



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

19 Union Street ~ Augusta, Maine

May 21, 2012

Commissioner Vestal called the May 21st Commission meeting to order at 8:33 a.m. Present were Commissioners: Paul Vestal, Sallie Chandler, Deborah Whitworth and Arnold Clark.

Commissioner Vestal called for adoption of the agenda.

- Executive Director Amy Sneirson requested that the following cases be tabled to the June 25, 2012 Commission meeting:
 - E10-0337: William Bernard (Westbrook) v. Rite Aid of Maine, Inc. (Portland)
 - PA10-0457: Carol Holmes (Derry, NH.) v. Open Hearth LLC (Trenton)
 - E10-0475: Owen M. McCarthy, Estate of (Bradenton, FL) v. Pine Tree Insurance (York Harbor)
 - E10-0588: Robin Estes (Wells) v. Marden's, Inc. (Waterville)
 - E10-0638: Glenn Mercier (Sidney) v. Elder Housing Development & Operations Corporation (Fort Lauderdale, FL)
 - PA11-0505: Allison Brown o/b/o Minor Child (Scarborough) v. North Atlantic Montessori School (South Portland)
 - E11-0511: Laray Davis (Milford) v. Old Town Canoe d/b/a Johnson Outdoors Watercraft (Old Town)
 - E11-0557: Danny Emerson (Milford) v. Old Town Canoe d/b/a Johnson Outdoors Watercraft (Old Town)
- Executive Director Amy Sneirson requested that case ED/PA11-0483, Parent o/b/o Minor (Portland) v. Maine School Administrative District 15 (Gray), be removed from the agenda and the Investigator's Report withdrawn for further investigation.
- Executive Director Amy Sneirson requested that case E10-0292, Gail Berenson (Portland) v. Consur Foods, LLC d/b/a Gauchos Brazilian Steakhouse (Portland), be removed from the Consent Agenda and reviewed with pre-determination settlements.

Commissioner Chandler moved, seconded by Commissioner Clark, to adopt the agenda as amended. 4 in favor | 0 opposed.

CONSENT AGENDA (see detailed listing on page 5)

Commissioner Chandler moved, seconded by Commissioner Whitworth, to accept the Investigator's recommendations in each of the cases on the amended Consent Agenda. 4 in favor | 0 opposed.

MINUTES:

Commissioner Chandler moved, seconded by Commissioner Clark, to adopt the April 9, 2012 Commission Meeting Minutes. 4 in favor | 0 opposed.

ADMINISTRATION:

Personnel Report: Executive Director Amy Sneirson reviewed the report dated May 15, 2012 noting no significant personnel changes.

COMPLIANCE:

Compliance Report: Commissioners reviewed the compliance report and it was placed on file.

INVESTIGATION:

New Charges: Commission staff opened 37 new cases in April.

Administrative Dismissals: Commission staff dismissed 9 cases in April.

Pre-determination Settlements: During the month April, staff were responsible for obtaining settlements in 26 cases resulting in total monetary relief in excess of \$ 202,000 for complainants.

LITIGATION: Commission Counsel John Gause reviewed several proposals for amendments to the Procedural Rules of the Maine Human Rights Commission accessibility regulations and requirements. The proposal includes: amendments to Chapters 2 & 4-A change the term "Compliance Officer" to "Compliance Manager," which is necessitated by a staffing change; adoption of a third-party neutral mediation program; and addition of "public charter schools" to the definition of "public school" in Chapter 4-A. The proposed amendments to Chapter 7 incorporate into regulation (a) new accessibility standards set forth in the Maine Human Rights Act, 5 M.R.S. §4594-G (compliance with which became mandatory on March 15, 2012), (b) the new MHRA definition of "service animal" in public accommodations (which took effect September 28, 2011), and (c) revised federal Department of Justice regulations interpreting Title III of the Americans with Disabilities Act covering nondiscrimination by "public accommodations" (with building standards that became mandatory on March 15, 2012). Chapter 6 is being repealed because it contains outdated (pre-1996) accessible building standards. Commissioner Clark moved, seconded by Commissioner Whitworth to place the proposed changes out for public comment. 4 in favor | 0 opposed.

NEW BUSINESS: None.

At 8:40 AM Commissioner Vestal called for a 10 minute recess.

CASES VOTED ON:

H11-0634: Diana Dumuna, Edmon Manguda & Dennis Manguda (Portland) v. NAA Properties LLC & Sheldon Ashby (Portland). Attorney Patricia Ender restated the position of the Complainant. Respondent was not present. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondents NAA Properties, LLC and Sheldon Ashby unlawfully denied Complainants Diana Dumuna, Edmon Manguda or Dennis Manguda a reasonable accommodation. 4 in favor | 0 opposed.

E11-0211: Therese Nyamahoro (Westbrook) v. Employment on Demand Agency, Inc. (Massachusetts): Respondent was not present. Complainant was in attendance but was not asked to present before the Commission. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Vestal, to find **reasonable grounds** to believe that Respondent Employment on Demand Agency, Inc. is liable for race/color discrimination as a result of the termination of Complainant Therese Nyamahoro's employment. 4 in favor | 0 opposed.

E10-0256: Kathleen Gallant (Bridgton) v. Mentor ABI, LLC d/b/a Neurorestorative Maine (Sebago). Complainant was not present. Respondent was in attendance but did not present before the Commission. Commissioner Clark moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Mentor ABI, LLC d/b/a Neurorestorative Maine retaliated against Kathleen Gallant in violation of the Whistleblowers' Protection Act by subjecting her to less favorable terms and conditions of employment and no reasonable grounds to believe that Mentor ABI, LLC d/b/a Neurorestorative Maine retaliated against Kathleen Gallant in violation of the Whistleblowers' Protection Act by terminating her employment. 4 in favor | 0 opposed.

E10-0487: Ingrid Carlson (Portland) v. Central Maine Medical Center (Lewiston). Attorney Maria Fox restated the position of the Complainant. Attorney Michael Poulin restated the position of the Respondent. Investigator Michele Dion restated the facts of the case. Commissioner Clark moved to find no reasonable grounds to believe that Respondent CMMC discriminated against Complainant Ingrid Carlson, MD in employment because of physical disability by denying her the opportunity to resume her full-time role as an OB/GYN physician based upon unfounded concerns that Crohn's Disease flare-ups might occur in the future. Motion was not seconded, motion did not pass. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find **reasonable grounds** to believe that the Respondent CMMC discriminated against Complainant Ingrid Carlson, MD in employment because of physical disability by denying her the opportunity to resume her full-time role as an OB/GYN physician based upon unfounded concerns that Crohn's Disease flare-ups might occur in the future. 3 in favor | 1 opposed (Clark opposed).

PA10-0498: Mohsen Shayanifar (Portland) v. Northeast Career Schools of Maine (Scarborough). Attorney Maria Fox restated the position of the Complainant. Attorney Frederick Finberg restated the position of the Respondent. Investigator Michele Dion restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Chandler, to find no reasonable grounds to believe that Respondent Northeast discriminated against Complainant Mr. Shayanifar because of race, color, religion, national origin or ancestry in access to public accommodations or education. 4 in favor | 0 opposed.

E11-0120: Todd Hathaway (Rockland) v. Linda Bean's Perfect Maine Companies d/b/a Port Clyde General Store Complex, LLC (Port Clyde). Complainant was not present. Respondent was in attendance but did not present before the Commission. Commissioner Chandler moved, seconded by Commissioner Clark, to find no reasonable grounds to believe that Complainant Todd A. Hathaway was subjected to retaliation (terminated) by Respondent Linda Bean's Perfect Maine, LLC d/b/a Port Clyde General Store as a result of Complainant's whistleblowing. 4 in favor | 0 opposed.

H11-0721: James Clark (Biddeford) v. Nova Properties, LLC (Scarborough). Attorney Lorne Fairbanks restated the position of the Complainant. Diane and Dale Armishaw restated the position of the Respondent. Chief Investigator Barbara Lelli restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that the Respondent Nova Properties, LLC unlawfully denied Complainant James Clark a reasonable accommodation. 4 in favor | 0 opposed.

E11-0403: Lisa Pierce (Hinckley) v. Families Matter, Inc. (Hallowell): Ronald Bourget restated the position of the Respondent. Attorney Lisa Butler restated the position of the Complainant. Investigator Michele Dion restated the facts of the case. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find **reasonable grounds** to believe that Respondent Families Matter, Inc. discriminated against Complainant Lisa Pierce in employment because of race, color, national origin and ancestry. 4 in favor | 0 opposed. Commissioner Chandler moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Respondent Families Matter, Inc. retaliated against Complainant Lisa Pierce for her engaging in protected whistleblowing activity. 4 in favor | 0 opposed.

EXECUTIVE SESSION:

Commissioner Chandler moved, seconded by Commissioner Clark, to move into executive session at 11:14 p.m. to discuss litigation with Commission Counsel pursuant to 1 M.R.S.A. §405(6)(E). 4 in favor | 0 opposed.

Commissioner Whitworth moved, seconded by Commissioner Clark to come out of executive session at 11:21 a.m. 4 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Clark, to approve settlement as proposed in case H09-0030-B Amy Martin v. Boyd Street Housing Associates . 4 in favor | 0 opposed.

ADJOURN:

There being no further business to come before the Commission, the meeting was adjourned at 11:30 a.m.

The consent agenda is a listing of cases scheduled on the Commission’s meeting agenda in which there is no written disagreement to the Investigator’s recommendation. Commissioners consider these cases without oral argument by the parties.

CONSENT AGENDA

E10-0407:	Julie Hilton (Porter) v. Stone Ridge Restaurant (Cornish)	NRG
E10-0496:	Michael Owens (Turner) v. Dorothy Egg Farms LLC (Winthrop)	NRG
E10-0502:	Keith Harriman (Vienna) v. VIP, Inc. (Lewiston)	NRG
E10-0525:	Phyllis Moss (South Portland) v. H.M. Payson & Co. (Portland)	NRG
E11-0261:	Donald Gilbert (Bangor) v. John F. Murphy Homes (Auburn)	NRG
H11-0672:	Marcey Johnson (Westbrook) v. Peter Risbara (Windham)	NRG
H12-0100:	Marcey Johnson (Westbrook) v. David Theriault (South Portland)	NRG