



Maine Human Rights Commission  
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**INVESTIGATOR'S REPORT**  
**H12-0287**

**DATE ISSUED: OCTOBER 1, 2012**

██████████ (Gardiner)

v.

██████████ (Unknown)

**I. Complainant's Complaint:**

Complainant ██████████ (hereinafter "Complainant" or "██████████") alleged that Respondent ██████████ (hereinafter "Respondent" or "██████████") created a racially hostile housing environment.

**II. Respondent's Answer:**

Respondent denied the allegation.

**III. Jurisdictional Data:**

- 1) Dates of alleged discrimination: December 15, 2011 to July 30, 2012.
- 2) Date complaint filed with the Maine Human Rights Commission: June 15, 2012.<sup>1</sup>
- 3) Respondent is subject to the Maine Human Rights Act and the federal Fair Housing Act as well as state and federal housing regulations.
- 4) Respondent is unrepresented by counsel. Complainant is represented by Patricia M. Ender, Esq.
- 5) Investigative methods used: A review of the written materials, interviews with witnesses. 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) The parties and issues in this case are as follows:

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<sup>1</sup> The complaint is dual-filed with the United States Department of Housing and Urban Development, HUD No. 01-12-0329-8.

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- a) Complainant [REDACTED] is a white female. Her ex-husband ("Ex") and their four year old son ("Son") are multiracial (white, African-American and Hispanic). She does not live with Ex, but they remain close and share parental responsibilities for Son. [REDACTED] rented a two bedroom, second floor apartment on Mechanic Street in Gardiner beginning on June 30, 2011.
  - b) Respondent [REDACTED] is a white male. He, his wife ("Wife") and their children moved in to the apartment downstairs from [REDACTED] in August 2011.
  - c) "Brother" is [REDACTED] brother, "Step-Sister" is her step-sister, and "Mother" is her mother.
  - d) [REDACTED] alleged that [REDACTED] created a racially hostile housing environment. [REDACTED] denied the allegation.
- 2) In written submission and in an in-person interview, Complainant provided the following regarding the harassment:
- a) Initially, she got along with [REDACTED] and his wife. Their children played together, they did favors for each other, and Ex (a roofing contractor) hired [REDACTED] as a laborer. Their relationship soured after mid-November 2011, when Ex fired [REDACTED] from his job and [REDACTED] failed to repay ten dollars that he borrowed from [REDACTED] to buy cigarettes.
  - b) After that, [REDACTED] and his wife harassed her with complaints about noise and disturbances, and [REDACTED] harassed her, Son, and other family members with racial slurs including "N---r", "half-breed," and a racist joke ("What do you call a black baby? A niglet"). She always responded by objecting to the slurs or walking away. The racial slurs were used at least twice a week until mid-May 2012.
  - c) [REDACTED] also suspects that [REDACTED] broke into her apartment and stole some of her belongings in December 2011. She reported this to the police.
  - d) The racial harassment interfered with their housing. She avoided using the entrance that went past [REDACTED] unit, and instead used the front door to enter and exit her apartment. [REDACTED] was outside, she avoided going out and kept Son inside. The racial harassment was also emotionally hurtful to her and Son. (She felt ready to "explode" when [REDACTED] said things that degraded her son and hurt his feelings.) She continued to have family and friends visit on a regular basis. They just used the front door.
  - e) In mid-May 2012, Ex had a conversation with [REDACTED] about leaving [REDACTED] and their son alone. After that, the racial harassment subsided. There was one occasion within the last two months of her tenancy where [REDACTED] yelled to her and another tenant, "I can't wait for the n---rs upstairs to move out."
  - f) [REDACTED] had a one-year lease that ended on July 1, 2012. She moved out on July 30, 2012 because the landlord did not renew her lease. [REDACTED] believes that her lease was not renewed because of "all the drama" between her household and that of the [REDACTED] which included multiple complaints to the landlord and to the police regarding noise and disturbances between the households.

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3) In a written submission, Gardiner Police Officer-1 provided the following:

"I've investigated a number of incidents at 20 Mechanic St. involving [REDACTED] and [REDACTED]. The vast majority of these are noise complaints with [REDACTED] living above [REDACTED] in a close knit complex and [REDACTED] complaining about stomping and associated apartment noise.

"In conversations with [REDACTED] she has mentioned slurs being used against her brother and children. This was never truly verifiable as it was often a case of he said/she said with neither of the parties being trustworthy. ..."<sup>2</sup>

- 4) In an in-person interview, "Brother", a white male, stated that he was a frequent visitor to [REDACTED] apartment. In February or March 2012, Brother was coming downstairs, leaving her apartment, when [REDACTED] called him a stupid "n----r." Brother responded by calling [REDACTED] bad names, too.
- 5) In an in-person interview, "Step-sister", a white female, stated that in the summer of 2012, she and her children stayed the weekend with [REDACTED]. Her children, Son, and [REDACTED] son were all playing together. She, [REDACTED] and [REDACTED] were there to supervise. [REDACTED] was rude to the children and called Son the "N" word. They didn't confront [REDACTED] about the racial slur. They took the children upstairs after [REDACTED] started grabbing toys away from their children.
- 6) In an in-person interview, "Mother", a white female, stated that Son (her grandson) asked her what a "niglet" was. The only person he could have heard that from was [REDACTED]. Also, on one occasion while she was standing on the corner of the porch, she heard [REDACTED] refer to [REDACTED] as "the niglet's mother."
- 7) "Ex" provided the following:
- a) He was aware that [REDACTED] was using racial slurs around his son at least as early as February 2012. [REDACTED] told him that [REDACTED] was referring to their son using the "N" word and making racist jokes about "niglets." He himself heard [REDACTED] use racial slurs when he visited [REDACTED] apartment, when [REDACTED] was downstairs and he was upstairs. When he heard the racial slurs, he would say, "Excuse me?" and start down the stairs. [REDACTED] would go back inside when he saw Ex coming.
- b) In mid-May 2012, he was at the apartment building unloading groceries from the back of his truck for [REDACTED]. [REDACTED] approached him and started complaining about a broken propane line that was leaking gas into his ([REDACTED] apartment. [REDACTED] blamed other neighbors for the problem (not [REDACTED] or Son) and was apparently telling Ex about it because [REDACTED] was friendly with the other neighbors. Ex told [REDACTED] that he had nothing to do with the problem and didn't want to hear about it. [REDACTED] asked if it would solve the problems between his household and [REDACTED] if he repaid [REDACTED] the ten dollars he owed her. Ex accepted the ten dollars from [REDACTED]. He also told [REDACTED] to stop "running his mouth" and causing problems for [REDACTED] and to stop calling his son names. He told [REDACTED] "it needs to stop."

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<sup>2</sup> Records indicate that Officer-1 responded to complaints between [REDACTED] and [REDACTED] on January 18, 2012 and April 17, 2012.

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- 8) In a written submission, [REDACTED] provided the following:<sup>3</sup>
- a) His family was bothered by noise disturbances including all-night screaming matches, hysterical crying, and as many as eight children jumping and running around upstairs in [REDACTED] household from the time his family moved in to 20 Mechanic Street in August 2011.
  - b) In spite of that, the two families got along. Ex hired him for work on some roofing jobs. [REDACTED] offered to help [REDACTED] wife with the children while she recovered from minor surgery, although as it turned out, [REDACTED] often left her son alone downstairs to play with the [REDACTED] children under his wife's supervision.
  - c) Their friendly, neighborly relationship ended when [REDACTED] 4-year-old son beat their 3-year-old son on the head with a toy truck just before Thanksgiving, and the two mothers had a disagreement about parenting.
  - d) He doesn't remember owing [REDACTED] ten dollars and he wasn't terminated by Ex; he just stopped showing up for work after Ex made him wait to get paid on the day of his youngest daughter's birthday party.
  - e) When [REDACTED] returned their children's movies on DVD from her apartment, they found that over ten of those movies were damaged beyond the point of being able to be watched. That was a major loss for their kids. Also, [REDACTED] cats ruined a fingertip length ribbon trimmed veil with a retail value of over \$140 that [REDACTED] wife had custom made. His wife was still trying to maintain a kind of neighborly peace and didn't charge [REDACTED] for the damage.
  - f) After all that happened, the noise disturbances from [REDACTED] apartment and other conflicts with [REDACTED] and her family became overwhelming.<sup>4</sup> The sleep deprivation and drama caused him to go back on powerful anti-depressants and his wife to go back on her anti-anxiety medication at a quadrupled dose. The strain of being trapped under [REDACTED] apartment for the better part of a year pushed his marriage to breaking point.
  - g) Neither he nor his wife is racist. His wife watched [REDACTED] son, cooking and feeding and treating him with the same kindness with which she treats her own children. His wife also helped out Ex's other family members, like giving them rides to work, and offering to tutor one of his sons who was having a hard time in school.
  - h) Did he call or refer to [REDACTED] son as a half-breed? The answer is emphatically no, Son is a good old fashioned American Heinz 57 like the rest of us.

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<sup>3</sup> [REDACTED] received the Commission's notice of a Fact Finding Conference scheduled for September 5, 2012, but did not appear. He no longer resides at the Mechanic Street address, his telephone number is not in service, and neighbors say that he left Maine and moved out of state.

<sup>4</sup> [REDACTED] suspects that [REDACTED] or her family ripped out the gas line that feeds his stove; cut the communal clothes line that his wife likes to use; hit his children with lit cigarettes flicked from the second story porch; falsely accused him of breaking in to her apartment and stealing her belongings; and threw broken household objects out of the second floor windows, littering the whole area around her apartment with broken glass and trash. [REDACTED] denied the allegations.

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- i) Did he call or refer to [REDACTED] son as a n----r? The answer here is also No. This is not a word that lives in the lexicon of vocabulary that he would want his children using so he doesn't use it either.
- j) Did he call or refer to [REDACTED] family members as n----rs? No. "I won't say that there haven't been other words said in anger on both sides, but again this is not a word I use."
- k) Did anyone tell [REDACTED] these terms were offensive? "No one needed to tell me that the words are hateful and offensive! I don't use them."
- l) Regarding the mid-May 2012 conversation with Ex, [REDACTED] approached Ex to see what it was going to take to make peace with [REDACTED] as it seemed that no one would be moving anytime soon; for the sake of their children (and their desperate need for sleep), he was willing to be the bigger person. Ex took the stance that he owed [REDACTED] ten dollars. He thought that was a strange reason to cause months of discord over such a small amount of money. He gave Ex the ten dollars and told Ex that he expected that the noise and drama would end. Not even a week later Ex and [REDACTED] were back at arguing and causing disturbances (for example, Ex peeled out from in front of the building at 4:30 or so in the morning.)

### 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) The Maine Human Rights Commission's regulations provide that it is unlawful to "threaten, intimidate, or interfere" with persons in their enjoyment of a dwelling because of the race or color of such persons, or of visitors or associates of such persons. Me. Hum. Rights Comm'n Reg. § 8.09(B)(2).
- 3) Here Complainant alleged that Respondent created a racially hostile housing environment. Respondent denied the allegation.
- 4) A hostile housing environment claim is analyzed similarly to a hostile work environment claim. *See, e.g., Neudecker v. Boisclair Corp.*, 351 F.3d 361, 364-365 (8th Cir. 2003); *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993).
- 5) Such a claim is actionable when unwelcome behavior because of protected class status unreasonably interferes with Complainant's use and enjoyment of the premises. *See Honce*, 1 F.3d at 1090. Cf. Me. Hum. Rights Comm'n Reg. § 3.06(I) (1) (July 17, 1999) (employment). "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive [housing] environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57 (employment case). In determining whether an actionable hostile housing environment exists, it is necessary to view "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere



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offensive utterance. . . ." *Doyle*, 2003 ME 61, ¶ 23, 824 A.2d at 57. It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the housing environment to become hostile or abusive. *Id*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996) (employment). "The standard requires an objectively hostile or abusive environment--one that a reasonable person would find hostile or abusive--as well as the victim's subjective perception that the environment is abusive." *Nadeau*, 675 A.2d at 976.

- 6) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st Cir. 1988) (employment).
- 7) Here, ██████ established that she and Son were subjected to a racially hostile housing environment by ██████. This conclusion turns on witness credibility. ██████ and her family members provided detailed, in-person testimony regarding the harassment. ██████ denied the allegations but did not appear at the Fact Finding Conference even though he had notice of the meeting. In addition, a Gardiner police officer recalls conversations he had with ██████ while he was responding to noise complaints in which she mentioned racial slurs being used against her brother and children. The fact that ██████ reported the racial slurs to a police officer at the time the harassment was happening helps bolster her credibility.
- 8) The racial harassment was severe and pervasive, as ██████ used racial slurs and a racist joke to refer to Son and other family members. The harassment was severe in that it included the use of a highly degrading and offensive racial slur (the "N" word). The harassment was pervasive in that it occurred frequently from the end of 2011 to mid-May 2012, and sporadically thereafter until July 30, 2012. The fact a very young (four year old) biracial boy, Son, was the target of racial slurs and a racist joke by a white male adult, ██████ makes the harassment especially unconscionable.
- 9) ██████ and Ex both communicated to ██████ that the racial slurs were unwelcome. ██████ did so by removing herself and Son from the vicinity when ██████ used racist words. Ex did so by stating, "Excuse me," and attempting to approach ██████ who responded by retreating into his apartment. Ex also confronted ██████ directly in mid-May 2012 and told him that the name-calling had to stop. This was mostly effective but a few more incidents occurred between mid-May and the end of July 2012, when ██████ moved out.
- 10) Finally, there is evidence that the racial harassment interfered with ██████ and her son's use and enjoyment of the premises. ██████ and her family members avoided using the entrance that went past ██████ unit, and instead used the front door to enter and exit her apartment. ██████ was outside, ██████ avoided going out and kept Son inside. The racial harassment was also emotionally hurtful to her and Son. (She felt ready to "explode" when ██████ said things that hurt her son's feelings.)
- 11) Based on the evidence outlined above, Complainant has established the elements necessary to prove that she and son were subjected to a racially harassment that unreasonably interfered with their use and enjoyment of the premise and created a racially hostile housing environment.
- 12) It should be noted, however, that the investigation also revealed evidence that could establish that ██████ falsely accused ██████ of racial harassment:

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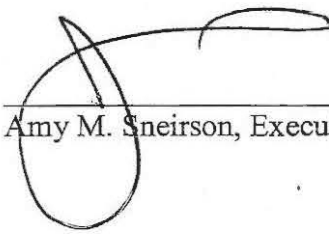
- a) [REDACTED] denied, in writing, that he used racial slurs. He wrote, "No one needed to tell me that [racial slurs] are hateful and offensive! I don't use them." He wrote that the "N" word "is not a word that lives in the lexicon of vocabulary that he would want his children using so he doesn't use it either." However, as noted above, [REDACTED] did not appear in person so his credibility could not be evaluated.
- b) It is also remarkable that [REDACTED] and the [REDACTED] had a friendly relationship at first. [REDACTED] four year old son played with [REDACTED] three year old son. Ex, a roofing contractor, hired [REDACTED] as a laborer. The two families visited often, shared DVDs, loaned money, and otherwise helped each other out. It seems unlikely that a racist would form friendships with people with he deems inferior. However, a white person who is not thoroughly racist may use racial slurs in anger against a person of color, without realizing and/or disregarding the psychic damage that can be cause by "mere words."
- c) A third consideration is that there were a number of other sources of friction between [REDACTED] and the [REDACTED] that were unrelated to race. There were mutual noise and disturbance complaints between the households. [REDACTED] and [REDACTED] wife had a disagreement about parenting. [REDACTED] may have owed money to [REDACTED] and forgotten to repay her. Ex either fired [REDACTED] from a job, or [REDACTED] quit without notice. [REDACTED] accused [REDACTED] of breaking into her apartment and stealing her belongings. These conflicts could provide a motive for [REDACTED] and her family to say things that are untrue about [REDACTED]
- d) A final consideration is that [REDACTED] and some family members made claims that lacked credibility in a related case against the owner and managers of the premises. See H12-0286, [REDACTED] v. Paige Realty Trust, LLC, Asset Management and Lee.

13) In spite of these caveats, the weight of the evidence here supports a "reasonable grounds" finding by the Maine Human Rights Commission.

**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] subjected Complainant [REDACTED] to a **racially hostile** housing environment; and
2. Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Barbara Lelli, Chief Investigator