



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330
Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711
www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT MHRC Case No. PA17-0060 November 15, 2018

Martin Van Hall, Sr. (Eddington)¹

v.

Fraternal Order of Eagles #3177 (Brewer)²

I. Summary of Case:

Complainant, a former member of Respondent's fraternal organization ("Club"), alleged that Respondent retaliated against him for testifying against its interests in a sexual harassment trial ("Civil Trial").³ Respondent denied retaliating against Complainant and stated it followed Club's internal rules when it refused him service at Club's bar, suspended his Club membership, and expelled him from Club. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, conducting an Issues and Resolutions Conference ("IRC"), and requesting additional information. Based upon this information, the Investigator recommends a finding that there are reasonable grounds to believe Respondent retaliated against Complainant for engaging in protected activity.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: July 24, 2016 through January 22, 2017.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 8, 2017.
- 3) Respondent is a "public accommodation" and is required to abide by the Maine Human Rights Act ("MHRA") and applicable regulations.

¹ Complainant named himself as "Marty Panther, Sr." in his complaint but legally changed his name during the pendency of the investigation. This report will refer to Complainant by his legal name, "Martin Van Hall, Sr."

² Complainant named Respondent as "Fraternal Order of Eagles #3177" in his complaint. Respondent provided that its name is "Penobscot Aerie No. 3177, Fraternal Order of Eagles." Complainant has not amended his complaint, so we used the name he did.

³ Complainant also alleged discrimination on the basis of race and national origin, as he had done in a 2015 Commission complaint. Complainant provided at the IRC that there had been no new race/national origin-based discriminatory action or statement since his 2015 charge. This is supported by the record, which includes no new evidence of post-2015 race and/or national origin discrimination. He also alleged that the retaliation he alleges here was due to his prior Commission complaint. The record does not support that Complainant's prior charge was the cause of any retaliation he experienced.

- 4) Complainant is represented by Sarah A. Churchill, Esq. Respondent is not represented by counsel.

III. Development of Facts:

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

In May 2016, Complainant participated in a Civil Trial against Club in which a former employee (“Manager”) accused him and two other Club officers of sexual harassment. Complainant testified that he engaged in sexual harassment, and that he observed other sexual harassment toward Manager. Club was held liable for the sexual harassment, and had to pay Manager damages plus attorney fees. Two months later, Club held an internal trial (“Hearing 1”) against Complainant and suspended his Club membership for six months. Hearing 1 was intended to punish Complainant for Club’s losses in Civil Trial. Approximately one year later, Club brought “fraud” charges against Complainant, held a second internal trial (“Hearing 2”), and permanently expelled him. In Hearing 2, Club found Manager shared Civil Trial damages with Complainant in exchange for his agreement to provide testimony, which is false and has no basis. Also, the internal charges were untimely under Club rules; they were brought solely to increase the penalty and expel Complainant.

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

Club expelled Complainant for ongoing inappropriate behavior, including sexual harassment of Manager. Complainant admitted under oath to sexual harassment in Civil Trial, which is the reason he was internally tried and disciplined.⁴ Club’s other accused officers denied Manager’s allegations of sexual harassment, so they were not tried. Club never retaliated against Complainant, including when he and minor Child were asked to leave Club’s bar; Club was simply abiding by its rules and state law.

- 3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the IRC:

- a) Club is organized under written Articles of Incorporation, an internal Constitution, and internal statutes (collectively, “Articles”), which are enforced by Club officers and justices. Complainant was a member of Club for approximately 17 years. In addition to membership, Complainant served as a trustee on Club’s Board, including as Chairman of the Board.
- b) Manager brought a lawsuit against Respondent alleging sexual harassment in her employment, which eventually led to Civil Trial. On May 10, 2016, Complainant testified in Civil Trial, admitting to his own sexually-harassing conduct toward Manager and sexually-harassing statements and actions of two other trustees (“Trustee 1” and “Trustee 2”), shortly before Manager’s discharge.
- c) On July 24, 2016, Complainant was having lunch with Child at Club’s bar and Club’s Chairman of the Board of Trustees (“Chairman”) ordered him to leave the bar area. Complainant objected, and he and Chairman argued heatedly while Club’s bartender (“Bartender”) threatened to throw both of them out of the bar area. Complainant threatened legal action for being discriminatorily targeted, while Chairman directed Bartender to call the police. Eventually, Complainant agreed to leave.

⁴ Complainant received notice of Club’s two internal trials against him but chose not to attend at the advice of his lawyer. Club also provided he had the opportunity to appeal his expulsion from membership, but he did not.

- d) On August 31, 2016, Court issued final judgement in Civil Trial which cost Club \$39,283.31 in damages and attorney fees.
 - e) Club internally tried Complainant twice for “Offenses against the Law of the Order” under Club statute 63.2. Both trials primarily consisted of a reading of Complainant’s witness testimony at the Civil Trial.
 - i. On November 27, 2016, Club held Hearing 1 to try Complainant under Articles and decided to suspend his membership for six months. Complainant was tried for “Conduct Unbecoming an Eagle”⁵. The transcript Club Hearing 1 makes clear that the misconduct alleged was Complainant’s sexual harassment of Manager.
 - ii. On January 22, 2017, Club held Hearing 2 to try Complainant under Articles⁶ and decided to permanently expel him from Club membership. Complainant was tried for “Fraud” which was effectively defined as “deceitfully or willfully” causing the loss of \$39,283.31 as a result of the Civil Trial. Complainant alleged he had heard from other Club members that some of the people deciding Hearing 2 believed Complainant provided testimony in exchange for money.
- 4) Articles on trial procedure include a provision that charges shall be filed within 90 days after the commission of an offense or the conclusion of an investigation, except in cases of fraud (which have no time limit). Complainant argued Club was acting outside Articles when it filed internal charges too late. Respondent provided that Civil Trial was not concluded until August 31, 2016, and Hearing 1 was filed on November 14, 2016, which is less than 90 days later, and the basis for Hearing 2 was “Fraud,” so no time limit applied.

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 that “[a] person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act.” 5 M.R.S. § 4633(1). The term “person” includes organizations. 5 M.R.S. § 4553(7).
- 3) In order to establish a prima-facie case of retaliation, Complainant must show that he engaged in statutorily protected activity, he was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d

⁵ Articles define “Conduct Unbecoming an Eagle” as conduct “which shall include any violation of house or club rules, postings on social media websites, and personal conduct likely to bring disgrace upon the Order.” The charging document for Club Hearing 1 had a list of particulars of the charged offense, which is a letter from Club’s Chairman of the Board of Trustees stating, “[Complainant] has sexually harassed a former employee of this Club as an officer of this organization.”

⁶ Articles, as amended in 2016, define “Fraud” as “the unlawful taking of property, money or funds for personal use or gain or some deceitful or willful purpose, resorted to with intent to deprive another of their right, or in some manner would cause harm.” The charging document for Club Hearing 2 lists the particulars of the offense: “[Complainant’s] admission of Guilt in Civil Court of sexual harassment of an employee while serving as an Aerie Trustee. Causing the \$39,283.31 loss of Aerie resources.”

48, 56 (employment case); *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006) (same). The term “materially adverse action” covers actions that are harmful to the point that they would dissuade a reasonable person from making or supporting a charge of discrimination. *See Burlington Northern*, 126 S. Ct. 2405. One method of proving the causal link is if the adverse action happens in “close proximity” to the protected conduct. *See id.*

- 4) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, Complainant must carry his overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 5) Complainant has established his prima-facie case, as he engaged in protected activity when he testified in Civil Trial and has since been suspended and ultimately permanently expelled from membership. The relatively short time period between Complainant’s participation in the trial and these events is sufficient to raise an inference of causal connection; in addition, Respondent specifically tied the charges brought in at least Hearing 2 to Complainant’s testimony in Civil Trial.
- 6) Respondent stated a legitimate, nondiscriminatory reason for charging and disciplining Complainant, namely that he violated its rules by harassing Manager and causing substantial financial harm to Club.
- 7) At the final stage of the analysis, Complainant has carried his overall burden to show that there was a causal connection between the protected activity and the adverse action, with reasoning as follows:
 - a) While Hearing 1 addressed Complainant’s participation in sexual harassment, the only reason for holding Hearing 2 was because of Complainant’s testimony at Civil Trial, in which he “testified . . . in an investigation, proceeding or hearing under this Act.” 5 M.R.S. § 4633(1). While Complainant’s participation in sexual harassment is certainly not protected activity, his testimony in Civil Trial is.
 - b) In participating in Civil Trial, Complainant was opposing sexual harassment made unlawful under the MHRA. Although Club has held itself out, particularly in Hearing 1, as strictly concerned with Complainant’s harassing conduct, Hearing 2 more clearly focused on Complainant’s participation in the Civil Trial. The charge expressly sets out the Club’s financial losses; Complainant credibly testified that other Club members had speculated that Complainant acted to take home a share of Civil Trial damages. Hearing 2’s discussion of fraud also seems to suggest Club suspected Complainant of something “deceitful” or “willful” to intentionally deny the Club of property.
 - c) Most tellingly, the personal conduct of three individual Club officers created the conditions for a Civil Trial judgment against Club, but Complainant was the only harassing officer internally tried and punished. He was also the only accused harasser who offered testimony against Club’s interest. Club distinguished Complainant by arguing he was also the only harassing officer who admitted to this conduct under oath. Club’s casual acceptance of Trustee 1 and 2’s denials does not pass the straight face test where Civil Trial found Club liable based on all three officers’ conduct. Club retaliatorily laid the blame for all harassing conduct at Complainant’s feet. It is also notable that Trustee 1 and Trustee 2’s sexually harassing conduct was objectively more severe than Complainant’s conduct.⁷

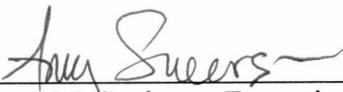
⁷ Complainant admitted he asked Manager to give him a kiss in front of a customer as an intended joke. Complainant testified Trustee 1 made comments to Manager about, “Getting on her knees,” and “Slapping her on the ass.” Trustee 2,

8) Retaliation in violation of the MHRA is found.

V. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that Fraternal Order of Eagles #3177 retaliated against Martin Van Hall, Sr. for engaging in MHRA-protected activity, and this claim should be conciliated in accordance with 5 M.R.S. § 4612(3).
- 2) There are **No Reasonable Grounds** to believe that Fraternal Order of Eagles #3177 discriminated against Martin Van Hall, Sr. on the basis of race or national origin, and these claims should be dismissed in accordance with 5 M.R.S. § 4612(2).



Amy M. Sneirson, Executive Director



Jenn Corey Meehan, Investigator

who died during pendency of Civil Trial, was accused of calling Manager “a Dumb Broad,” stating “We don’t need [Manager] running this fucking club,” criticizing Manager’s performance, and twice stating, “A man could run the club better” shortly before Club’s Board of Trustees voted to discharge Manager.