement and monitor the agreement's implementation in LaPlante v. Days Inn (PA15-0419). 5 in favor | 0 opposed.

- Commissioner Oettinger moved, seconded by Commissioner Whitworth, to to approve the conciliation agreement and monitor the agreement's implementation in *Bourgeois v. Antonia's* (E15-0325). 5 in favor | 0 opposed.
- Investigations in April:
  - New Charges: 51 new charges filed.
  - Administrative Dismissals: 25 administrative dismissals.
  - There were 7 predetermination settlements with benefits of \$174,000 to complainants.

## NEW BUSINESS

Executive Director Amy Sneirson noted that the Commission had been invited to meet with the Labor and Employment section of the Maine Bar on October 2, and invited Commissioners to share with her any feedback or recommendations they had for parties or counsel appearing at meetings or submitting argument.

The Commission took a five-minute break at 8:40 AM.

At 8:46 AM Commission Chair Arnold Clark began the case hearing agenda.

## CASES VOTED ON

### *Morning Hearing Session - 8:45 A.M.*

E15-0361 *Kenneth R. Artkop (Searsmont) v. State of Maine/Department of Inland Fisheries & Wildlife (Augusta)*. Assistant Attorney General Kelly Morrell restated the position of the Respondent. Attorney Roberta L. de Araujo restated the position of the Complainant. Investigator Beauchesne restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Oettinger, to find **reasonable Grounds** to believe that Respondent State of Maine/Department of Inland Fisheries & Wildlife unlawfully discriminated against Complainant Kenneth R. Artkop on the basis of disability (reasonable accommodations, failure to hire); 3 in favor | 2 opposed (Norman, Whitworth opposed). Commissioner Norman moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Respondent State of Maine/Department of Inland Fisheries & Wildlife unlawfully retaliated against Complainant Kenneth R. Artkop for protected MHRA activity. 4 in favor | 1 opposed (Oettinger opposed.)

E15-0408: *Samuel Monroe Duboise (Portland) v. University of Southern Maine/University of Maine Systems (Bangor)*. Attorney Patricia Peard restated the position of the Respondent. Attorney Maria Fox restated the position of the Complainant. Investigator Corey restated the facts of the case. Commissioner Oettinger moved, seconded by Commissioner Helberg, to find **reasonable grounds** to believe that Respondent University of Southern Maine/University of Maine Systems discriminated against Complainant Samuel Monroe Duboise on the basis of age (disparate treatment) when it discharged him from employment. 4 in favor | 1 opposed (Whitworth opposed). Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent University of Southern Maine/University of Maine Systems discriminated against Complainant Samuel Monroe Duboise on the basis of age (disparate impact) when it discharged him from employment. 5 in favor | 0 opposed. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Respondent University of Southern Maine/University of Maine Systems discriminated against Complainant Samuel Momoe Duboise on the basis of age or retaliated against him for engaging in protected activity when it failed to recall him to a vacant position. 5 in favor | 0 opposed. After voting, Attorney Peard requested that the Commission rule upon Respondent's request that the Commission reconsider its vote due to the discovery of new evidence; the

Commissioners declined to do so.

E15-0444: *Kaitlin Iuzzolino (Boothbay) v. General Dynamics/Bath Iron Works (Bath)*. Attorney Samuel Riotte restated the position of the Complainant. Attorney Shiloh Theberge restated the position of the Respondent. Chief Investigator Alice Neal restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Respondent General Dynamics/Bath Iron Works discriminated against Complainant Kaitlin Iuzzolino based upon her sex in violation of the MI-IRA when it subjected her to a hostile work environment. 3 in favor | 2 opposed (Norman, Clark opposed).

Commission Chair Clark called for a 2 minute break.

E15-0448: *Cynthia Nesbit (Bowdoin) v. L.L. Bean, Inc. (Freeport)*. Cynthia Nesbit restated her position as the Complainant. Attorney Peter Lowe restated the position of the Respondent. Investigator Corey restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent L.L. Bean, Inc. subjected Complainant Cynthia Nesbit to unlawful retaliation in violation of the WPA or MHRA. 5 in favor | 0 opposed.

E15-0480: *Jessica D. Chartier (Auburn) v. SOM/DHHS/Riverview Psychiatric Hospital (Augusta)*. Attorney Jeanne Sund restated the position of the Complainant. Assistant Attorney General Valerie Wright restated the position of the Respondent. Investigator Evans restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that SOM/DHHS/Riverview Psychiatric Hospital discriminated against Jessica D. Chartier by denying her a reasonable accommodation for her disabilities or that SOM/DHHS/Riverview Psychiatric Hospital discriminated against Jessica D. Chartier by discharging her on the basis of sex, age or disability. 5 in favor | 0 opposed.

E15-0491: *Rebecca S. Behlen (Casco) v. Granite Bay Care, Inc. (Portland)*. Complainant was not present. Commissioner Whitworth moved, seconded by Commissioner Oettinger, to find there are no reasonable grounds to believe that Respondent Granite Bay Care, Inc. discriminated against Complainant Rebecca S. Behlen on the basis of her age or that Respondent retaliated against Complainant due to protected activity (WP A and MHRA). 5 in favor | 0 opposed.

E15-0522: *Robert A. McCarthy (Brownville) v. Millinocket Regional Hospital (Millinocket), Jason Fugelberg (Millinocket), and Samantha Paradis (Millinocket)*. Attorney Michael Saucier restated the position of the Complainant. Attorney Alan Muir restated the Position of the Respondents. Investigator Evans restated the facts of the case. Commissioner Norman moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Millinocket Regional Hospital, Jason Fugelberg or Samantha Paradis discriminated against Robert A. McCarthy in employment on the basis of sex or age or that Respondents retaliated against Complainant in employment for engaging in protected activity (WPA and/or MHRA). 5 in favor | 0 opposed.

E16-0313: *Michael Bell (Turner) v. Reed & Reed, Inc. (Woolwich)*. Complainant was not present. Commissioner Norman moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent Reed & Reed, Inc. discriminated against Complainant Michael Bell on the basis of disability by denying a request for a reasonable accommodation or that Respondent discriminated against Complainant based upon his disability when it discharged him from employment. 5 in favor | 0 opposed.

**Afternoon Hearing Session 12:00 PM**

Commission Chair Clark called the afternoon session to order at 12:15 PM.

E16-0123: *Helen M. Thompson (Gorham) v. Cinemagic Grand Theater and David Headley (South Portland)*. Helen Thompson restated her position as the Complainant. Attorney Ben Ford restated the position of the Respondent. Investigator Evans restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find there are no reasonable grounds to believe that Cinemagic Grand Theater and David Headley subjected Helen M. Thompson to less favorable terms and conditions in employment on the basis of age or that Respondents discriminated against Complainant on the basis of age by refusing to promote her. 5 in favor | 0 opposed.

E16-0239: *Lisa L. Lambert (Waterville) v. Maine Industrial Repair Service (Augusta)*. Lisa Lambert restated her position as the Complainant. Respondent was not present. Investigator Fortin restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent Maine Industrial Repair Service subjected Complainant Lisa Lambert to discrimination on the basis of sex or that Respondent retaliated against Complainant in violation of the WPA and MHRA for engaging in protected activity. 5 in favor | 0 opposed.

E16-0326: *Karen Jo Young (Corea) v. Maine Coast Memorial Hospital (Ellsworth)*. Karen Jo Young restated her position as the Complainant. Attorney Frank McGuire restated the position of the Respondent. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Oettinger, to find no reasonable grounds to believe that Respondent Maine Coast Memorial Hospital subjected Complainant Karen Jo Young to unlawful employment discrimination on the basis of disability or that Respondent subjected Complainant to unlawful retaliation for engaging in protected WPA/MHRA activity. 5 in favor | 0 opposed.

E16-0328: *Leon E. Doyle (Chelsea) v. General Dynamics Bath Iron Works (Bath)*. Leon Doyle restated his position as the Complainant. Attorney Shiloh Theberge restated the position of the Respondent. Investigator Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Complainant Leon E. Doyle was subjected to age discrimination when he was not selected for a position by Respondent General Dynamics Bath Iron Works. 4 in favor | 1 opposed (Norman opposed).

At 1:55 Chair Clark called for a 5 minute recess

E16-0363: *Carolyn J. Augusto (Vinalhaven) v. SAD #8 (Vinalhaven)*. Carolyn Augusto restated her position as the Complainant. Respondent was not present. Investigator Corey restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe Respondent SAD #8 discriminated in employment against Complainant Carolyn Augusto in violation of the MHRA. 5 in favor | 0 opposed.

E16-0494: *Bradley W. Tompkins (Perry) v. Dead River Company (Calais)*. Complainant was not present. Commissioner Whitworth moved, seconded by Commissioner Norman, to find no reasonable grounds to believe that Respondent Dead River Company discriminated against Complainant Bradley W. Tompkins in employment (promotion) based on his age. 5 in favor | 0 opposed.

H17-0216: *Jules & John Dennison (Kennebunk) & Victoria Bond (Kennebunk) v. Half Tide Properties (Kennebunk) & Jennifer Braddick (Kennebunk)*. Complainants were not present. Commissioner Norman moved, seconded by Commissioner Oettinger, to find no reasonable grounds to believe Respondents Half Tide Properties and Jennifer Braddick denied Complainants Jules Dennison, John Dennison, and Victoria Boyd a reasonable accommodation in violation of the MHRA, or that Respondents discriminated against

Complainants in the terms and conditions of housing based on disability, or that Respondents retaliated against Complainants for engaging in MHRA protected activity. 5 in favor | 0 opposed.

H17-0240: *Elizabeth Thompson (Dedham, MA) and Tennyson Martin (Dedham, MA) v. J.G.Q. Property Management, Inc. (Bangor) and Joe Quinn (Bangor)*. Respondent Joe Quinn restated the position of the Respondents. Complainant Elizabeth Thompson restated the position of the Complainants. Investigator Evans restated the facts of the case. Commissioner Oettinger moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that J.G.Q. Property Management, Inc. and Joe Quinn discriminated against Elizabeth Thompson by conditioning her use of an assistance animal in housing on unlawful terms/conditions. 5 in favor | 0 opposed. Commissioner Oettinger moved, seconded by Commissioner Helberg, to find **reasonable grounds** to believe that J.G.Q. Property Management, Inc. and Joe Quinn discriminated against Tennyson Martin by conditioning his use of an assistance animal in housing on unlawful terms/conditions. 4 in favor | 1 opposed (Clark opposed)

## EXECUTIVE SESSION

At 3:15 PM, Commissioner Norman moved, seconded by Commissioner Whitworth, to go 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 3:26 PM, Commissioner Norman moved, seconded by Commissioner Oettinger, to come out of executive session. 4 in favor | 0 opposed.

## LITIGATION

Commissioner Clark moved, seconded by Commissioner Norman, that the Commission should not proceed with litigation in the following reasonable-grounds cases:

- E15-0220, *Peavey v. Access Worldwide*;
- PA15-0195, *Francis v. Amistad*; and
- E15-0154, *Hyatt v. Getchell Agency, Inc.*:

5 in favor | 0 opposed.

At approximately 3:27 PM, Commissioner 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.

E15-0382	Pamela St. Clair (Durham) v Varney Agency (Bangor)	NRG
PA15-0438	Kenneth T. Stanhope (Steuben) v. Community Health Counseling (Bangor)	NRG
E15-0454	Bonnie Kalish (Millinocket) v. New England Whitewater Center, Inc. d/b/a New England Outdoor Center (Millinocket)	NRG

E15-0455	Debora Penney (Searsmont) v. Mathew Brother's (Belfast)	NRG
E15-0457	Gisela Nazaroff (Minot) v. Clover Health Care (Auburn)	NRG
E15-0462	Paul Marin (Caribou) v. Lee Credit Now and affiliates (integrated enterprise) (Auburn)	NRG
E15-0468	Angel Clifford (Wales) v. ACS-Xerox (Lewiston)	NRG
E15-0507	Elaine A. Sparks (Lewiston) v. Dunkin Donuts (Lewiston)	NRG
E15-0520	Barry J. Giles, Sr. (Southwest Harbor) v. Mardens (Ellsworth)	NRG
E15-0537	Kelly Merchant (Bradley) v. Victoria's Secret, LLC (Bangor)	NRG
E16-0002	Eric Daigle (New Canada) v. Twin Rivers Paper (Madawaska)	NRG
E16-0010	Nicholas G. Bourgoin (Greene) v. Wal-Mart Distribution Center (Lewiston)	NRG
E16-0055	Linda L. Hooper (Dayton) v. Dayton Consolidated School (Dayton)	NRG
E16-0107	Christopher Garrahan (Biddeford) v. Maine Veterinary Referral Center (Scarborough)	NRG
E16-0142	Mercy F. Edwin (Auburn) v. St. Mary's D'Youville Pavilion Dept. (Auburn)	NRG
E16-0189	George Bailey (Winterport) v. DAL Global Services, Inc. (Atlanta, GA)	NRG
E16-0225	Severe John Turenne (Brunswick) v. Professional Security Consultants (Los Angeles, CA)	NRG
E16-0235	Sherri Simmons (Hermon) v. Four Points by Sheraton (Bangor)	NRG
E16-0265	Wendy L. Knapp (Roxbury) v. Rumford Community Hospital (Rumford)	NRG
E16-0445	Maria Breckenridge (Newcastle) v. Lincoln Health Miles Campus (Damariscotta)	NRG
H17-0192	Omar Jassim (South Portland) v. Olde English Village, LLC (Seabrook, NH) and Heninger (South Portland, ME)	NRG