

- 4) Complainant is represented by [REDACTED] [REDACTED] [REDACTED]. Respondents are not represented by counsel.
- 5) Investigative methods used: A thorough review of the materials submitted by the parties, requests for further information and documents. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of “reasonable grounds” or “no reasonable grounds” in this case.

IV. Development of Facts:

- 1) The relevant parties, facts, and documents in this case are as follows:
 - a) Complainant has mental disabilities for which her health care provider has recommended a service animal. Complainant has lived in Respondents’ mobile home park since 2010.
 - b) Respondents [REDACTED] and [REDACTED] [REDACTED] own and manage the property at which Complainant rents a lot for her mobile home and Complainant resides.
 - c) On August 14, 2014, Complainant sent an email to Respondents requesting the use of a service dog. Complainant attached a doctor’s prescription stating, “[REDACTED] would benefit from having a dog due to her depression and anxiety.”²
 - d) On August 15, 2014, Ms. [REDACTED] responded to Complainant’s email and denied her request for a service animal. The email states, “Please know that we understand and we do allow an inside cat and there are many in the local shelters that are great companions and would love to be adopted.”
 - e) On March 27, 2015, Complainant’s attorney sent Respondents a request for a service dog on behalf of Complainant. The request included a doctor’s note stating that Complainant had a disability and that a dog would be necessary to mitigate the symptoms of the disability. Complainant’s doctor stated, “[REDACTED] suffers from stress, anxiety and depression. A service dog would provide support and help all the above. It would provide focus for her mind from recent losses.”
 - f) On April 11, 2015 Ms. [REDACTED] sent Complainant’s attorney an application form for a service animal as well as a copy of the document “[REDACTED] [REDACTED] [REDACTED] Rules for Service Animals”. *See Exhibit A.*
 - g) On April 27, 2015 Ms. [REDACTED] sent Complainant’s attorney a letter stating that if Complainant wanted a service animal, she would have to comply with the park rules regarding service animals. Ms. [REDACTED] also requested Complainant show proof of homeowner’s insurance, and stated that this was a requirement for all tenants. Ms. [REDACTED] also requested that Complainant remove her pet cat if she was to have a service dog, since Respondents allow only one pet per property. *See Exhibit B.*
 - h) The “Park Rules and Regulations” state the following regarding lot maintenance: “Grounds must be kept clean and neat at all times. No discarded material, unnecessary items, building material, trash, junk or other items that create a cluttered appearance may be stored or abandoned outside the home.”

² Respondents alleged that Complainant did not attach a doctor’s note in her request, but Complainant provided a copy of the email showing the attachment.

- i) Complainant and Respondents each submitted a copy of the section of the Park Rules regarding homeowner's insurance. Complainant's copy of the Rules stated, "We strongly suggest that tenants have homeowner's or renter's fire and personal liability insurance." Respondent's copy of the Rules stated, "We require that tenants have homeowner's or renter's fire and personal liability insurance." The copies are undated and it is unclear when the policy change occurred.
- 2) Complainant provided the following:
- a) Respondents discriminated against Complainant on the basis of disability by denying her the use of a service animal on August 15, 2014. Complainant had provided proper documentation from her medical provider but her request was still denied by Respondents.
 - b) Respondents further discriminated against Complainant by subjecting her service animal to unreasonable requirements that are in violation of the MHRA. For example, the rules established by Respondents required an "updated mental health doctor's prescription every two years," and required the service animal to be indoors only. Other requirements were that Complainant had to certify that she was "capable financially and physically" to "properly care for a service animal" and that Complainant would have to get rid of her current pet cat to comply with Respondents' rule of only one pet per household, despite the fact that a service animal is not a pet. The rules also required a prescription specifically from a "mental health doctor." Complainant's attorney sent Respondents a letter on April 25, 2015 pointing out these unlawful requirements. Despite this, Respondents replied to the letter on April 27, 2015 by insisting that Complainant comply with their service animal policy.
 - c) The letter Respondents sent on April 27, 2015 also requested that Complainant provide proof of homeowner's insurance for her file, which Respondents claimed was required of all tenants. Complainant believes that this request was retaliation for asserting her rights under the MHRA by requesting the use of a service animal. Complainant believes that other tenants were not required to show proof of homeowner's insurance, and she believes Respondents were scrutinizing her tenant file and looking for problems to hold against her. The Park Rules only suggest that tenants have homeowner's insurance, but it was never a requirement. Furthermore, it is unlawful for Respondents to require additional liability insurance for a service animal. Complainant believes Respondents were requesting this.
 - d) On May 5, 2015, while Complainant was away, Respondents removed a sign from a tree that Complainant had placed outside of her home, which stated "free stuff." Respondents also removed the items she had placed under the tree and put them on Complainant's porch. Complainant believes this was an act of retaliation by Respondents for filing a Complaint with the MHRC. Respondents were made aware of Complainant's MHRC Complaint on May 1, 2015, only four days prior. Complainant had always placed items outside of her trailer and it had never been an issue in the past. Complainant believes that Respondents chose to enforce the rule regarding placing items outside because she filed a Complaint with the MHRC.
 - e) Complainant's neighbors had a large sofa on the side of the road in front of their mobile home. These neighbors have not been subjected to the same treatment. Complainant believes Respondents are selectively enforcing the rule about placing items outside against her as retaliation for filing her complaint with the MHRC.
- 3) Respondents provided the following:

- a) Respondents have, since the filing of this Complaint, revised their service animal policy and removed the following requirements: that a service animal has to remain indoors, that the tenant is required to submit an updated prescription every two years, and that a tenant would be limited to one pet only, even if it is a service animal. Complainant is aware of this change in policy and she has not been denied the use of a service animal.
- b) Respondents require that tenants have homeowner's or renter's fire and personal liability insurance. Complainant was not retaliated against and was treated the same as all other tenants with respect to showing proof of insurance. Due to previous management issues, Respondents no longer have some tenants' policies on file. Respondents did not believe the request would be a problem since Complainant already had insurance on her mobile home. Respondents provided examples of other tenants with insurance copies in their files.
- c) Respondents only suggested that Complainant contact her insurance carrier to notify them that she has a dog and that it is covered. Respondents never required Complainant to purchase extra insurance as a condition of getting her service dog.
- d) Respondents did not retaliate against Complainant by requesting that she comply with the Park Rules regarding lot maintenance. Every once in a while tenants are asked to remove objects that were left outside their mobile homes. Respondents do not keep a record of the residents that they have talked to regarding removing items because the residents usually are willing to correct the violation and it is not a problem. Respondents recall speaking to six tenants other than Complainant regarding the condition of their lots, including removing: toys and debris, a heavy bag hanging from a tree, mulch bags, miscellaneous items, and fire wood.
- e) Respondents are not aware of a couch being left outside and Complainant did not include any details regarding which lot or when this occurred. Respondents drive through the property at least once per day and never saw a couch outside. If there was one, Respondents believe it was moved, or disposed of promptly which would not have caused a problem.

V. Analysis:

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Disability – Denial of the Use of a Service Animal

- 2) The MHRA provides that it is unlawful:

For any owner, lessor, sublessor, 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 permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of a service animal may not be conditioned on the

payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal.

5 M.R.S. § 4582-A(3).

- 3) For housing, the MHRA defines “service animal” as any animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician’s assistant, nurse practitioner or licensed social worker or has been individually trained to assist the person with a disability. 5 M.R.S. § 4553(9-E).
- 4) Here, Complainant showed that Respondents discriminated against her on the basis of disability by denying her the use of her service animal, and by conditioning the use of her service animal on unreasonable requirements which interfered with the full and equal enjoyment of her housing accommodation. Reasoning is as follows:
 - a) It is undisputed that Respondents denied Complainant the use of a service animal on August 15, 2014. While Respondents alleged that Complainant did not attach a doctor’s note to her request, Complainant provided a copy of the original email which included the attachment. Even if Complainant had not attached the doctor’s note, it is undisputed that Respondents flatly denied her request and did not ask for further medical documentation to clarify her request.
 - b) It is clear from the record that Respondents were not initially willing to allow Complainant to have a service animal when she requested one again in March of 2015, but that after several correspondences, Respondents agreed, although with stipulations. As shown in Exhibit A, these stipulations included that Complainant provide an updated mental health doctor’s prescription every two years, that she keep the service animal indoors only, and that she get rid of her pet cat to comply with Respondents’ one pet only rule. These requirements are discriminatory.
 - c) As stated above, the definition of a service animal is not limited to an animal prescribed by a physician (or “mental health doctor”), and does not require an update every two years.
 - d) A service animal is not a pet, and therefore cannot be subjected to the same requirements as pets, such as staying indoors only.
 - e) If Respondents allow other tenants to have one pet, Complainant should be allowed the same. Since a service animal is not a pet, Complainant should be allowed to keep her pet in addition to her service animal.
 - f) By subjecting Complainant to the above requirements, Respondents discriminated against Complainant in the use of her service animal by subjecting her to less favorable terms and conditions of housing than other tenants.
 - g) Although Respondents have since corrected their service animal policy to remove some of the above requirements, this does not change the fact that Complainant was subjected to discrimination as outlined above.
 - h) The revised policy still requires a prescription from a “mental health doctor explaining the resident’s mental illness and exactly how the service animal is expected to mitigate this disability”. This requirement is not permissible under the MHRA.

- 5) Disability discrimination was found.

Retaliation

- 6) The MHRA provides that “[a] person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act.” 5 M.R.S. § 4633(1).
- 7) In order to establish a prima-facie case of retaliation, Complainant must show that she engaged in statutorily protected activity, she was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56 (employment case); *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006) (same). The term “materially adverse action” covers. *See Burlington Northern*, 126 S. Ct. 2405. One method of proving the causal link is if the adverse action happens in “close proximity” to the protected conduct. *See Id.*
- 8) The prima-facie case creates a rebuttable presumption that Respondents retaliated against Complainant for engaging in statutorily protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondents must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondents make that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 9) Here, Complainant was unable to establish a prima-facie case of retaliation because she could not show that she was subjected to a materially adverse action or that there was a causal connection between her protected activity and her alleged incidents of retaliation. Reasoning is as follows:
- a) As shown above, a materially adverse action is defined as “actions that are harmful to the point that they would dissuade a reasonable person from making or supporting a charge of discrimination.” Complainant alleged that Respondents removed a sign and some items from her yard and placed them on her porch. Complainant also alleged that Respondents requested that she provide proof of homeowner’s insurance. Neither of these acts of alleged retaliation can reasonably be considered to fit the definition of materially adverse action. Complainant was not issued a lease violation or any other adverse action.
 - b) It is undisputed that park regulations prohibit tenants from leaving junk or other objects on the property outside of their mobile homes. Complainant did not dispute this, but alleged that Respondents selectively enforced this rule against her as an act of retaliation. Respondents, however, provided examples of other tenants they have enforced this rule against (by asking them to move their items), and Complainant could not refute this evidence. Complainant alleged that a neighbor’s sofa was left on the side of the road, but provided no evidence to show that the sofa was left there for any extended period of time.
 - c) It is unclear when Respondents changed the Park Rules from “strongly suggesting” to “requiring” homeowner’s insurance. However, Respondent provided examples of other tenants with copies of homeowner’s insurance in their files, and Complainant provided no evidence to show that she was singled out when Respondents asked for a copy of her insurance for her file. Respondents also

alleged that Complainant already had insurance that they were aware of, and they did not think a request for a copy for her file would have been an issue. Complainant could not refute this.

- d) Complainant provided no further evidence to show that Respondents retaliated against her for requesting a service animal and for filing a Complaint with the MHRC.

10) Retaliation was not found.

VI. Recommendation:

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

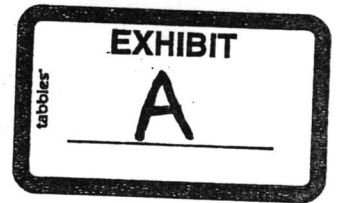
- 1) There are **Reasonable Grounds** to believe that Respondents discriminated against Complainant on the basis of disability, and conciliation of this portion of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).
- 2) There are **No Reasonable Grounds** to believe that Respondents retaliated against Complainant for asserting their rights under the MHRA, and this portion of the charge should be dismissed in accordance with 5 M.R.S. § 4612(2).



Amy M. Sneirson, Executive Director



Angela Tizón, Investigator



[REDACTED]
[REDACTED]
[REDACTED]@yahoo.com

FAX COVERSHEET

DATE: 4/10/15

TO: [REDACTED] FAX: 207-[REDACTED]

FROM: [REDACTED] Mgr. FAX: 207-[REDACTED]

RE: [REDACTED] York, [REDACTED]

PERSONAL & CONFIDENTIAL

If you received this fax in error, please contact sender above.

Hello Attorney [REDACTED]

Attached is the Service Animal Application and Rules for Service Animals which we will be putting the final touches on at the end of the month as we discussed. I will let you know when they have received approval and are in effect.

[REDACTED] Park is a privately-owned family park with private roads in the Town of York. Most residents own their home and rent the lot only and there are no common areas. We do our best to operate the Park and enforce the Rules for the betterment of all our residents and the enjoyment of their mobiles.

The Service Animal Supporting Documentation for [REDACTED] that you provided with your letter of 3/27/15 is illegible. Please resend a legible explanation of how the animal would be necessary to mitigate one or more of her identified symptoms, and the name, address, and credentials of the prescriber.

Should you have any questions, I can be reached at 207-[REDACTED], at the fax above, or via email [REDACTED].

[REDACTED]
[REDACTED] Manager

CAINCREST MOBILE HOME PARK

Located on U.S. Route 1, York, Maine

Mailing address: 2 [redacted] Court, York, ME 03909

Phone (207)363-3381 / Fax (207)363-3505 / email caincrestmhp@yahoo.com

SERVICE ANIMAL APPLICATION

Resident Name: _____

Lot/Address: _____

Contact tel. #: _____

Kind/breed of service animal requesting: _____

Will this service animal receive specific training/certification: _____

Do you currently own a pet? _____

If so, do you plan on replacing it with a service animal? _____

Do you understand the life-long commitment to a service animal? _____

Have you read and do you understand the Caincrest Mobile Home Park Rules and requirements for Service Animals? _____

If not, please feel free to contact the office at the above phone number with any questions.

By my signature below, I acknowledge that I will be the sole responsible party for the service animal, that I am capable financially and physically to properly care for this service animal, and agree to abide in accordance [redacted] [redacted] Rules 2001 and of the Caincrest Mobile Home Park Rules for Service Animals for as long as I am a resident of Caincrest Mobile Home Park.

Date

Signature of Resident

██████████ ██████████ ██████████ ██████████
Rules for Service Animals

██████████ ██████████ ██████████ Rules for Service Animals is in addition to and made part of Caincrest's Park Rules of 2001, and any resident requesting to own a service animal under the Maine Human Rights Act is required to understand these Rules and to provide the following to Caincrest's management:

- a Service Animal application which will be provided by management upon request and copy of the service animals rules,
- a legible prescription from the resident's mental health doctor explaining the resident's mental illness and exactly how the service animal is expected to mitigate this disability, and must include doctor's name, address, and credentials,
- resident must provide a updated mental health doctor's prescription every two(2) years,
- animal must be "**indoor only**" in accordance with Park Rules 2001, pet paragraph, and in accordance with The Maine Human Rights Act "The person with a service animal should be afforded the same housing experience on the same terms as other tenants without service animals." (small breeds are recommended)
- resident may own only one(1) pet total in accordance with Park Rules 2001, pet paragraph, this is not in addition to any pet they currently own, therefore, the resident will be required to rehome their current pet in order to own a service animal,
- residents are required to keep insurance current on their mobile in accordance with Park Rules 2001 and therefore needs to provide proof of updated homeowner's insurance policy to include the service animal if canine,
- must comply with all animal regulations of the Town of York,
- provide veterinarian documentation that all required shots, vaccinations, etc., are current,
- if the service animal should pass away or be removed from the Park for whatever reason, the resident must re-apply for Park approval before replacing the service animal,
- ██████████ ██████████ ██████████ is allowed 10 days to process the resident's service animal application after receiving all required documents, and

Rules for Service Animals (continued)

- resident acknowledges that the service animal may be removed from the premises and agrees to do so upon request if it is a threat to the health or safety of others, if it would result in physical damage to the property of others, or if the animal interferes with the reasonable enjoyment of Caincrest Mobile Home Park by others.

As attested by my signature below, I understand and agree to abide by the above guidelines,

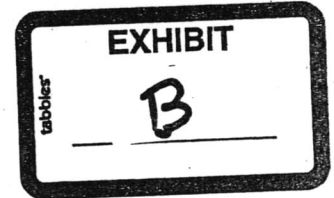
Date: _____

Resident: _____

Lot #/Address: _____

Date: _____

Caincrest Mobile Home Park



CAINCREST MOBILE HOME PARK

Located on U.S. Route 1, York, Maine

Mailing address: 2 [redacted] Court, York, ME 03909

Phone (207)363-3381 / Fax (207)363-3505 / email caincrestmhp@yahoo.com

FAX COVERSHEET

DATE: April 27, 2015

TO: Mark C. Joyce, Esq.

FAX: (207)621-1419

ATTN:

FROM: Victoria [redacted] Mgr.

FAX: (207)363-3505

RE: [redacted] Service

Animal Request

PAGES (inc. coversheet) 3

PERSONAL & CONFIDENTIAL

If you received this fax in error, please contact sender above.

See attached letter dated 4/26/15.

CAINCREST MOBILE HOME PARK

Located on U.S. Route 1, York, Maine

Mailing address: 2 [REDACTED] Court, York, ME 03909

Phone (207)363-3381 / Fax (207)363-3505 / email caincrestmhp@yahoo.com

April 26, 2015

Mark C. Joyce, Esq.
Disability Rights Maine
24 Stone Street, Suite 204
Augusta, ME 04330

RE: [REDACTED] Service Animal Request

Dear Mr. Joyce,

We are in receipt of your fax dated April 25, 2015. We respect your opinion that you feel [REDACTED] regulations pertaining to service dogs are in violation of Maine Human Rights Act or the Federal Fair Housing Act, however, I do not see any documentation or legal reference cited to support that opinion.

We will allow her to have a dog but it will remain conditional based upon [REDACTED] Rules and Regulations (Park Rules) and the Service Dog Regulations made a part thereof. I have read every pamphlet/brochure that you supplied as reference and I do not see where it states we cannot have certain service dog regulations for the park or that we are in violation of any law with the regulations that we've prepared.

We want to allow Ms. [REDACTED] every opportunity for her to enjoy her lot the same as every other resident here. As you know, there has never been any dogs allowed in [REDACTED] and many of our residents have voiced that they want this rule to continue. It is our responsibility to have in place rules and regulations fair and just to all residents of the Park to the best of our abilities.

Have you read [REDACTED] [REDACTED] Rules 2001? I will send them to you at your request. Ms. [REDACTED] agreed to these Park Rules when she became a resident of Caincrest Mobile Home Park. The Park and it's roads are private property, there are no common grounds.

As per the Park Rules, every homeowner is required to have homeowner's insurance on their mobile. Often times insurance companies require that if you own a dog, they be notified as some dogs for instance a pit bull, are insured differently due to the breed.

As a matter of fact, we do not have any insurance company binder on record for her mobile, please have her provide a copy of her current insurance binder at her earliest convenience so we may update our records. It should not be a problem for her to add it to her insurance policy depending on her choice of dog.

Residents are allowed *one* indoor only cat, and in Ms. [REDACTED]'s case, because of her doctor's recommendation, it may be a dog if she chooses. You did not address this issue in your fax, but I assume Ms. [REDACTED] knows she will be required to remove her current pet from the Park if this is the case.

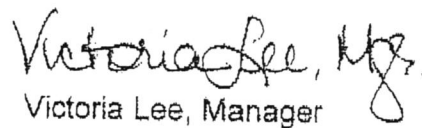
Given the possibility that her condition could improve, I would think it is very reasonable to expect Ms. [REDACTED] to provide an updated prescription from a doctor at a later date if necessary. For example, should the dog she chooses pass away or be removed from her residence, we would require to see a current prescription before allowing a replacement service dog.

Thank you for supplying a typed copy of the doctor's letter regarding Ms. [REDACTED]. We will put it in her file.

Please provide documentation to support your opinions and we will take it under further consideration. Like you, we do not take this matter lightly and would like to reach a timely resolve.

Until such time, if Ms. Lamb wants to get a service dog on or before your May 1, 2015 deadline, she may do so with the understanding and acceptance that she must comply with the Service Dog Regulations of Caincrest Mobile Home Park.

Sincerely,


Victoria Lee, Manager

cc: B. [REDACTED]
file