



Maine Human Rights Commission

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Corrected
INVESTIGATOR'S REPORT
H14-0572, H14-0573, H14-0574, and H14-0575
HUD No. 01-15-0103-8

DATE: March 3 2015

██████████ (Lewiston)

v.

██████████, LP d/b/a ██████████ (Lewiston),
██████████ (Lewiston),
██████████ (Lewiston), and
██████████ (Lewiston)

I. Complainant's Complaint:

Complainant ██████████ alleged that Respondents ██████████, LP d/b/a ██████████
██████████ ("██████████, ██████████ and ██████████" collectively "Respondents")
denied her a reasonable accommodation for her disability, treated her differently than other residents, and
threatened her with eviction due to her disability.

II. Respondents' Answer:

Respondents denied discrimination, stating that Ms. ██████████ had not asked for a reasonable accommodation, and
that she received Notices to Cure due to her violation of lease provisions and house rules, not due to her
disability.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: August 1, 2011 and ongoing.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): October 24, 2014.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Complainant is not represented by counsel. Respondents are represented by ██████████, Esq.

- 5) Investigative methods used: A thorough review of the written materials provided by the parties, telephone interviews, and a request for additional information from Respondent. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" here.

IV. Development of Facts:

- 1) The parties in this case are as follows:

- a) Ms. [REDACTED] has lived at 195 Sabattus Street, Apt. 3, Lewiston, Maine ("the Premises"), for approximately 17 years. She has physical and mental disabilities.
- b) The Premises is owned by [REDACTED] LP and managed by [REDACTED] Inc. The units located at 195 Sabattus Street were specifically developed for people who have been diagnosed with long term mental illnesses.
- c) Mr. [REDACTED] was the CEO for [REDACTED]. Ms. [REDACTED] is the Property Manager, and Mr. [REDACTED] is the Director.

- 2) Complainant provided the following in support of her position:

- a) Ms. [REDACTED] has had some significant illnesses. The only one that [REDACTED] knew of was related to her problems she was having with her gall bladder.¹ [REDACTED] also knew that Ms. [REDACTED] had a long term mental illness, since she qualified to reside at the Premises.
- b) Three years ago, Ms. [REDACTED] began to have problems with other tenants making false accusations against her. Ms. [REDACTED] and Mr. [REDACTED] believed the other tenants when they made these accusations, and did not investigate the accusations adequately.
- c) Whenever Ms. [REDACTED] complained about other tenants, even when her safety was involved, Respondents did not do anything about it.
- d) On June 27, 2014, Ms. [REDACTED] received a Notice to Cure from Ms. [REDACTED] for an alleged parking violation. Respondents sent Ms. [REDACTED] the Notice to Cure because her friend parked behind another vehicle in order to get Ms. [REDACTED] into her apartment quickly due to a medical issue she was having at the time. Before issuing the Notice to Cure, Ms. [REDACTED] did not contact Ms. [REDACTED] to get her side of the story.
- e) Ms. [REDACTED] felt that Ms. [REDACTED] falsely accused her of misconduct, threatened her with eviction, and essentially asked Ms. [REDACTED] to give her 30-day notice to vacate the Premises. When Ms. [REDACTED] tried to get Mr. [REDACTED] involved, he laughed at her and dismissed her concerns that she was being treated unfairly.

¹ Ms. [REDACTED] provided that she has longstanding back problems which Mr. [REDACTED] was aware of through telephone discussions they had including around 2000, where Mr. [REDACTED] denied Complainant's request for a ramp as she recovered from fractured cervical discs. Her recovery took two years.

- f) On or around July 3, 2014, Ms. [REDACTED] sent Mr. [REDACTED] a letter asking that he investigate Ms. [REDACTED] and Mr. [REDACTED] for discriminating against her.
- g) During Ms. [REDACTED]'s tenancy, [REDACTED] accommodated her due to some physical limitations she has experienced.²
- i. Mr. [REDACTED] has some knowledge of her physical problems, since he approved several accommodations for her. Ms. [REDACTED] was never asked to submit any medical information to prove her long standing physical limitations. Ms. [REDACTED] spoke with Mr. [REDACTED] on the phone. He handled things informally, but met her needs.
- h) In a phone conversation on September 11, 2014, Ms. [REDACTED] asked Ms. [REDACTED] to use a location near the Premises³ briefly when she was transferring items from a car to her apartment, due to her disabilities.
- i. During the conversation, Ms. [REDACTED] also brought up the fact that other tenants were breaking the parking rules, but Ms. [REDACTED] got upset and hung up without addressing Ms. [REDACTED]'s request.⁴
- i) On the same day, Ms. [REDACTED] received another Notice to Cure from Mr. [REDACTED]. The Notice to Cure accused Ms. [REDACTED] of taking pictures of tenants through their windows and/or doors.
- j) On September 15, 2014, Ms. [REDACTED] received a letter from Mr. [REDACTED] that indicated that her concerns had been investigated, but he found no basis for her complaints.
- i. Ms. [REDACTED] did not believe an impartial investigation was done since Mr. [REDACTED] did not consider much of her evidence, speak with witnesses, or confer with her case manager ("Case Manager") as she had requested.
- A. Mr. [REDACTED] never asked for Ms. [REDACTED]'s permission to speak with her case workers or treating doctors related to her mental health diagnoses.
- k) On September 16, 2014, Ms. [REDACTED] sent Mr. [REDACTED] a letter disputing the accusation in the Notice to Cure she had received on September 11, 2014. In the letter she also asked for proof of the accusations, since she had not been contacted to provide her side of the story.
- i. Ms. [REDACTED] also indicated that she had requested on multiple occasions that Case Manager be contacted to gain input, resolve, or settle the matters, but Case Manager was never involved in the process.

² These accommodations included installing slide out shelves under a counter because of back, knee, and hand problems Ms. [REDACTED] experienced, having a key to the front door made for Ms. [REDACTED] so that she could more easily open the front door due to hand problems, and installing a larger toilet due to gastric problems Ms. [REDACTED] experienced.

³ This location had once been used by tenants as a temporary drop-off location, but Respondents prohibited all tenants from using the location after an increase of tenant conflicts over use of the area.

⁴ In a letter dated February 9, 2015, Ms. [REDACTED] responded to Ms. [REDACTED]'s request in the September 11, 2014 phone call. See Exhibit 1.

- l) Ms. [REDACTED] held the belief that over time, Ms. [REDACTED] and Mr. [REDACTED] had encouraged other tenants to make complaints against her.
 - i. On September 20, 2014, the police spoke with Ms. [REDACTED] about supposedly taking pictures of tenants. A tenant called the police even though nothing had happened since September 11, 2014.
 - m) Ms. [REDACTED] retained a lawyer who, among other things, put Mr. [REDACTED] and Mr. [REDACTED] on notice that she had requested that Case Manager be involved in the issues going on as a reasonable accommodation, but her request was and has been ignored.
 - n) On October 2, 2014, Ms. [REDACTED]'s attorney sent Respondents a letter stating in part that, "Despite requests that [REDACTED] call her caseworker, [Case Manager], no such initiate has been taken. Ms. [REDACTED] has a legitimate mental health diagnosis. [REDACTED] and its staff are failing to take into account her mental health status. By treating Ms. [REDACTED] as a fully healthy individual, the organization is verging on discriminatory practices".
 - o) On February 9, 2015, Ms. [REDACTED] received another Notice to Cure related to allegations of taking pictures of residents, their guests, and their vehicles. The Notice to Cure also related to Ms. [REDACTED]'s alleged continued use of the no parking zone.
- 3) Respondents provided the following in response to Complainant's allegations:
- a) [REDACTED] manages over 150 units of affordable housing, and has a positive history of working with a diverse population of tenants. It expects the tenants to follow the rental housing rules and policies, and works with each tenant to ensure that the tenant follows the rules of their housing.
 - i. All residents who live at 195 Sabattus Street have a mental health diagnosis, but all residents are expected to abide by the lease and house rules and to respect their neighbors
 - b) Respondent is aware that Ms. [REDACTED] has a mental health disability, but it does not know the details of her disability.
 - i. Ms. [REDACTED] stated that she was not aware that Ms. [REDACTED] had any disability, other than her knowledge that Ms. [REDACTED] is eligible for housing at 195 Sabattus Street.
 - ii. Mr. [REDACTED] has no recollection of Ms. [REDACTED] discussing any injuries with him. He does recall her telling him that she had lupus, but this was not a disability she mentioned in the course of the investigation.
 - c) Respondents have no evidence in Ms. [REDACTED]'s file, any other tenants' files, or household notes that show that they did not investigate Ms. [REDACTED]'s complaints. Respondents found that Ms. [REDACTED] made numerous complaints about other residents and Respondents addressed all of those complaints in a timely manner in accordance with its complaint procedure.

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- i. Ms. [REDACTED] has made numerous other complaints to Respondents. These complaints were not for lease violations, and Respondent deemed them not worth further action.⁵
- d) Over the 17 years Ms. [REDACTED] has lived in the Premises, Mr. [REDACTED] felt that he had a good landlord/tenant relationship with her. They would often talk at length about her concerns. Mr. [REDACTED] thought he was always more than accommodating to Ms. [REDACTED] by taking the time to walk with her. He does not recall ever laughing at her or dismissing her concerns about Ms. [REDACTED].
 - i. When he is at the office, Mr. [REDACTED] sits outside of Ms. [REDACTED]'s workspace. He has overheard many of Ms. [REDACTED]'s conversations with Ms. [REDACTED]. Ms. [REDACTED] is always professional and courteous when addressing issues Ms. [REDACTED] has brought to her attention.
- e) On June 27, 2014, Ms. [REDACTED] was issued a Notice to Cure because Respondents received a complaint from another resident's ("Resident") case worker. The complaint was that Ms. [REDACTED]'s friend had blocked Resident's case worker's car, which prevented the case worker from leaving. Resident also reported that Ms. [REDACTED]'s friend also parked in the tenant-only parking lot most of the time. This incident occurred after an ongoing disagreement between Ms. [REDACTED] and Resident.⁶
 - i. The location where Ms. [REDACTED]'s friend parked was much further away from the Premises door than parking curbside on the street or in what used to be the temporary drop off space in front by the mailboxes. Additionally, Ms. [REDACTED]'s friend could have parked in Ms. [REDACTED]'s spot or behind her vehicle. There was no need for Ms. [REDACTED]'s friend to block someone else's vehicle.⁷
- f) With regard to Ms. [REDACTED]'s telephone conversation with Ms. [REDACTED], Mr. [REDACTED] heard Ms. [REDACTED]'s side of the conversation. He did not overhear any discussion about Ms. [REDACTED] requesting to use a parking area briefly when transferring items from a car to the Premises. Ms. [REDACTED] confirmed that Ms. [REDACTED] did not make this request.
 - i. During the phone conversation, Mr. [REDACTED] heard Ms. [REDACTED] responding to several of Ms. [REDACTED]'s demands and complaints. Ms. [REDACTED]'s voice was not raised or aggravated. Mr. Valle could hear Ms. [REDACTED] "asking Ms. [REDACTED] to please calm down and to stop yelling, and stating that she was going to hang up if [Ms. [REDACTED]] did not. After hearing this from [Ms. [REDACTED]] several times [Mr. [REDACTED]] could hear [Ms. [REDACTED]] state to [Ms. [REDACTED]] "I need to hang up now, good bye."
 - ii. After the phone call, Mr. [REDACTED] received an email from Ms. [REDACTED] stating that moments before Ms. [REDACTED] called, Ms. [REDACTED] had been told that a friend had passed away, and she was very affected by the news. Ms. [REDACTED] further stated that she felt it was best to end the phone call with Ms. [REDACTED] professionally, since Ms. [REDACTED] was making demands for action even after Ms.

⁵ One complaint included Ms. [REDACTED] stating that another resident's door was being closed too loudly when that resident came and went. Respondents installed an automatic door closer for this door at Ms. [REDACTED]'s request.

⁶ Respondents have multiple notes of Ms. [REDACTED] calling to complain of others parking their vehicles in the tenant-only parking lot, and of taking other tenants' spots (not Ms. [REDACTED]'s spot).

⁷ Ms. [REDACTED]'s parking space is the closest parking space to the Premises door.

█████ explained that she had already taken the requested action, and Ms. █████ was becoming increasingly angry with Ms. █████.

- g) Ms. █████ did not recall Ms. █████ asking to use the former temporary drop-off location due to her disability.
- h) In the past, Respondents had allowed tenants to use a space in front by the mailboxes as a temporary drop off spot. Due to constant bickering between tenants over use of this space, Respondents prohibited use of this space as a temporary drop off spot.
 - i. Curbside street parking is directly in front of the apartment building and is approximately 10 feet away from the prior temporary drop off spot. The curb side parking is also approximately 15-20 feet away from the steps to the front porch.
- i) Mr. █████ received a letter from Ms. █████ in July 2014 asking him to look into how she was being treated by █████'s staff. He spoke with Ms. █████ by phone to gather more information about her concerns and agreed to look into them. Mr. █████ offered to speak with Case Manager. He received a voice message from her on August 28, 2014, where she stated she wanted to schedule an appointment with him. That meeting did not occur, and he did not hear from her again.⁸
 - i. Ms. █████ did not provide a list of witnesses, and no witnesses came forward to speak on her behalf.
 - ii. Mr. █████ spoke with Mr. █████ and Ms. █████ to gain more information about Ms. █████'s complaint. Mr. █████ also independently reviewed the information in Ms. █████'s tenant records.
- j) Upon completing his review, he did not find information to support Ms. █████'s claim that she was being discriminated against or being treated unfairly. He sent her a letter in September 2014 to inform her of the results of his review of her concerns.
- k) On September 15, 2014, Mr. Valley sent Ms. █████ a letter after receiving multiple complaints from Resident and her case worker that Ms. █████ was repeatedly taking pictures of Resident and her friend through Resident's window and door. Resident stated that she had gone to court and filed a harassment complaint against Ms. █████ because of this, and received a no-harassment order against Ms. █████.
- l) Mr. █████ tried to contact Case Manager on June 4, 2014. He left a message for Case Manager, but did not receive a call back. Mr. █████ also tried to contact Case Manager on October 2, 2014, and October 15, 2014. He received calls back after these messages which resulted in voicemail messages back and forth between the two, but they were not able to connect.
 - i. Mr. █████ stated that he tried to contact Case Manager on more occasions than he kept written record of doing so.

⁸ Respondent noted that Ms. █████ needed to authorize her case worker to speak with Mr. █████ due to client confidentiality; Mr. █████ did not receive that authorization from Ms. █████.

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- m) Respondents do not have a written policy regarding how tenants can go about requesting an accommodation⁹, but if a tenant wants a reasonable accommodation, the tenant will let ██████████/██████████ know. ██████████ will then take the name of the tenant's physician and send the physician a form to fill out. If the form comes back stating that the accommodation will benefit the resident, then ██████████ complies with the request.
- n) Respondents have not received any requests for reasonable accommodations from Ms. ██████████
- i. Ms. ██████████'s request to have Case Manager involved in dealing with her concerns with Respondents was not made in the context of an accommodation request. It is fairly normal and routine for residents to request that their case workers be involved. Respondents frequently engage with case workers for various residents.
 - ii. Mr. ██████████ recalled Ms. ██████████ requesting the slide out shelf, but it was not a request for a reasonable accommodation; it was presented as a maintenance request as it would help her to get things out of her cabinets. Mr. ██████████ did not recall Ms. ██████████ requesting a ramp, but she may have. If she did, the request was not in writing and was not made as a request for a reasonable accommodation. The other requests she mentioned were maintenance requests.
- o) Ms. ██████████ received two Notices to Cure in 2014. These are issued to residents to give them an opportunity to correct/cure reported violations of their lease and/or house rules so that they may continue to reside at the property. Ms. ██████████ was never served with Termination of Lease (eviction) paperwork.
- i. In a telephone interview, Ms. ██████████ stated that Notices to Cure are given to tenants when someone reports that another tenant has done something (i.e. being noisy). ██████████/██████████ sends a Notice to Cure to give the tenant against whom the complaint is lodged an opportunity to discontinue the behavior or to deny it. Tenants are not typically notified of the complaint prior to the Notice to Cure unless it is an emergency, but tenants often contact ██████████ in response to receiving a Notice to Cure to discuss the situation.
 - ii. Property Manager further provided that other tenants have received Notices to Cure based on complaints made by Ms. ██████████
- p) In the past five years, Respondents have asked two residents to vacate. Both resided in the apartment beside Ms. ██████████ Respondents received numerous complaints from Ms. ██████████ against these residents. The complaints were investigated by Respondent, and the residents were asked to leave.
- i. The first tenant ("Former Tenant") was asked to leave due to many disturbances and inappropriate interactions and behaviors towards other tenants. This tenant signed a Mutual Termination agreement to move with no eviction. He was not restricted from coming to the property.
 - ii. The second was asked to leave due to many complaints of disturbances and violations of house rules mainly due to the behavior of her guests who were taking advantage of the tenant's

⁹ In a telephone interview with Property Manager, she stated that ██████████ does not inform tenants of their reasonable accommodation procedure, but the tenant can start the process by making a request.

inability to make good decisions for herself. Respondent signed a Mutual Termination with this tenant as well, with no eviction.

- 4) In a March 13, 2013, letter to Ms. [REDACTED] regarding her concerns about a new neighbor, Respondents stated that, "[w]e take every complaint seriously that we receive from any of our residents about reported activities and behavior that are deemed inappropriate. We address them with the tenant who the complaint is levied against and we work with them to allow them to cure any behavior that is deemed inappropriate that they may not otherwise have been aware was inappropriate".
- 5) On June 14, 2014, Resident received a letter regarding a lease violation that stated that in part that guests must park on the street and they are not to park in the parking area, or they will be towed. Respondent provided information to show that other tenants received Notices to Cure in response to complaints made by Ms. [REDACTED]
- 6) In a letter dated July 25, 2014, from Mr. [REDACTED], he acknowledged that he would be willing to meet with Ms. [REDACTED] and her therapist to gain more insight into her concerns and to discuss a resolution.
- 7) In the September 11, 2014, phone call with Ms. [REDACTED], which was recorded by Ms. [REDACTED], Ms. [REDACTED] stated that she has a serious problem with not being able to park in front of Resident's unit to unload groceries or if she is injured. She further stated that she considered it to be violating her rights as a disabled person due to medical and physical problems she is having. She asked Ms. [REDACTED] to look into the situation and also stated she wanted it changed because it was difficult for her to lift things.
- 8) In a telephone interview, Case Manager provided the following:¹⁰
 - a) Ms. [REDACTED] wanted Case Manager to speak with [REDACTED] about concerns she had related to issues she was having with Ms. [REDACTED]. Case Manager tried to communicate with [REDACTED] staff, but her phone calls were not returned.
 - b) Ms. [REDACTED] has been dealing with a lot of medical issues along with her mental health issues. Ms. [REDACTED] received a warning related to [the parking incident with her friend referenced in the complaint]. Instead of talking to Ms. [REDACTED], [REDACTED] sent her threatening letters.
 - c) Case Manager initially left messages for Mr. [REDACTED] asking for a group meeting to figure out the best route to try to solve the issues Ms. [REDACTED] was having. Case Manager wanted to set up the meeting so that it would not continue to increase Ms. [REDACTED]'s anxiety. Ms. [REDACTED] and Case Manager wanted Case Manager to be involved so that Ms. [REDACTED] would be able to talk with [REDACTED] through Case Manager to try to resolve the issues that were occurring.
 - d) At a later point, Case Manager spoke with [REDACTED] staff members, but they would not connect her to Mr. [REDACTED].
 - e) Case Manager got one return call from Mr. [REDACTED], and left him a subsequent voicemail, but she never heard back from him. Case Manager left multiple voicemails for Mr. [REDACTED], but never heard back from

¹⁰ Case Manager returned this investigator's telephone message within a couple hours.

him. She also spoke with another staff member about Ms. [REDACTED]'s actions towards Ms. [REDACTED] and how she was not treating Ms. [REDACTED] properly and not taking Ms. [REDACTED]'s mental health into consideration due to her disability. Case Manager was assured that was not the case and that the staff member would take a note and pass it to Mr. [REDACTED]. Case Manager never received a return call from this conversation.

V. 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 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.
- 2) The MHRA provides, in part, that any person has the right to rent an apartment without discrimination on the basis of disability. 5 M.R.S. § 4581-A(1)(B); 94-348 C.M.R. Ch. 8, § 8.04(a)(1).
- 3) The MHRA also provides, in part, 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", 5 M.R.S. § 4633(2), or to "evict... any tenant of any housing accommodations because of race or physical or mental disability." 5 M.R.S. § 4581-A(1)(E).
- 4) The Commission's housing regulation, which interprets § 4633(2), provides that:
 - A. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any person in the exercise or enjoyment of, any right granted or protected by this part.
 - B. Conduct made unlawful under this section includes, but is not limited to...
 - (2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the disability... of such persons...

94-348 C.M.R. Ch. 8, § 8.09.
- 5) Here Complainant alleged, and Respondents denied, that Complainant was denied the reasonable accommodations of having Case Manager involved in the discussion of the issues she brought up with Respondents as well as denied the use of a temporary parking area due to her disabilities. Additionally, Complainant alleged that she was threatened with eviction when Respondents presented her with Notices to Cure, yet Respondents did not enforce the rules in issuing their Notices to Cure equally among Residents. Respondents denied this allegation.

Disability Discrimination Claim – Threatened Eviction/Terms and Conditions

- 6) Because Complainant's discrimination claim does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination with regard to her potential eviction by proving: (1) she is a member of a class protected under the MHRA; (2) Respondents were aware of Complainant's membership in that class at the time of the threatened eviction; (3) Complainant was willing and qualified

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to continue renting the apartment; and (4) Respondent refused to permit Complainant to continue to rent the apartment. *See Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997).

- 7) With regard to her claim of discrimination in the price, terms, conditions, or privileges of the sale, rental, or lease of a housing accommodation, Complainant establishes a prima-facie case by showing (1) that Complainant is a member of a protected class, (2) that Complainant was not offered the same terms, conditions or privileges of rental of a dwelling or not provided the same services or facilities in connection therewith made available to others, and (3) under circumstances giving rise to a reasonable inference of prohibited discrimination. *See Khalil v. Farash Corp.*, 260 F. Supp. 2d 582, 588 (W.D.N.Y. 2003).
- 8) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondent to articulate a legitimate, nondiscriminatory reason its action. *See United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. After Respondents have articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondents' proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.
- 9) In order to prevail, Complainant must show that she would not have suffered the adverse action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 10) Complainant has established her prima-facie case in her threatened eviction claim (as stated on the Notices to Cure that she received) by demonstrating she is a member of a protected class, and Respondents were aware of this; Complainant could have continued to rent their apartment; and Respondents took steps to prevent Complainant from doing so by issuing her several Notices to Cure threatening her with eviction.
- 11) Complainant has not met the prima-facie case in her terms/conditions claim because the record does not shown that she was treated differently than other residents. While Complainant argued that she has been treated differently than other residents regarding enforcement of the parking rules, the record does not support that there was differing treatment, or that any stray occasions where Complainant was treated differently differing occurred due to Complainant's disability. Additionally, Complainant argued that she received Notices to Cure before Respondents spoke with her about issues. The record shows that Respondent did not speak with any residents before sending residents Notices to Cure. Complainant received Notices to Cure when complaints were made about her, as did other residents. Other residents received Notices to Cure based on complaints made by Complainant.
- 12) Respondents provided non-discriminatory reasons for sending Complainant Notices to Cure which include language that further complaints or continued violation of the rules will result in the issuance of a termination of the lease. Respondents received complaints regarding Complainant's behavior which warranted issuing her Notices to Cure, and she was treated in the same manner as all other residents.

13) At the final analysis, the record does not support a finding that Respondents sent Complainant Notices to Cure or treated her different due to her disability.¹¹

- a) Respondents issued Complainant the Notices to Cure after it received complaints from other tenants and their guests regarding Complainant's behavior. Respondents were acting on what they believed to be legitimate complaints based on their experiences with Complainant as a resident. The Premises is housing specifically for those with mental health diagnoses. Respondents appear to be motivated by Complainant's actions and not her disability.

14) Discrimination on the basis of disability in Complainant's threatened eviction or the terms and conditions of her housing is not found.

Disability Discrimination – Reasonable Accommodation

15) The MHRA makes it unlawful:

For any owner...managing agent or other person having the right... rent, lease or manage a housing accommodation or any of their agents to refuse to make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give a person with physical or mental disability equal opportunity to use and enjoy the housing.

5 M.R.S. § 4582-A(2).

16) To establish a prima-facie case of failure to accommodate, Complainant must show that:

- (1) She has a "physical or mental disability" as defined by the MHRA;
- (2) Respondents knew or reasonably should have known of the Complainant's disability;
- (3) Complainant requested a particular accommodation;
- (4) The requested accommodation is necessary to afford Complainant an equal opportunity to use and enjoy the housing;
- (5) The requested accommodation is reasonable on its face, meaning it is both efficacious and proportional to the costs to implement it; and
- (6) Respondents refused to make the requested accommodation.

See 5 M.R.S. § 4582-A(2); Astralis Condominium Ass'n v. Secretary, U.S. Dept. of Housing and Urban Development, 620 F.3d 62, 67 (1st Cir. 2010) (interpreting similar provision in Fair Housing Amendments Act, but seemingly placing burden on Complainant to show accommodation was reasonable); Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775, 783 (7th Cir. 2002) (plaintiff's burden is only to show reasonableness "on its face"). Compare Reed v. Lepage Bakeries, Inc., 244 F.3d 254, 259 (1st Cir. 2001) (interpreting ADA) (holding that plaintiff need only show requested accommodation was feasible "on the face of things").

¹¹ For purposes of this report, the same reasoning at the final analysis stage would have applied if Complainant had been able to establish a prima-facie case in her terms and conditions claim.

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- 17) If Complainant makes this showing, Respondents can defeat the claim by showing that the proposed accommodation was unreasonable, meaning "it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program." *Oconomowoc Residential Programs*, 300 F.3d at 784.
- 18) The evidence in this case supports Complainant's claim that Respondents denied her a reasonable accommodation.
- a) Complainant has shown that she has disabilities as defined under the MHRA.
 - b) Respondents were aware of Complainant's mental disabilities, and the credible evidence in the record shows that at least Mr. [REDACTED] was aware of on-going physical limitations that Ms. [REDACTED] experienced.
 - c) Complainant requested that Case Manager be involved in the discussions she was having with Respondents regarding particular issues. She also requested to be allowed to use a former temporary parking location to unload groceries due to her physical disabilities.
 - d) The accommodation requests were reasonable and were necessary to afford Complainant an equal opportunity to use and enjoy her property.
 - e) The record shows that Respondents did not act on Complainant's accommodation requests, effectively denying the accommodations.
 - i. Neither party disputes that Complainant asked for Case Manager to be involved in the discussions regarding the concerns she was bringing to Respondents' attention. Respondents stated that Complainant did not make the request as a reasonable accommodation. Respondent was aware of Complainant's mental health history as she was required to meet certain requirements in order to attain housing. Additionally as of at least September 20, 2014, Respondents were on notice by a letter from Complainant's attorney that she was requesting Case Manager be involved and that Respondents were not taking Complainant's mental health disabilities in to consideration in its dealings with her.
 - ii. With regarding to the parking accommodation, the recording Ms. [REDACTED] took clearing shows that she made the request for Respondent to consider allowing her to park in the former temporary drop off location and not doing so was violating her rights as a disabled person.
 - iii. Respondents stated that it does not have a written policy regarding how tenants can request reasonable accommodations, but when a tenant makes a request, it will ask the tenant to provide healthcare provider information so that it can inquire into the need for the requested accommodation. The record shows that Respondents did make what appear to be reasonable accommodations for Complainant in the past. Complainant was never asked to provide medical documentation for those requests, despite Respondents' stated practice to ask for medical information to confirm the need for a request for an accommodation.
 - iv. Making a request for a reasonable accommodation is not a static process, and where Respondents do not have a written policy regarding how tenants make reasonable

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accommodations, the process is in Respondents' control unless a tenant knows how to present the request in a certain manner.

- v. The fact that Respondents made some accommodations for Complainant in the past shows that in the past Complainant could make a request and it would be addressed. With regard to Case Manager's participation, Respondent provided evidence to show that it made attempts to contact Case Manager, but Complainant had never provided a release for Respondents to speak with Case Manager about her concerns. If Respondents truly believed they needed additional approval from Complainant to engage Case Manager, they could have contacted Complainant regarding this approval. They did not. However, Respondents did state that they made attempts to contact Case Manager, but were unable to reach her. Case Manager was contacted for this investigation and was very prompt in responding to the message that was left for her. Additionally, Case Manager stated that Respondents were evasive with her regarding her being able to provide assistance to Complainant. Case Manager stated that she spoke with Respondents' staff as well as left voice messages trying to schedule a meeting with Respondents and Complainant but only received one return phone call.
- vi. It is reasonable to infer that Complainant's request to have Case Manager involved was a request for a reasonable accommodation and Respondents' denied the request by failing to make contact with Case Manager, failing ask Complainant for a release to speak with Case Manager, and not engaging Complainant further to provide a medical information regarding her need for Case Manager to be involved.
- vii. With regard to Complainant's request for parking in the former temporary parking location, Respondents vehemently stated that Complainant had not requested any reasonable accommodations during her tenancy. On September 11, 2014, Complainant clearly requested that she be able to park in the former temporary parking location as a reasonable accommodation for her disability. Complainant provided a recording of the conversation during the investigation. Ms. [REDACTED] disregarded Complainant's request and it was not acted upon.¹²
- viii. Mr. [REDACTED] stated that he overheard the conversation with Complainant on September 11, 2014, and that Ms. [REDACTED] on multiple occasions had to ask Ms. [REDACTED] to calm down, but this did not occur during the conversation. Ms. [REDACTED] said little during the whole conversation, and did not ask Ms. [REDACTED] to calm down. Respondents' credibility regarding the nature and content of the phone call is an issue, since their descriptions of the conversation do not match the recording of the actual call.
- ix. In February 2015, Respondents sent a letter to Complainant requesting additional information regarding her request for "an accommodation as it related to [REDACTED] parking policy as it relates to a claimed disability. The passage of time between when the request was made and Respondents' correspondence regarding the request shows that Respondent disregarded Complainant's specific request. Respondents' shifting statements regarding

¹² Ms. [REDACTED] provided that she was upset upon hearing that her friend had passed which is why she ended the conversation with Complainant the way she did.

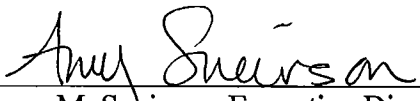
whether Complainant made a request for an accommodation and referred to her disability at all in making the request call into question their position on this issue.

19) Disability discrimination on the basis of denial of reasonable accommodations is found.

VI. Recommendation:

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

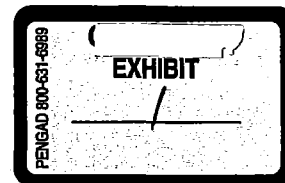
1. There are **No Reasonable Grounds** to believe that Respondents [REDACTED], LP d/b/a [REDACTED], [REDACTED] and [REDACTED]; discriminated against Complainant [REDACTED] on the basis of disability in violation of the Maine Human Rights Act, and these portions of the complaint should be dismissed in accordance with 5 M.R.S. § 4612(2);
2. There are **Reasonable Grounds** to believe that that Respondents [REDACTED], LP d/b/a [REDACTED], [REDACTED] and [REDACTED] denied Complainant [REDACTED] reasonable accommodations the reasonable accommodations; and conciliation on that claim should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director




Victoria Fernig, Chief Investigator



**Community Concepts**
property management & maintenance department
240 Bates Street Lewiston, Maine 04240 207.795.4065

Fax 207.333.6544

February 9, 2015


195 Sabattus St. #3
Lewiston ME 04240

Dear Sharon:

On September 11, 2014, during our phone conversation, it appears you may have requested an accommodation as it relates to our parking policy as a result of a claimed disability.

Please complete the enclosed paperwork and return it to us, so we may send to your chosen Medical Provider, if you are in fact seeking an accommodation.

If you have any questions, please feel free to contact me at 333-6417.

Thank you,



Jeanne M. 
Property Manager

Enc:

Disability and Reasonable Accommodation Verification form



Transportation

Community Services

Children's Services

Family Services

Housing & Property Management

