



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

PA16-0472

October 16, 2018

**John J. Mokarzel (Ogunquit)**

v.

**H&B Realty, LLC (Gray)**

### Summary of Case:

Complainant, who leased a commercial car lot open to the public from Respondent, alleged that he was subjected to unlawful discrimination in public accommodation because of his association with sublessees of a different national origin, race, color, religion, and/or ancestry.<sup>1</sup> Respondent, the owner of the car lot and the realty company that leased the lot, denied discrimination and stated that Complainant only alleged discrimination after it brought an action for unpaid lease payments. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties and holding a Fact Finding Conference ("FFC"). Based upon this information, the Investigator recommends a finding that there are reasonable grounds to believe Complainant was discriminated against on the basis of his association with individuals of different national origin.

### Jurisdictional Data:

- 1) Dates of alleged discrimination: 2/1/2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 10/26/2016.
- 3) Respondent is a place of public accommodation subject to the Maine Human Rights Act ("MHRA") and state regulations.<sup>2</sup>
- 4) Complainant is represented by Neal Weinstein, Esq. Respondent is represented by Marshall J. Tinkle, Esq.

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<sup>1</sup> For ease of reference, these protected classes will be referred to collectively as "national origin" throughout this report.

<sup>2</sup> The MHRA provides that it is unlawful for, "any person who is the owner, [or] lessor...of any place of public accommodation..." to discriminate on the basis of any protected class, including national origin. 5 M.R.S. § 4592(1). Respondent both owned the commercial lot Complainant leased for the purpose of selling cars to the public (a "place of public accommodation" under the MHRA, 5 M.R.S. § 4553(8)(N)), and also operated the realty company that brokered the lease. For purposes of this case, Respondent will be considered the owner of a place of public accommodation and subject to the MHRA accordingly.

#### **IV. Development of Facts:**

1) Complainant provided the following in support of his claims:

Complainant leased a commercial car lot from Respondent ("the Property"). The lease allowed Complainant to sublet the Property and he found qualified subtenants, but Respondent would not approve his sublessees because of their national origin. Complainant sublet the Property to them anyway. Respondent's owner ("Owner") would then show up at the Property without prior notice to harass the subtenants and call them derogatory names, which led them to leave. Complainant asked Owner to stop doing this and warned that if it continued, Complainant would be unable to pay rent, which eventually occurred due to Owner's harassment.

2) Respondent provided the following in support of its position:

Respondent is not a public accommodation. Even if it is, Complainant never sought prior approval for any sublet, as was required by the lease. Respondent could have evicted each sublessee as a result, but refrained from doing so. Owner did not harass or discriminate against any subtenant. After Complainant stopped paying rent, Respondent obtained a court order to evict him. Respondent then sued Complainant for rent arrearage and other amounts due under the lease. It was only at that time that Complainant first alleged (falsely) that Respondent had refused to consent to the sublets and discriminated against the subtenants.

3) The Investigator made the following findings of fact:

- a) On 5/25/2011, Complainant and Respondent signed a five-year commercial lease for the Property - a car lot - in Portland. The lease provided that Complainant could not sublet the Property without the prior written consent of Respondent, and that consent would "not be unreasonably withheld or delayed." The lease further provided that Respondent had "reasonable access to the leased premises upon reasonable prior notice" and that Complainant would have "quiet enjoyment" of the leased premises, "without hinderance or interruption by lessor [Respondent]."
- b) The business Complainant operated on the Property failed approximately two years into the lease period. Complainant had no issues with Respondent during those two years.
- c) Complainant found a prospective subtenant ("Tenant 1"), who was an immigrant, and sublet to him. Complainant did not seek prior approval from Respondent for the sublet, allegedly because Owner had made prior comments about not wanting immigrants on his property. Tenant 1 provided a notarized statement to the Commission stating that he tried to get Respondent's permission to sublet, but Respondent would not meet with him, which he believes was because of his Latino heritage and immigrant status. Tenant 1's statement further alleged that Owner would frequently stop by the Property to harass him, making him feel uncomfortable and unwelcome, which led to Tenant 1 vacating the Property. Respondent disputed that Tenant 1 asked to meet with him and that harassment occurred.
- d) Complainant advertised the Property for sublet again. The next tenant ("Tenant 2") was from Morocco, and had partners who were legal immigrants from Iraq. Tenant 2 provided a notarized statement to the Commission alleging that he tried multiple times to seek sublet approval from Respondent, but Respondent refused to meet with him. Tenant 2 further provided that Owner would repeatedly come by the Property unannounced to "drive through the parking lot, take pictures, give menacing looks and tell us we were illegals and had no right to be on his property". This caused Tenant 2 to vacate the property.

Respondent disputed that Tenant 2 ever sought sublet approval, that Owner took pictures, and that Owner ever said Tenant 2 or his staff were illegal and had no right to be on the Property.

- e) Complainant again advertised the Property and found another tenant ("Tenant 3"), who was Caucasian. Tenant 3 provided a notarized statement to the Commission in which he alleged that he made multiple attempts to seek sublet approval and to provide a financial statement to Respondent, but Respondent would not meet with him. Tenant 3 also alleges that Owner would harass him by implying that Tenant 3 was an "illegal tenant," and that this led him to vacate the Property. Respondent disputed that Tenant 3 offered to provide a financial statement, although it agreed that Tenant 3 informed Owner that he was leasing from Complainant.
- f) On or about February 2016, Complainant vacated the Property. He alleged that he stopped paying rent when he left.. Respondent disputed this and alleged that Complainant stopped making lease payments after October 2015.
- g) On 3/24/2016, a Forcible Entry and Detainer Judgment was entered which allowed Respondent to take possession of the Property. Complainant did not appear at the FED hearing.
- h) On or about May 2016, Respondent sued Complainant to recover the rent arrearage and other amounts allegedly due under the lease. In response, Complainant filed an affidavit in opposition to Respondent's motion for summary judgement alleging discrimination based on the national origin of his sublessees. According to Respondent, Complainant had never before raised concerns about alleged discrimination. Complainant, on the other hand, provided that he had many conversations with Owner about the harassment of his sublessees.

## V. Analysis:

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA makes the following unlawful: "For a [public accommodation] to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association." 5 M.R.S. § 4592(6). By analogy, it would be similarly unlawful for a public accommodation to treat an individual or entity less favorably because they had an association with individuals in other protected classes, such as national origin.
- 3) In order to establish a prima-facie case of public accommodations discrimination, Complainant may show that he (or someone associated with him) "(1) is a member of a protected class, (2) attempted to contract for services and afford himself or herself of the full benefits and enjoyment of a public accommodation, (3) was denied the full benefits or enjoyment of a public accommodation, and (4) such services were available to similarly situated persons outside his or her protected class who received full benefits or were treated better." *Jackson v. Waffle House, Inc.*, 413 F.Supp.2d 1338, 1361 (N.D.Ga. 2006) (Title II).
- 4) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse treatment. *Id.* at 1355-56. *See also Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1262 (Me. 1979). After Respondent has 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 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 Respondent's 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 his 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.

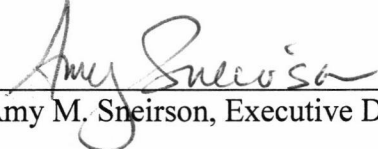
- 5) In this case, Complainant established a prima-facie case by alleging that his sublessees were members of a protected class, and Complainant was – in effect – denied the right to sublet the Property he had leased because Respondent refused to approve his subtenants based on their national origin. Given the allegations by Complainant and his sublessees that Owner made frequent discriminatory statements, it is assumed that others would have been treated better. Respondent, in turn, provided a legitimate, nondiscriminatory reason for its actions: the harassment and discrimination claims were fabricated, and Complainant had not followed the lease by obtaining prior written permission to sublet the Property.
- 6) In the final analysis, it is found that Complainant was subjected to unlawful discrimination by a public accommodation, with reasoning as follows:
  - a) Complainant reportedly had no issues with Respondent during the two years Complainant operated a business on the Property. No harassment was alleged to have occurred until after Complainant sublet the Property to subtenants who were immigrants of foreign national origin, concededly without seeking Respondent's prior approval.
  - b) Even if Respondent is correct in his assertion that Complainant failed to obtain prior approval to sublet the Property, this does not resolve the question of whether Respondent discriminated against Complainant in administering the commercial lease of the Property by driving Complainant's subtenants off the Property. It is notable that Respondent conceded that it opted not to enforce the lease provision requiring prior approval. Complainant's alleged lease violation does not excuse any discrimination on Respondent's part.
  - c) Respondent disputed that Owner ever harassed any of Complainant's subtenants or made statements about their national origin. Complainant countered this with his own sworn statements and notarized statements from Tenant 1 and Tenant 2 providing that Owner did harass each of them on the basis of their national origin, and that this behavior ultimately forced each of them to leave the Property.
  - d) Complainant and Owner both appeared to be credible at the FFC, although clearly both cannot be telling the truth about the harassment of Tenants 1 and 2. In addition to statements by those two Tenants, Complainant also provided written statements from others who claimed to have heard Owner regularly make derogatory and racist statements about immigrants, Latinos, and "Arabs". Although three of those statements were provided by individuals formerly employed by Complainant, the allegations have other hallmarks of credibility: while the statements are different, they are consistent with respect to Respondent expressing distaste for immigrants and certain specific national origins. This tends to support a finding that it is at least as likely as not that Respondent did make the comments recounted by Complainant, Tenant 1 and Tenant 2, especially since Respondent provided no evidence to support his version of events other than his own statements.

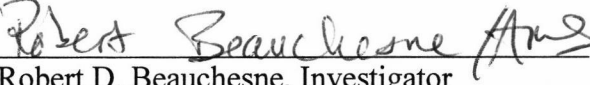
7) It is found that Respondent subjected Complainant to national origin discrimination (by association) in public accommodations.

**VI. Recommendation:**

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

- 1) There are **Reasonable Grounds** to believe H&B Realty, LLC discriminated against John J. Mokarzel on the basis of national origin (by association); and
- 2) Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Robert D. Beauchesne, Investigator