



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

February 28, 2014

H12-0458

[REDACTED]

v.

[REDACTED]

I. Complaint:

Complainants [REDACTED] allege that Respondents [REDACTED] and [REDACTED] use a policy in evaluating applicants for their rental housing units – requiring each individual unmarried tenant to have a monthly income of at least triple the full amount of the rent – which has a disparate impact on unmarried, same-sex couples and on those who receive public assistance.¹

II. Respondents' Answer:

Respondents deny discrimination and allege that Complainants were denied housing because they did not meet Respondents' standard for required income, which is applied to all potential tenants, regardless of sexual orientation or receipt of public assistance. Respondent also alleges that this policy is justified by a business necessity.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: July 22, 2012.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): September 28, 2012.
- 3) Respondents provide rental housing and are subject to the Maine Human Rights Act, the Federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Complainant is represented by [REDACTED]. Respondent is represented by [REDACTED].

¹ Complainants originally claimed that Respondents discriminated against them primarily because of their sexual orientation and receipt of public assistance, and also that Respondents' policies had a disparate impact upon them because of their sexual orientation and receipt of public assistance. Complainants have since agreed that Respondents did not harbor any personal animus toward them. As a result, their claim for intentional discrimination is not considered further in this investigation.

- 5) Investigative methods used: A thorough review of the materials submitted by the parties and an Issues and Resolution Conference. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

IV. Development of Facts:

- 1) The relevant parties, issues, and facts in this case are as follows:
- a) Complainants are both females and are an unmarried, same-sex couple. Both Complainants receive public assistance in the form of Social Security Insurance ("SSI") and Social Security Disability Insurance ("SSDI").
 - b) Respondents own a building containing four rental housing units, one of which the Complainants applied to rent.
- 2) Complainants provided the following:
- a) On or around July 9, 2012, Complainants applied for a rental unit owned by Respondents. Complainants planned to rent the apartment along with several members of their family; four adults, in total, were going to be permanent residents listed on the lease. As instructed by Respondents, each of the four adults filled out a separate rental application. They returned the four applications, along with a \$650 security deposit, as required by Respondents.
 - b) Complainants have a combined income of approximately \$1400 per month, which includes SSDI and SSI income. The other two adult residents have a combined income of \$1200 per month, as well as a profitable franchise that brings in over \$5,000 a month.
 - c) On or about July 22, 2012, Respondents informed Complainants that their applications had been denied because Respondents required each individual adult tenant to have a monthly income of \$1,800 or higher, approximately three times the \$650 monthly cost of the rental unit.
 - d) Respondents told Complainants that they would not consider combined incomes unless the individuals were married.
 - e) Respondents' income requirement policy has a disparate impact on same-sex couples and those who receive public assistance. Same-sex couples were unable to legally marry at the time Complainants sought housing, and were at an unfair advantage in that they were held to stricter income requirements than heterosexual couples who were able to marry. The policy also has a disparate impact on applicants who receive public housing, because the majority of recipients would not have an income of at least three times the monthly cost of the rental unit.
 - f) An alternative policy that would achieve the goal of ensuring that Respondents were not left with a tenant who could not afford the rent while avoiding a disparate impact on same-sex couples and those who receive public assistance would be to have a requirement in the lease that states the parties are "jointly and severally responsible for the rent." According to Complainants, other landlords do not use the same policy as Respondents, and it is not a common practice.
- 3) Respondents provided the following:

- a) They have been landlords for many years, and it is their past experience that unmarried tenants are more likely to be transient and leave the rental units at different times. The policy of requiring all unmarried tenants to have an income of three times the monthly rent is a business necessity to protect them from having one tenant leave and have the remaining tenant unable to pay the full cost of the rental unit. This policy has been in place for many years and has been applied to all applicants regardless of sex, sexual orientation, relationship between the applicants, or receipt of public assistance. The policy is not discriminatory and is used by many other landlords across the country.
- b) They did not rent to Complainants solely because Complainants did not meet their income requirements individually. They did not deny Complainants a rental unit because of their sexual orientation or because they receive public assistance.

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 provides that it is unlawful for the owner of a housing accommodation to refuse to rent to an individual on the basis of their sexual orientation or their receipt of public assistance. 5 M.R.S. § 4581-A (1)(B) & (4).
- 3) Courts have recognized the applicability of the “disparate impact” approach to proving discrimination in the housing context. *See, e.g., Langlois v. Abington Housing Authority*, 207 F.3d 43, 49 (1st Cir. 2000) (Fair Housing Act). A complainant makes a prima facie showing of disparate impact where a housing practice is facially neutral but in fact affects more harshly one group than another. *See Maine Human Rights Com. v. Department of Corrections*, 474 A.2d 860, 865-866 (Me. 1984) (employment case). Respondent must then show that its practice is justified by a “business necessity,” not mere business convenience. *See* 5 M.R.S.A. § 4583 (referencing “business necessity”); *Maine Human Rights Com. v. Auburn*, 408 A.2d 1253, 1265 (Me. 1979) (employment case); *HUD v. Mountain Side Mobile Estates*, 2A Fair Housing-Fair Lending (P-H) ¶ 25,053 (HUD Sec’y, July 19, 1993), *standard explained further by* 2A Fair Housing-Fair Lending (P-H) ¶ 25,064 (HUD Sec’y, October 20, 1993), *rev’d in part* 56 F.3d 1243 (10th Cir. 1995); Office of Fair Housing and Equal Opportunity, Title VIII Handbook 2-4(D) (1998). Although courts have interpreted the necessary showing in different ways, at a minimum, Respondent must “present bona fide and legitimate justifications for its action with no less discriminatory alternatives available.” *Huntington Branch, N.A.A.C.P. v. Town of Huntington*, 844 F.2d 926, 939 (2nd Cir. 1988). *Cf.* Robert G. Schwemm, *Housing Discrimination Law* 10-49 (2006) (explaining different standards).
- 4) The Maine Supreme Judicial Court recently examined the viability of the disparate impact theory in a housing discrimination case involving participation in the Section 8 housing voucher program. *See Dussault v. RRE Coach Lantern Holdings, Inc.*, 2014 ME 8 (decided January 23, 2014). In *Dussault*, the Court held that “as a matter of law, the MHRA, as currently established by the Maine Legislature, does not create disparate impact liability in the context of claims of housing discrimination **based on a landlord’s decision not to participate in the voluntary voucher program established by Section 8.**” *Id.* at ¶ 26 (emphasis added); *see also id.* at ¶ 29. In reaching its decision, the Court focused on the voluntary nature of Section 8’s voucher program, and its concern that application of the disparate impact theory of liability would have the effect of making the voluntary program mandatory. Of particular note, the Court did not foreclose the application of the disparate impact theory in housing cases involving allegations of

discrimination on the basis of receipt of public assistance as a general rule. Federal cases involving the Fair Housing Act support the application of disparate impact analysis in housing cases generally. *See, e.g., Langlois v. Abington Hous. Auth.*, 207 F.3d 43, 49 (1st Cir. 2000); *see also Dussault*, 2014 ME 8 at ¶ 52 (Levy, J., dissenting) (collecting cases).

- 5) In this case, Complainants receive public assistance in the form of SSI and SSDI; they have made no allegation that they sought to participate in Section 8's voluntary voucher program, and the policy implications involved in applying a disparate impact analysis to a voluntary program are not at issue. Accordingly, their claim is not foreclosed by *Dussault*, and the investigation into whether Respondents' policy had a disparate impact on recipients of public assistance such as SSI and SSDI continues.
- 6) Here, Complainants alleged that Respondents' facially neutral income requirement policy has a disproportionate impact on same-sex couples. Complainants argue that because same-sex couples could not legally marry at the time this Complaint was filed, Respondents' policy unfairly disadvantaged them by subjecting them to stricter income requirements than heterosexual couples who were legally able to marry.²
- 7) Complainants also alleged that Respondents' policy has a disparate impact on applicants who receive public assistance, because those individuals would in almost no circumstance receive an income of three times the cost of the rental unit.
- 8) Respondents argue that their income requirement policy is applied to all unmarried applicants, regardless of sexual orientation or receipt of public assistance. Respondents argue that this long-standing requirement serves a business necessity because, based on their past experience as landlords, unmarried tenants sharing a housing unit, regardless of sex or relationship to each other, are more likely to be transient than a married couple. In these cases, if one tenant leaves, the other tenant is stuck with the full rental amount. Respondents' policy protects their business by assuring that each individual in the apartment would be able to pay the full amount of the rental unit in the case of the other tenant leaving.
- 9) In this case, Respondents' policy had a disparate impact based on sexual orientation, because same sex couples - no matter how lengthy or committed their relationship - did not qualify to have their joint income considered because they were legally foreclosed from marrying. As a result, Respondents' policy imposed higher standards on same-sex couples than on heterosexual couples, who had the opportunity to marry and apply for housing based upon their joint income.
- 10) It is also reasonable to conclude that Respondents' policy had a disparate impact on recipients of public assistance. Individuals who receive public assistance generally have a lower income than most individuals, since these programs generally have strict income guidelines and limitations. As a result, most applicants who receive public assistance would be excluded from renting a housing unit from Respondents because of their income qualification policy.
- 11) In the end, Respondents were unable to "present bona fide and legitimate justifications for [their] action with no less discriminatory alternatives available." While Respondents had a business reason for wanting all tenants to be able to pay the rent on their own, there are many less discriminatory

² Since same-sex couples now have the right to marry in Maine, this issue may be moot in future cases. This case is analyzed under the law as it existed at the time the alleged discrimination occurred.

alternatives available to them. Respondents' policy may be a business convenience, but Respondents could not show that it is a business necessity which justifies the disproportionate impact on same-sex couples and those who receive public assistance. Respondent could not refute that there are less discriminatory means of achieving their objective, for example, holding all signers of the lease "jointly and severally" accountable for the rent.

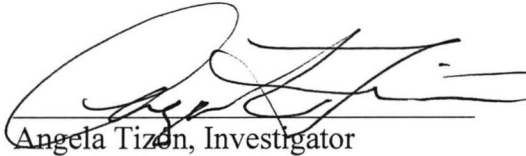
VI. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that [REDACTED] and [REDACTED] discriminated against [REDACTED] and [REDACTED] through the use of a policy in evaluating applicants for their rental housing units which has a disparate impact on same-sex couples and on those who receive public assistance.
- 2) Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



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