



# Maine Human Rights Commission

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**INVESTIGATOR'S REPORT**  
**MHRC # H17-0074; HUD # 01-17-6296-8**  
June 9, 2017

**Amelia Harmon (Naples)**

v.

**Jo-Anne Connolly (Bridgton) &  
John Siciliani (Bridgton)**

## **I. Summary of Case:**

Complainant Amelia Harmon was a long-term tenant of the First and Last Motel in Bridgton ("the Premises"), owned by Respondent Jo-Anne Connolly ("Connolly") with maintenance assistance performed by her grandson Respondent John Siciliani. Complainant alleged that Respondents, who live on Premises, discriminated against her when they made discriminatory statements about Complainant's family members, subjected Complainant to a hostile housing environment, treated her differently in the terms and conditions of her housing and tried to evict her, all because of the race of persons with which she is associated. Respondents did not respond substantively to the Complaint in this case. The Investigator conducted a preliminary investigation, which included reviewing all documents submitted by Complainant, holding an Issues and Resolution Conference ("IRC"), and requesting additional information. Based on this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondents discriminated against Complainant based on the protected class status of her house guests.

## **II. Jurisdictional Data:**

- 1) Dates of alleged discrimination: June 2, 2016 through November 1, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): March 13, 2017.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) Complainant is represented by Frank D'Alessandro, Esq. Respondents are not represented by counsel.

## **III. Development of Facts:**

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

On or about June 2, 2016, soon after moving into the Premises, Complainant was at the Premises with

family members – some of whom are African American (“Cousins”) – when Siciliani demanded that Cousins leaves the Premises, and threatened to shoot and kill them. Siciliani said something like he, “Didn’t like Niggers on his property,” that he was worried “Niggers were taking over the property,” and that, “There was a place they could bury Niggers.” Complainant and Cousins objected to Siciliani’s use of racial slurs paired with a threat and became highly upset. Siciliani responded by saying something like, “It’s 2016, and we can use the N-word anytime we want to.” Siciliani took a nearby 2x4 of wood and swung it at Complainant, Cousins, and Complainant’s daughter and hit Complainant and her daughter. When other family members responded, Siciliani continued to swear at Complainant and her family and began to call them, collectively, “Niggers”; he then left and came back with a gun, which he shot just over Complainant’s father’s head. Police were called to the Premises, but Siciliani had already absconded into the woods. The following day police located Siciliani, but he resisted arrest. He and his father (Connolly’s son) engaged in an armed standoff with police, which ended in arrest. Connolly was on the Premises and was aware of the racial nature of the conflict. After these incidents, while Siciliani remained jailed, Connolly began to harass Complainant. Without explanation, Complainant’s water and electricity<sup>2</sup> were turned off, her unit was blocked with saw horses, and signs (including a “No Trespassing” sign) were nailed to her porch. Connolly told Complainant her family was not allowed on the property anymore, and twice called police when Complainant had family guests. Connolly also told Complainant that her daughter was not allowed to play in certain areas where other children were permitted to play, and began to perform frivolous inspections of her unit almost daily. In September 2016, Complainant broke her lease and finally left the Premises due to the ongoing harassment.

- 2) Respondents chose not to respond to the complaint or to participate substantively in the investigation.

The Commission notified Respondents of the complaint in this case via U.S. Mail on March 3, 2017; the letter was not returned by U.S. Mail and is deemed received. On April 4, 2017, the Investigator sent notice that an IRC was scheduled. On April 9, 2017, Connolly contacted the Investigator to notify that Siciliani was indefinitely jailed and would not be attending the IRC; on April 20, 2017, the Investigator re-sent all mailings to Siciliani at his address in jail. For medical reasons, Connolly also requested the IRC be moved to a different date, which the Investigator did. On May 16, 2017, Connolly contacted the Investigator and stated she was choosing not to attend the rescheduled conference.<sup>3</sup> The Investigator and Connolly corresponded several more times by phone, fax, and e-mail, discussing a need for Respondents’ participation, and Connolly was offered the opportunity for a phone interview. The Investigator was ultimately unable to discuss the substance of the case with Respondents because neither Respondent returned the required Non-Disclosure Agreements, which the Investigator requested on four occasions. On May 17, 2017, the Investigator sent notice that the evidentiary record would be closed as of June 7, 2017; the notice was not returned and is deemed received. Connolly contacted the Investigator on June 7, 2017 to see how she could participate, but continued to refuse to return a signed Non-Disclosure Agreement.<sup>1</sup> Given Respondents’ notice of and opportunity to participate in this investigation, the Investigator proceeded to close the record as scheduled. Although it had been rescheduled at her request, Connolly chose not to attend the Conference.

- 3) The Investigator made the following findings of fact:

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<sup>2</sup> On at least one occasion, this caused Complainant to lose \$300 in groceries when her refrigerator lost power.

<sup>3</sup> At the time the IRC was held, Siciliani remained in the Cumberland County Jail; although he is deemed to have received notice, he failed to respond and arrange for telephonic or some other alternate participation.

<sup>1</sup> At the same time, Connolly notified the Investigator that Siciliani had been moved to another facility.

- a) Complainant was a resident of the First and Last Motel under a one-year lease.
- b) Connolly was on the Premises but inside her house for the June 2, 2016 incident, which she may or may not have observed; she did observe the related June 3, 2016 police standoff and arrest.
- c) Because Siciliani's criminal matter is still pending, police reports were not available to the investigation. However, news articles from June 2016 corroborate Complainant's story and characterize what happened as a racially motivated crime.
- d) On June 2, 2016, June 3, 2016, and again in the middle of July 2016, Complainant's electricity and water were shut off. Each time Complainant reported the problem, Connolly denied knowing how to control the utilities for the Motel; she stated she would have to figure out how to turn it back on. Complainant would then call the police to the Premises and, at that point, the electricity and water would return. Siciliani resided in the apartment in which the electric panel and water control panel for the First and Last Motel are located. His father and Connolly are the only people who had access to the breaker and water control panel.
- e) On June 7, 2016 and June 11, 2016, Connolly called the police to remove Complainant's family from the property. Police responded and instructed Connolly she could not exclude Complainant's family from the Premises, but Connolly continued to tell Complainant her family was barred because her grandson, Siciliani, would be returning.
- f) On June 9, 2016 and June 23, 2016, Connolly inspected Complainant's unit. After June 23, 2016, Connolly began inspecting Complainant's unit almost daily without giving her notice.
- g) Since Respondents did not refute or in any way respond to the allegations contained in Complainant's Commission complaint, which was made under oath, all material facts she alleged in her complaint are presumed to be true, since it is reasonable to draw the presumption that Respondents would have provided exculpatory or explanatory evidence if any was available.

#### **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.
- 2) The MHRA provides, in part, that any person has the right to rent housing without discrimination on the basis of race. 5 M.R.S. § 4581-A(1)(B); 94 Code of Maine Regulations ("C.M.R.") Ch. 8, § 8.04(a)(1). It is unlawful to limit "the use of privileges, services or facilities associated with a dwelling because of [the]...race...of an owner, tenant or a person associated with him or her." 94-348 C.M.R. Ch. 8, § 8.04(C)(4).

#### *Discriminatory Statements*

- 3) The MHRA provides it is unlawful "[f]or any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these" to

"[m]ake...any...statement...relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon race...or an intention to make any such preference, limitation or discrimination." 5 M.R.S. §4581-A(1)(C). Discriminatory statements include, "[u]sing words ... which convey that dwellings are available or not available to a particular group of persons because of race..." 94 C.M.R. § 8.04(E)(3)(a).

- 4) In this case, both Respondents made statements expressing a limitation in housing (or the benefits or privileges associate with housing, such as Complainant's having a visitor) on the basis of race. Complainant alleged that Siciliani made multiple, derogatory statements using the word "Nigger," and issued race-based death threats to Complainant's family to drive them from the Premises. There is evidence Connolly had direct knowledge of at least some of Siciliani's racist remarks and failed to take any action (at the time or later) to mitigate or correct them.<sup>2</sup> Even in the absence of personal knowledge, it is likely Connolly had knowledge of Siciliani's statements because of the level of police intervention and the highly publicized nature of the conflict. It is notable that the only information Connolly did provide during the Commission's investigation was that she thought it was unfair that what happened was being widely discussed (in particular, at her granddaughter's school). Aside from her failure to address Siciliani's racist remarks, Connolly herself directly told Complainant that her family (some of whom are African American, and all of whom were called "Niggers" by Siciliani) were not welcome at the Premises.
- 5) Respondents' notice of, and failure to respond to, Complainant's allegations about discriminatory statements are considered to be an admission of those allegations.
- 6) It is found that both Respondents made statements relating to Complainant's lease of the Premises that indicated discrimination based upon race in violation of the MHRA.

#### Hostile Environment

- 7) The MHRA makes it unlawful for any "owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these", to discriminate against any person because of race or color in the furnishing of facilities or services in connection with any housing accommodations. 5 M.R.S. § 4581(1-D).
- 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 race 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. *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) 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. *Cf.* Me. Hum. Rights Comm'n Reg. § 3.06(I) (1) (July 17, 1999) (employment). "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

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<sup>2</sup> Complainant alleged Connolly had directly observed Siciliani make racist statements to Complainant on other occasions but did not provide further detail.

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. The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1<sup>st</sup> Cir. 1988) (employment).

11) To impose liability on Respondent for acts committed by others, Complainant must show that Respondent 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). *Cf.* Me. Hum. Rights Comm'n Reg. § 3.06(I) (3) (employment). Respondent can avoid liability by showing that it took immediate and appropriate corrective action. *See Williams*, 955 F. Supp. at 496. *Cf.* Me. Hum. Rights Comm'n Reg. § 3.06(I) (3).

12) Here, Complainant established that both Respondents subjected her to a hostile housing environment claim, with reasoning as follows:

- a. Complainant has shown that she is in a protected class by her association with African American family members who were guests at her unit.
- b. Respondents both subjected Complainant to intense harassment based on race that was sufficiently severe to make her housing accommodation abusive. As noted above, Siciliani repeatedly made racist comments while assaulting Complainant and threatening to kill members of Complainant's family because they objected to his comments. Siciliani's armed death threats would, standing alone, constitute behavior so severe as to meet this standard for harassment. Connolly likely knew of Siciliani's race-based harassment and did nothing to stop it or remediate it, and herself excluded Complainant's family members from visiting Complainant based on race. Connolly's actions after her grandson's arrest -- making meritless calls to police, blocking Complainant's access to the Premises, and performing daily inspections of Complainant's unit -- actively conveyed a very clear message to Complainant that Complainant and her family were unwelcome. Both Respondents interfered with Complainant's enjoyment of her dwelling to a point whereby any reasonable person would objectively believe Respondents created an abusive housing environment.
- c. When Complainant encountered these interferences, she asked Connolly for an explanation and sought corrective action. Connolly's answers were either evasive or based in the sentiment that she was acting for the safety of her own family, which served only to perpetuate the hostile housing environment for Complainant.

13) It is found that both Respondents subjected Complainant to a hostile housing environment based on race.

*Terms & Condition of Tenancy and/or Attempted Eviction*

14) The MHRA makes it unlawful for any "owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these", to discriminate against a person because of race in the "price, terms, conditions or privileges of the sale, rental or lease of any



housing accommodations.” 5 M.R.S. § 4581(1-D). The MHRA also provides it is unlawful to “attempt to evict any tenant of any housing accommodation because of....race.” 5 M.R.S. § 4581-A(1)(E).

- 15) A mixed-motive analysis applies in cases involving “direct evidence” of unlawful discrimination. *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment case); *Texas v. Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d 722, 730 (D. Tex. 2000) (Fair Housing Act). “Direct evidence” consists of “explicit statements by [Respondents] that unambiguously demonstrate [Respondents’] unlawful discrimination. . . .” *Doyle*, 2003 ME 61, ¶ 14, n.6. Where this evidence exists, Complainant “need prove only that the discriminatory action was a motivating factor in an adverse [housing] decision.” *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1<sup>st</sup> Cir. 2002) (employment); *Doyle*, 2003 ME 61, ¶ 14, n.6. Upon such a showing, in order to avoid liability, Respondents must prove “that [they] would have taken the same action in the absence of the impermissible motivating factor.” *Id.*; *Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d at 730. *Cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O'Connor, J., concurring).<sup>3</sup>
- 16) Here, the direct evidence standard is applicable:
- a. Complainant alleged that Siciliani repeatedly called her family members “Niggers” while assaulting her and making death threats to her family members. Connolly made no effort to redress the remarks at the time they were made or later. These are axiomatic examples of discriminatory intent of which Connolly likely knew and did not address. Respondents did not participate in the instant investigation to dispute this direct evidence.
  - b. Connolly also stated that Complainant and her guests were not welcome to stay because Siciliani – who had made the discriminatory statements - would be returning after he was released from jail. This served essentially to endorse Siciliani’s discriminatory intent at the expense of Complainant’s enjoyment of her housing accommodation.
- 17) In order to prevail, Complainant must show that her protected class status was a motivating factor in Respondents’ actions.
- 18) The record tends to show that Siciliani’s behavior in harassing and threatening Complainant and her guests was motivated by the race of some members of Complainant’s family. Connolly’s actions and statements indicate that her subjecting Complainant to very different terms and conditions than other tenants (for purposes of this analysis, it is assumed other Premises residents had continual access to electricity and running water, were permitted guests, and were not limited in their use of certain areas of the property) was motivated by supporting her grandson, who had openly harassed and attacked Complainant and her family based on race. The record tends to indicate that Connolly acted so as to persuade Complainant to leave the Premises permanently.
- 19) Respondents chose not to respond or controvert any of the claims Complainant raised here.

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<sup>3</sup> The continued application of the mixed-motive analysis has been called into question as a result of the U.S. Supreme Court’s decision in *Gross v. FBL Financial Services, Inc.*, 129 S.Ct. 2343, 2348 (2009), in which the Court held that the burden of persuasion does not shift to defendant even with “direct evidence” of unlawful discrimination in a federal Age Discrimination in Employment Act case. That decision did not interpret the MHRA, however, and the guidance from the Maine Supreme Court in *Doyle* will continue to be followed.

20) It is found that Respondents discriminated against Complainant in the terms and conditions housing on the basis of race.

*Intimidation/Interference*

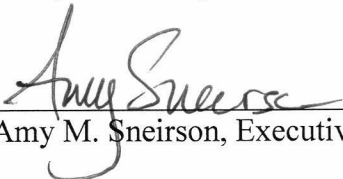
21) The MHRA provides, in part, that it is "unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act". 5 M.R.S. § 4633(2).

22) In the particular circumstances of this case, it is found that Respondent Siciliani threatened, intimidated or interfered with Complainant's exercise and enjoyment of her right to enjoy the use of her housing accommodation free of discrimination based on race.

**VI. Recommendation:**

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

- 1) There are **Reasonable Grounds** to believe that Respondents Jo-Anne Connolly and John Siciliani discriminated against Complainant Amelia Harmon by stating an unlawful preference in housing on the basis of race;
- 2) There are **Reasonable Grounds** to believe that Respondents Jo-Anne Connolly and John Siciliani discriminated against Complainant Amelia Harmon on the basis of race by subjecting her to a hostile housing environment;
- 3) There are **Reasonable Grounds** to believe that Respondents Jo-Anne Connolly and John Siciliani discriminated against Complainant Amelia Harmon on the basis of race with respect to the terms and conditions of her housing and/or attempted eviction;
- 4) There are **Reasonable Grounds** to believe that Respondent John Siciliani unlawfully threatened, intimidated or interfered with Complainant's MHRA rights; and
- 5) The complaint should be conciliated in accordance with 5 M.R.S. § 4612(2).

  
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Amy M. Sneirson, Executive Director

  
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Jenn Corey, Investigator