



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC Case No. H19-0202-A-E/HUD Case No. 01-19-2499-8

October 3, 2019

Angela Pitts (Lewiston)

v.

Ricky Drew (Raymond)
Adam Mack (Standish)
Jesse Warren (Charleston)
Nicole Policano (Auburn)
Blue Wagon, LLC (Raymond)

I. Summary of Case:

Complainant, a former tenant at a property owned by Respondent Blue Wagon, LLC ("Blue Wagon"), alleged that Respondents subjected her to a hostile housing environment based on sex after Respondent Warren sexually assaulted Complainant's minor daughter. Respondent Drew is the agent of Blue Wagon and took care of maintenance work and remodeling at Complainant's residence. Respondent Mack collected rent and acted as Complainant's landlord. Respondent Policano¹ was Complainant's downstairs neighbor. Respondent Warren² was Respondent Policano's boyfriend who, while not a tenant at the premises, lived primarily with Respondent Policano. Respondents denied Complainant's allegations. Respondents Drew, Mack, and Blue Wagon stated that Complainant was evicted because they wanted to renovate and rent her unit for more money and because she was a problematic tenant. The Investigator conducted a preliminary investigation, which included reviewing all of the documents submitted by the parties and holding an Issues and Resolutions Conference ("Conference"). Based upon all of this information, the Investigator recommends a finding that there are reasonable grounds to believe Respondent Warren unlawfully discriminated against Complainant, but no reasonable grounds to believe that Respondents Drew, Mack, Policano, or Blue Wagon, LLC unlawfully discriminated against Complainant.

II. Jurisdictional Data:

¹ Respondent Policano did not sign a non-disclosure agreement and her participation was therefore limited. Complainant appears to allege that Respondent Policano somehow conspired with Respondents Warren, Drew, and Mack to have her evicted so that Respondent Warren could move back in. Complainant has provided no evidence of this. Certainly Complainant's interactions with Respondent Policano deteriorated in the months following the assault. However, these interactions were few and far between, and do not rise to the level of a violation of §4633 of the MHRA. Except as the information Respondent Policano provided is adopted by the Investigator in the Developments of Fact, the claim against her will not be analyzed further.

² Respondent Warren is currently serving a prison sentence for the sexual assault of Complainant's daughter.

- 1) Dates of alleged discrimination: September 3, 2017 – June 30, 2018.
- 2) Date complaint filed with the Maine Human Rights Commission (“Commission”): Complainant originally filed her complaint with the Department of Housing and Urban Development (“HUD”) on February 1, 2019. Due to circumstances beyond Complainant’s control, the case was not referred to the Commission until May 24, 2019.
- 3) Respondents Drew, Mack, and Blue Wagon are housing providers subject to the MHRA and the federal Fair Housing Act (“FHA”), as well as state and federal housing regulations.
- 4) Respondents Warren and Policano are subject to 5 M.R.S. §4633, which prevents individuals from interfering with others’ MHRA-protected rights.
- 5) Complainant is represented by Patricia Ender, Esq. Respondents are not represented by counsel.

III. Development of Facts:

- 1) Complainant provided the following in support of her claims:

Complainant resided for many years in an apartment in Auburn (“the Premises”) pursuant to a Section 8 lease through the local housing authority. In 2013, Blue Wagon bought the Premises. From then on, Complainant paid her portion of the rent to Respondent Mack. On September 3, 2017, Complainant’s minor daughter (“Daughter”) was babysitting for Respondent Policano, who was Complainant’s downstairs neighbor. When Respondent Policano and her boyfriend, Respondent Warren, returned, Respondent Warren sexually assaulted Daughter. Respondent Warren was arrested; his conditions of pretrial release included that he have no contact with Complainant or her family and that he was barred from the Premises. Complainant’s relationship with Respondent Policano, which had been friendly, deteriorated over the next few months. On February 27, 2018, Complainant received a Notice to Quit from Respondent Drew. Respondent Policano and Respondents Mack and Drew conspired to evict Complainant so that Respondent Warren could move back in to the downstairs apartment. Shortly after Complainant moved out, in June 2018, Respondent Warren moved back in. Respondent Warren later pled guilty to one count of unlawful sexual contact and one count of sexual abuse of a minor regarding Complainant’s daughter and is currently serving a prison sentence.

- 2) Respondents Drew and Blue Wagon provided the following in support of their position:

Respondent Drew is the registered agent for Blue Wagon, LLC, in addition to his responsibilities as the maintenance person for the Premises. Respondent Drew, and through him Blue Wagon, was not aware that the assault had occurred. Respondent Warren was not a tenant. Many complaints were made about Complainant, and Blue Wagon wanted to renovate the apartment and rent it for more money than Complainant, through the Section 8 program, could pay.

- 3) Respondent Mack provided the following in support of his position:

Respondent Mack’s grandmother owned Blue Wagon until her death; now the LLC is owned by her estate. Respondent Mack occasionally acted in an informal manner as property manager for the Premises but has never held a paid position for Blue Wagon. Respondent Mack did collect Complainant’s rent in person occasionally if he happened to be there. Respondent Mack was not aware that the assault had occurred.

4) Respondent Warren provided the following in support of his position:

Respondent Warren was not a tenant at the Premises. He lived there with his girlfriend, Respondent Policano, until the night of the assault when he was arrested and then barred from the Premises as a condition of his release. After Complainant moved out in June 2018, Respondent Warren moved to have that condition lifted, which motion was granted by the court. Respondent Warren spent a total of perhaps five nights at the Premises after the condition was lifted before he was incarcerated.

5) Respondent Policano provided the following in support of her position:

Respondent Warren was not a tenant at the Premises. After the assault, Respondent Policano made Respondent Mack aware that Respondent Warren was not allowed on the premises anymore.

- 6) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the Conference:
- a) Complainant resided at the Premises from 2011 until June 2018.
 - b) In 2013, the building was purchased by Blue Wagon, LLC, which is controlled by Respondent Mack's family.
 - c) Although Respondent Mack was not paid by Blue Wagon, he acted as its agent in several capacities, including collecting rent and ensuring repairs were made.
 - d) Respondent Drew was originally the maintenance person for the Premises. He later became the registered agent for Blue Wagon.
 - e) Complainant resided in her apartment pursuant to a month-to-month Section 8 lease. The original lease was a year-long lease signed by Complainant when she moved in in 2011. None of the parties has a copy of the original lease at this time.
 - f) For the time period relevant to the instant complaint, Complainant resided in her apartment with her Daughter and Complainant's minor son.
 - g) In the early morning of September 3, 2017, Respondent Warren sexually assaulted Daughter. Daughter was 14 years old at the time. Respondent Warren was immediately arrested and one of the conditions of his release, pending trial, was that he stay away from the Premises.
 - h) A few days later, Respondent Policano made Respondent Mack aware that Respondent Warren was not allowed on the premises.
 - i) In September or October 2017, Complainant sent Respondent Mack a text message letting him know that her rent would be late because she had taken time off from work to deal with a family matter. She did not identify to him that the matter was Respondent Warren's sexual assault on Daughter.
 - j) Complainant's relationship with Respondent Policano deteriorated after Respondent Warren was arrested and barred from the premises.

- k) On or about February 27, 2018 Complainant was served a notice to quit by Respondent Blue Wagon, signed by Respondent Drew.
- l) Complainant moved out pursuant to an agreement in June 2018.

IV. Analysis:

- 1) The MHRA 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 Maine Revised Statutes (“M.R.S.”) § 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.

Respondent Warren

- 1) The MHRA provides that any person has the right to rent an apartment without discrimination on the basis of sex. 5 M.R.S. § 4581-A.
- 2) The MHRA further provides that it is “unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act.” *Id.* at § 4633(2). Unlawful conduct under this section includes “[t]hreatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the . . . sex . . . of such persons”. 94-348 C.M.R. Ch. 8, § 8.09.
- 3) 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). 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. “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 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.
- 4) Complainant has standing as an “aggrieved person” based on her association with Daughter, who was sexually assaulted by Respondent Warren; she also has standing based on her allegation that she was injured by the alleged unlawful housing discrimination. *See* 5 M.R.S. § 4553(1-D). This assault was severe and created a hostile housing environment for Complainant due to her relationship with Daughter.
- 5) Respondent Warren pled guilty to unlawful sexual contact with Daughter and is currently incarcerated pursuant to this plea. Respondent Warren’s actions violated the MHRA by interfering with Complainant’s right to rent an apartment free from sexual harassment.

- 6) With respect to Respondent Warren, interference with Complainant's right to be free from discrimination in housing on the basis of sex (association with Daughter) is found.

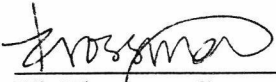
Creation of a hostile housing environment: Respondents Drew, Mack, and Blue Wagon

- 7) The MHRA makes it unlawful for any owner, lessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to discriminate against any individual on the basis of sex in the "price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S. § 4582.
- 8) The Commission's regulations provide that it is unlawful to "threaten, intimidate, or interfere" with persons in their enjoyment of a dwelling because of the sex of such persons, or of visitors or associates of such persons. Me. Hum. Rights Comm'n Reg. § 8.09(B)(2).
- 9) A hostile housing environment claim is analyzed similarly to a hostile work environment claim, as laid out above. *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).
- 10) To impose liability on Respondents for acts committed by others, Complainant must show that Respondents knew or should have known about the conduct. *See Neudecker*, 351 F.3d at 365; *Smith v. Mission Assocs.*, 225 F. Supp. 2d 1293, 1300 (D. Kan. 2002); *Williams v. Poretsky Mgmt.*, 955 F. Supp. 490, 496 (D. Md. 1996). Respondents can avoid liability by showing that they took immediate and appropriate corrective action. *See Williams*, 955 F. Supp. at 496.
- 11) Complainant cannot establish that Respondents Drew, Mack, or Blue Wagon knew that Respondent Warren had assaulted Complainant's daughter. Clearly, they were told by Respondent Policano that Respondent Warren was not allowed on the premises. However, there is no evidence that Complainant or Respondents Policano or Warren made Respondents Drew, Mack, or Blue Wagon aware of why he was barred.
- 12) Even if Complainant could establish that Respondents Drew, Mack, or Blue Wagon were aware of the assault, there was no action for them to take. Respondent Warren was arrested the night of the assault, and then barred from the premises while Complainant and her family were living there.
- 13) In the final analysis, Complainant has not met her burden of showing Respondents Drew, Mack, or Blue Wagon liable for the hostile housing environment created by Respondent Warren, with reasoning as follows:
- a. Respondent Warren's conduct clearly created a hostile housing environment for Complainant, based on her association with her daughter.
 - b. Complainant has provided no evidence that Respondents had knowledge of the assault beyond the fact that Respondent Policano informed them that Respondent Warren was not allowed on the premises.
 - c. Even if Respondents were aware of the assault, Respondent Warren had already been arrested. One of the conditions of his release was no contact with Complainant or her family.
 - d. There is no evidence that any of the Respondents conspired to evict Complainant so Respondent Warren could return to the premises.
- 14) Discrimination on the basis of sex is not found.

V. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that Jesse Warren discriminated against Angela Pitts on the basis of sex, and conciliation of this claim should be attempted in accordance with 5 M.R.S. § 4612(3); and
- 2) There are **No Reasonable Grounds** to believe that Ricky Drew discriminated against Angela Pitts on the basis of sex and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2); and
- 3) There are **No Reasonable Grounds** to believe that Adam Mack discriminated against Angela Pitts on the basis of sex and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2); and
- 4) There are **No Reasonable Grounds** to believe that Nicole Policano discriminated against Angela Pitts on the basis of sex and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2); and
- 5) There are **No Reasonable Grounds** to believe that Blue Wagon, LLC discriminated against Angela Pitts on the basis of sex and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2).



Kit Thomson Crossman, Investigator