



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT MHRC Case Number: PA18-0165-B<sup>1</sup> June 5, 2019

**Judith Estee (Orland)**

v.

**Michael Jacques (Bucksport)**

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

On April 26, 2018, Complainant filed her Complaint with the Maine Human Rights Commission ("Commission") alleging that Respondent discriminated against her based on her disability because his building was partially inaccessible. Respondent provided no response as part of this investigation.<sup>2</sup>

### **II. Summary of Investigation:**

The Investigator reviewed the following documents as part of the investigation: (i) Complaint filed by Complainant on April 26, 2019; (ii) an Issues and Resolution Conference ("IRC") on January 4, 2019; and (iii) available public building records for the subject premises.

### **III. Analysis:**

The Maine Human Rights Act ("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.

Respondent is the owner of a building located at 84 Main Street, Bucksport, ME 04416. In January of 2018, Complainant went to an appointment at a salon located on the first floor of Respondent's building. Complainant [REDACTED]. She alleged that she had difficulty entering the building because it had a step leading up to the door and she required the assistance of two people to lift her onto the step. In addition, she alleged she could not use the bathroom inside because there was no handrail for her to use as a support.

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<sup>1</sup> Complainant filed a related charge MHRC Case No. PA18-0165-A. The cases involve the same premises but involve substantially different claims and analysis. Therefore, while related, the cases are analyzed in two separate reports.

<sup>2</sup> Respondent was contacted by mail on May 1, 2018, July 9, 2018, September 25, 2018, October 25, 2018, November 15, 2018 and finally on January 9, 2019. Respondent was notified of the IRC but did not attend.

The MHRA prohibits discrimination on the basis of disability by any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation. 5 M.R.S. § 4592(1). Unlawful discrimination includes buildings that fail to meet certain standards of design and construction to provide access for individuals with disabilities. There are no dimensions or measurements for the spaces in question as part of the record because Respondent did not participate in the investigation. Based on Complainant's description and photographs provided by the owner of the salon, the description of the entrance and bathroom are as follows:

- 1) Entrance: The salon entrance is a single standard door facing Main Street with a step out front. The step is at least an inch in height. There is no ramp or handrail.
- 2) Bathroom: The bathroom is a small room with a standard door and a toilet opposite the door. A counter with a sink is mounted on the left wall. There is space on either side of the toilet, but there is no handrail.

The MHRA provides for different standards of construction based on when the building was constructed or altered. Building records for 84 Main Street reflect that it was built in 1900 and purchased by Respondent in 1994. It was renovated in 1994 and 2018, but the specifics of what was renovated, or the cost of the renovations are not provided in the record. Therefore, we will assume facts most favorable to the Complainant and analyze whether the building is compliant based on the strictest standards of construction for a public accommodation altered in 2018.

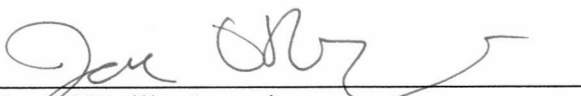
The MHRA standards of construction<sup>3</sup> require that accessible routes must have no vertical change in level greater than  $\frac{1}{4}$ . See ADAAG § 403.4, §303. Bathrooms or "water closets" must have grab bars on the rear and side wall closest to the toilet between 33 and 36 inches from the floor. See ADAAG § 604.5, § 609.4.<sup>4</sup> The information in the record establishes that the step out front of the entrance to the facility is higher than the required  $\frac{1}{4}$  inch minimum. In addition, the bathroom has no hand rails at all. Assuming that the renovations involved the relevant spaces and cost the threshold amount to trigger compliance, Respondent's building is in violation of the design/construction standards of the MHRA.

Discrimination on the basis of disability is found.

#### **IV. Recommendation:**

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

- 1) There are **Reasonable Grounds** to believe that Michael Jacques discriminated against Judith Estee in access to a public accommodation on the basis of disability; and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Jane O'Reilly, Investigator

<sup>3</sup> The standards of construction for a building constructed or altered after March 15, 2012 are the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Section 36.104 and Sections 36.401 to 36.406. 5 M.R.S. § 4594-G(1)(K)(3).

<sup>4</sup> Though the standards of construction used for analysis here would only apply to renovations done in 2018, the requirements in the standards that apply for the 1994 renovations are the same for vertical changes in level and contain the requirement of a grab bar in a bathroom.