



## Maine Human Rights Commission

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EXECUTIVE DIRECTOR

**Barbara Archer Hirsch**  
COMMISSION COUNSEL

### COMMISSION MEETING MINUTES

*19 Union Street ~ Augusta, Maine*

November 23, 2015

Commissioner Sallie Chandler served as Chair, called the November 23, 2015 Commission meeting to order at 8:30 a.m. Present were Commissioners Sallie Chandler, John Norman, A. Mavourneen Thompson and Deborah Whitworth.

#### AGENDA

Commissioner Chandler called for adoption of the Agenda and Consent Agenda.

Commissioner Whitworth moved, seconded by Commissioner Norman, to adopt the Agenda and to accept the Investigator's recommendations in each of the cases on the Consent Agenda. 4 in favor | 0 opposed (see detailed listing on page 5).

#### MINUTES

Commissioner Norman moved, seconded by Commissioner Whitworth, to adopt the October 26, 2015 Commission Meeting Minutes. 4 in favor | 0 opposed.

#### ADMINISTRATION

Executive Director Amy Sneirson reported that Field Investigator Michele Dion has resigned her position. The Commission posted an advertisement/job posting for the Field Investigator Position on Monday 11/16/2015.

#### COMPLIANCE:

Commissioners reviewed the compliance report showing no successful conciliations, two unsuccessful conciliations, and six conciliations in progress. It was placed on file.

Commissioner Whitworth moved, seconded by Commissioner Thompson, to approve a Conciliation Agreement in E13-0620, Lennan vs Spa Tech Institute. 4 in favor | 0 opposed.

#### INVESTIGATION:

- New Charges: In October, 35 new complaints were filed with the Commission.
- Administrative Dismissals: The Executive Director administratively dismissed 20 cases in October.
- Pre-determination Settlements: Since October 9, 2015, 2 cases pending at the Commission were resolved resulting in \$3,500 benefit to complainants.

#### NEW BUSINESS:

Barbara Archer Hirsch reviewed the status of proposed rulemaking for the Commission's Procedural, Education Procedural and Education rules. The Governor requires that all proposed rulemaking be approved by him before going out for public comment. This does not generally impact the Commission, as an independent agency, but does impact the Commission with respect to the Education and Education Procedural rules, as they are rules made jointly with the Maine

comment once the Commission received approval from the Maine Dept. of Education and received the Governor's permission to publish the Education and Education Procedural rules. As of last week, the Governor's Office declined to put the proposed changes in the Education and Education Procedural rules out for comment on the basis that there had not been any changes in the Maine Human Rights Act statute recently, just a court case. Accordingly, efforts to change the Commission's Education and Education Procedural rules are dead. The Commission will put its Procedural rule out for public comment, as it is not a joint rule with any other department. The Commission will shortly be issuing guidance on the topics that would have been addressed in revisions to the Education Procedural and Education rules.

The Governor's Review Panel (formed as result from the Governor's Executive Order regarding perceived bias against employers from the Commission) began its review by focusing on the Commission investigation processes. A member of the Review Panel interviewed the Commission's investigators and would be contacting other staffers to understand the procedural path complaints take and various staffers' responsibilities. The Executive Director and Commission Counsel will be meeting with the Review Panel in December, and Panel members are going to meet with and surveys to members of the employment bar in Maine about the Commission. The Panel apparently is aiming to complete its work in/about April 2016. One Commissioner asked whether Commissioners would be interviewed/would have input into the Review Panel's work.

Executive Director Amy Sneirson requested the Commission rescind its prior finding in E14-0456, Cotter v. Nordx, as the Complainant notified the Commission of her changed address but did not receive notification of her case being placed on the October agenda and was not able to present her case to the Commissioners. Commissioner Whitworth moved, seconded by Commissioner Thompson, to rescind the finding in case E14-0456 and place the case on a Commission Agenda. 4 in favor | 0 opposed.

#### **CASES VOTED ON 8:45 A.M.**

E14-0106: Rebecca Graffam (Rockport) v. Pen Bay Ice Company, Inc. (Rockport)

Rebecca Graffam restated her position as the Complainant. Respondent was not present. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Norman, to find no reasonable grounds to believe that Complainant Rebecca Graffam was subjected to unlawful retaliation by Respondent Pen Bay Ice Company, Inc. 4 in favor | 0 opposed.

E14-0152: LaRay Davis (Sandwich, MA) v. Lighthouse Painting (South Portland). Respondent Abdul Azimi restated his position as the Respondent. Attorney Sally Morris restated the position of the Complainant. Chief Investigator Victoria Ternig restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Norman, to find no reasonable grounds to believe that Respondent Lighthouse Painting terminated Complainant LaRay Davis's employment because he engaged in protected activity in violation of the MHRA. 1 in favor | 3 opposed; motion failed. Commissioner Norman moved, seconded by Commissioner Whitworth, to find **reasonable grounds** to believe that Respondent Lighthouse Painting terminated Complainant LaRay Davis's employment because he engaged in protected activity in violation of the MHRA. 3 in favor | 1 opposed (Whitworth opposed).

E14-0018: Margaret Gary (Lincoln) v. Securitas USA (Bangor)

Complainant was not present. Commissioner Whitworth moved, seconded by Commissioner Thompson, to find no reasonable grounds to believe that Respondent Securitas USA discriminated against Complainant Margaret Gary on the basis of sex and age by failing to hire her. 4 in favor | 0 opposed.

E14-0069: Carol Bouchard (Corinth) v. Walmart (Bangor)

Carol Bouchard restated her position as the Complainant. Attorney Shiloh Theberge restated the position of the Respondent. Investigator Angela Tizon restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Norman, to believe that there are no reasonable grounds to believe that the Respondent retaliated against

Complainant in violation of the WPA by terminating her employment after she reported an unsafe workplace condition. 4 in favor | 0 opposed.

PA14-0385: Devon Holmes (Westbrook) v. PT's Show Club (Portland)

PA14-0386: Mina Shir (Westbrook) v. PT's Show Club (Portland)

Attorney Janet Britton restated the position of the Respondent. Complainants were not present. Investigator Angela Tizon restated the facts of the case. Commissioner Thompson moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that PT's Show Club discriminated against Devon Holmes and Mina Shir on the basis of race, color, national origin, and ancestry by denying them the full and equal enjoyment of a place of public accommodation. 2 in favor | 2 opposed (Commissioners Norman and Chandler opposed); the motion failed. As there was not a finding of "reasonable grounds", the finding was no reasonable grounds to believe discrimination occurred.

E14-0414: Randi Norwood (Corinth) v. Walmart (Bangor). Attorney Shiloh Theberge restated the position of the Respondent. Attorney Kristin Aiello restated the position of the Complainant. Chief Investigator Victoria Ternig restated the facts of the case. Commissioner Norman moved, seconded by Commissioner Thompson, to find that there are no reasonable grounds to believe that Walmart denied Randi L. Norwood a reasonable accommodation for her disability in violation of the MHRA. 4 in favor | 0 Opposed. Commissioner Norman moved, seconded by Commissioner Chandler, to find reasonable grounds to believe that Walmart discriminated against Randi L. Norwood due to her disability when it terminated her employment. 2 in favor | 2 opposed (Whitworth and Thompson opposed); the motion failed. Since there was not a majority vote in favor of finding reasonable grounds to believe discrimination occurred, the finding was no reasonable grounds. Commissioner Norman moved, seconded by Commissioner Chandler, to find reasonable grounds to believe that Walmart retaliated against Randi L. Norwood for engaging in protected activity in violation of the MHRA; 2 in favor | 2 opposed (Whitworth and Thompson opposed); the motion failed. Since there was not a majority vote in favor of finding reasonable grounds to believe discrimination occurred, the finding was no reasonable grounds.

E14-0439: Anthony Kalicky (Westbrook) v. Cintas (Piscataway, NJ) Anthony Kalicky restated his position as the Complainant. Respondent was not present. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Thompson, to find no reasonable grounds to believe that Cintas subjected Complainant Anthony Kalicky to unlawful retaliation in employment based on upon protected whistleblower activity. 4 in favor | 0 opposed.

PA14-0477: Christian Thompson (Naples) v. Town of Naples (Naples). Christian Thompson restated his position as the Complainant. Commissioner Norman moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that the Town of Naples discriminated against Complainant Christian N. Thompson on the basis of disability by denying him access to the full and equal enjoyment of a place of public accommodation. 4 in favor | 0 opposed.

## **NEW BUSINESS, continued**

Executive Director Amy Sneirson reviewed with the Commissioners two requests that the Commission issue right-to-sue letters in cases where the staff already completed investigations and issued reports. Sneirson recommended the Commissioners grant each of the complainants a right-to-sue letter in the following two cases that were tabled from the agenda.

- E13-0681 Rodney Kates (Lewiston) v. Bath Iron Works Corporation (Bath)
- E13-0686 Richard Roberts (Lisbon Falls) v. Bath Iron Works Corporation(Bath)

Commissioner Whitworth moved, seconded by Commissioner Thompson, to grant a right to sue request in each of these two cases. 3 in favor | 1 opposed (Norman opposed).

## **EXECUTIVE SESSION:**

At 11:30 AM Commissioner Chandler moved, seconded by Commissioner Norman, to move into executive session to discuss pending or contemplated litigation, a personnel issue, and the Commission's legal rights and duties, with Commission Counsel pursuant 1 M.R.S. §405(6)(E). 4 in favor | 0 opposed.

At approximately 11:38 AM Commissioner Chandler moved, seconded by Commissioner Whitworth, to come out of executive session. 4 in favor | 0 opposed.

Commissioner Chandler moved, seconded by Commissioner Norman, that the Commission should not litigate the following cases:

- E14-0252, Swett v. VFW Post 9935:
- E13-0608, Brown v. HE Murdock d/b/a Day's Jewelers

and the Commission should litigate the following cases:

- H14-0022, Gottshall/Freshette v. 110 High Street Associates, LLC et al.
- E14-0177 and -0178, Childs v. The Millard Group/Garza.

At approximately 11:40 AM, Commissioner Thompson moved, seconded by Commissioner Whitworth, to adjourn. 4 in favor | 0 opposed.

**CONSENT AGENDA PAGE 5**

## CONSENT AGENDA

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

ED14-0058:	Persephone Bennett (Rollinsford, NH) v. Berwick Academy (Berwick)	NRG
E14-0060:	Tina White (Jefferson) v. ATV Maine (Jefferson)	NRG
E14-0166:	Kari Koehler (Portland) v. Church of the Holy Spirit (Portland)	NRG
PA14-0187:	Joshua Valley v. Family Violence Project (Augusta)	NRG
E14-0263:	Sandra Smith (Portland) v. Delta Global Services (Atlanta,GA)	NRG
E14-0496;	Lisa Field (Hampden) v. Rite Aid (Newburgh)	NRG
H15-0283:	Barbara and Michael Davis (Bangor) v. Double Eagle Properties, LLC (Auburn)	RG/NRG
H15-0320:	Nordia Gagar (Portland) v. Gary Sidelinger, Maureen Sidelinger, and Huntington Apt.Part.(Portland)	NRG
H15-0321:	Lynda Proctor (Lewiston) v. Bert Dutil, Marguerite Rollins, and Pauline Muldoon (Lewiston)	NRG