



Maine Human Rights Commission
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Amy M. Sneirson
Executive Director

John P. Gause
Commission Counsel

INVESTIGATOR'S REPORT
H11-0534

June 21, 2012

[redacted]

v.

[redacted]

I. Complainant's Complaint:

Complainant [redacted]”) alleged that Respondent [redacted] (hereinafter [redacted]) violated the Maine Human Rights Act by using an application for rental housing that asks for the number of children who will occupy the unit.

II. Respondent's Answer:

Respondent states that he asks how many children will occupy the unit as a way of determining the total number of individuals who will be living in the unit and to insure that there are a sufficient number of bedrooms and spaces for all occupants. Respondent denied that any unlawful discrimination occurred and denied that [redacted] has standing to bring this claim.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: July 23 and 25, 2011.
- 2) Date complaint filed with the Maine Human Rights Commission: September 1, 2011.
- 3) Respondent is subject to the Maine Human Rights Act as well as state housing regulations.
- 4) Respondent is represented by Norman G. Trask, Esq. Complainant is represented by Jill E. Hunter, Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of “reasonable grounds” or “no reasonable grounds”.

IV. Development of Facts:

- 1) Complainant [redac] is a legal services organization that provides statewide civil legal services. [reda] has a Fair Housing Initiative Program ("FHIP") Grant from the U.S. Department of Housing and Urban Development, part of which involves conducting a Fair Housing Testing Program ("the Grant"). Under the Testing Program, [redac] sends trained testers to inquire about housing units to see if housing discrimination is occurring.
- 2) [reda] employs one full-time attorney, one full-time-equivalent attorney and a .4 full time equivalent paralegal to work on the Grant. Staff time is used to handle complaint-based cases, provide advice to victims of discrimination, hold community trainings and operate the Testing Program. When tests provide evidence of discrimination, a staff attorney must take the time to gather and review the evidence, interview testers, research applicable laws, and draft a complaint. When this occurs, [reda]'s resources are diverted from other needs under the Grant, such as handling complaint-based cases and conducting additional tests.
- 3) [reda] testers obtained rental applications for [redacted] rental units on July 23 and 25, 2011 (Exhibit 1). [reda] alleges that the rental applications contain an unlawful question about familial status: "No. of occupants: Adults: ____ Children: ____"
- 4) Respondent [redacte] owns 6 mobile home lots and 36 duplex two-bedroom apartments.
- 5) [redacte] states that he asks how many children will occupy the unit as a way of determining the total number of individuals who will be living in the unit and to insure that there are a sufficient number of bedrooms and spaces for all occupants.
- 6) [redacte] states that he could effectively screen applicants without asking if and how many children will be occupying the unit by ascertaining the total number of individuals who will be residing in a unit, "although it is helpful to know how many children will be present as, for instance, two very small children require far less space than two teenagers."
- 7) [redacted] denied that any unlawful discrimination occurred and denied that [redac] has standing to bring this claim.

V. Analysis:

- 1) The Maine Human Rights Act 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.A. § 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) It is unlawful under the Maine Human Rights Act to make or cause to be made any written or oral inquiry concerning the race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin, or *familial status* of any prospective purchaser, occupant or tenant of the housing accommodation. 5 M.R.S.A. § 4582 (emphasis added).

- 3) Inquiries are not unlawful if they are consistent with business necessity and are not based on protected-class status. 5 M.R.S.A. § 4583.
- 4) Here, Complainant [redacted] alleges that Respondent [redacted] violated the Maine Human Rights Act by using an application for rental housing that asks for the number of children who will occupy the unit. Respondent states that he asks how many children will occupy the unit as a way of determining the total number of individuals who will be living in the unit and to insure that there are a sufficient number of bedrooms and spaces for all occupants. Respondent denied that any unlawful discrimination occurred and denied that [redacted] has standing to bring this claim.
- 5) With regard to the familial status discrimination claim, the following is noted. [redacted]'s rental application asks applicants to disclose how many children will be occupying the unit, which is a question that requires applicants to reveal their familial status. There is no business necessity for this question since [redacted] acknowledges that he could effectively screen applicants without asking if and how many children will be occupying the unit by ascertaining the total number of individuals who will be residing in a unit.
- 6) With regard to [redacted]'s standing to bring this claim, the following is noted. In order for an organization to have standing to bring a claim on its own behalf, it must allege "a personal stake in the outcome of the controversy." *Havens Realty Corp. v. Coleman*, 102 S.Ct. 1114, 1124 (1982). Such a showing can be made where an organization has had to divert resources to address the alleged discrimination. *See Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2nd Cir. 1993). *But see* Schwernm, *Housing Discrimination Law and Litigation* § 12A:5 (noting a split in the Circuits on whether a diversion of resources on a particular case alone is sufficient). In *Ragin*, the Second Circuit found the following facts sufficient:

Here, the injury sustained by the OHC as a result of the defendants' advertisements was documented by the trial testimony of Ms. Phyllis Spiro, the deputy director of the OHC. Ms. Spiro testified that the services offered by the OHC included providing information at community seminars about how to fight housing discrimination. Spiro testified that she and her small staff devoted substantial blocks of time to investigating and attempting to remedy the defendants' advertisements. For example, Spiro detailed the steps she took to file the administrative complaint with the SDHR, including identifying the buildings' developers, the marketing agent and the advertising agent, as well as attending a conciliation conference. Spiro also testified that the time she and her coworkers spent on matters related to this case prevented them from devoting their time and energies to other OHC matters. Finally, Spiro testified that she personally devoted 150 to 200 hours working on this case after the Ragins filed their complaint in federal court.

- 7) [redacted] here established that it has standing to bring this claim because when it tested this Respondent's rental practices, it discovered that Respondent uses a rental application that asks an illegal question. This caused [redacted] to divert its resources from other needs under the Grant, such as handling complaint-based cases and conducting additional tests.

VI. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Respondent [redacted] violated the Maine Human Rights Act by making unlawful inquiries on his rental application; and
2. Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).



Amy M. Sneirson, Executive Director



Barbara Lelli, Chief Investigator

Nc 7/27/11

RENTAL APPLICATION

Landlord:
SKYWAY TRAILER PARK
290 SKYWAY ST SUITE 10
Presque Isle, Maine 04769

This Application is made to rent:

For a term of: _____.

Desired date of occupancy: _____

Desired length of occupancy: _____

No. of Bedrooms: _____

Reason for moving: _____

The rent shall be \$ _____ payable in advance.

A deposit of one month's rent \$ _____ is due with the application approval and signing of the lease agreement.

The Applicant understands that if this Application is accepted and the Applicant fails to execute a Lease before the beginning date specified above, or to pay the required deposits and the first month's rent, the application deposit will be forfeited as liquidated damages.

It is also understood that if the Application is not accepted, or if the premises are not ready for occupancy by the Applicant on the beginning date specified above, the deposit shall be returned to the Applicant, upon the Applicant's request.

The Applicant understands that the Landlord may perform a credit check to verify the Applicant's credit references and credit history in connection with the processing of this Rental Application.

A credit report fee of \$0.00 is due with this application.

APPLICANT INFORMATION

Name: _____

No. of occupants: Adults: _____ Children: _____

Water bed: Yes _____ No _____

Smokers: Yes _____ No _____

Exhibit 1
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