



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

MHRC No. H13-0259

HUD No. 01-13-0453-8

Date issued: September 9, 2013

[REDACTED]

v.

[REDACTED]

### I. Complainant's Complaint:

Complainant [REDACTED] (hereinafter "Complainant", "[REDACTED]" or "C") alleged that Respondent [REDACTED] Inc. (hereinafter "Respondent", "R" or "[REDACTED]") engaged in housing discrimination by (a) denying a tester an equal opportunity to view an apartment on the basis of race, color, national origin and ancestry; (b) making unlawful oral inquiries about disability and familial status, and (c) using a rental application that makes unlawful written inquiries about disability, sexual orientation and familial status.

### II. Respondent's Answer:

Respondent denies that Complainant has standing to maintain this complaint. Respondent also states that the facts alleged are inaccurate, that there was no unequal treatment of the tester based on race, color or national origin/ancestry, and that no unlawful inquiries were made.

### III. Jurisdictional Data:

- 1) Dates of alleged discrimination: April 18-May 7, 2013.
- 2) Date complaint filed with the Maine Human Rights Commission: June 7, 2013.
- 3) Respondent owns and manages [REDACTED] [REDACTED] (80 units) and [REDACTED] (170 units) and is subject to the Maine Human Rights Act and the federal Fair Housing Act as well as state and federal housing regulations.
- 4) Respondent is represented by [REDACTED]. Complainant is represented by [REDACTED] Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds."

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## IV. Development of Facts:

1) The parties and issues in this case are as follows:

- a) [REDACTED] is a legal services organization that provides statewide civil legal services. [REDACTED] has a Fair Housing Initiative Program Grant ("FHIP Grant") from the U.S. Department of Housing and Urban Development ("HUD") to conduct a fair housing testing program. Under the testing program, [REDACTED] sends trained testers to inquire about housing units and compares how testers are treated in order to determine if discrimination has occurred.
- b) [REDACTED] is an owner and manager of residential rental housing in Portland ([REDACTED] Village) and Falmouth ([REDACTED]).
- c) At issue in this case is whether [REDACTED] has standing to proceed with this complaint and whether [REDACTED] engaged in housing discrimination by denying a tester an equal opportunity to view an apartment on the basis of race, color and national origin/ancestry or by making unlawful oral or written inquiries.

2) The following information addresses the question of organizational standing:

- a) (C) [REDACTED] has suffered actual injury in fact because it has had to divert resources from its general mission and from activities mandated by the FHIP Grant in order to pursue this complaint against [REDACTED]. [REDACTED]'s mission is to ensure that state and federal laws affecting poor people are enforced while also addressing the systemic barriers to justice that low-income Mainers face. [REDACTED] work under the FHIP Grant supports this general mission. The FHIP Grant must fund all fair housing related activities, not simply the fair housing tests. Under the FHIP Grant, [REDACTED] is required to produce and provide a brochure regarding fair housing matters; investigate client claims regarding allegations of housing discrimination; provide information to other organizations regarding fair housing protections and how to refer clients to [REDACTED] for assistance; make presentations regarding fair housing to other organizations and individuals interested in fair housing; publicize our services and educate the public about fair housing; publicize case resolutions in order to deter potential violations; perform testing throughout the state; conduct investigations to support clients' complaints; file complaints; and provide legal representation to disabled individuals seeking reasonable accommodations. Each time test results reveal evidence of housing discrimination, a complaint must be filed and attorney time must be used to see that this complaint reaches a resolution. This time could have been used to update and produce literature regarding fair housing matters; investigate client claims regarding allegations of housing discrimination and other fair housing activities. While pursuing complaints of housing discrimination as a result of fair housing test results indirectly furthers [REDACTED] mission by educating individuals and corporations who are unlawfully discriminating against potential tenants, this does not directly help low income individuals who have issues with housing discrimination and thus it weakens [REDACTED] ability to provide services to its clients. The time and resources spent pursuing complaints as a result of testing reduce the time and resources available to the fair housing coordinator for directly helping low income Mainers by investigating client claims regarding housing discrimination and assisting clients who seek reasonable accommodations and modifications. The temporary Fair Housing Testing Coordinator who represents [REDACTED] in this case has spent over 15 hours on this case beyond the time spent assigning the test and reviewing the tester reports. Additionally, an inquiry into standing at this point of the administrative proceeding is premature because of the nature of the Maine Human Rights Act.

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- b) (R) [REDACTED] does not have standing to maintain this complaint, having suffered no actual injury in fact. [REDACTED] is the recipient of a HUD FHIP grant that requires it to conduct housing discrimination testing. Rather than "diverting resources" or "frustrating its mission," [REDACTED] conduct of the tests that form the basis of this complaint was in fact part of that mission and an expected expenditure of its resources.
- 3) Complainant provided the following with regard to the testers:
- a) Tester A is a white woman who was born in the United States.
  - b) Tester B is a black man who immigrated to the United States who speaks with an accent that identifies him as not being from the United States.
  - c) Tester C is a white man who was born in the United States.
  - d) The testers were trained and given fair housing testing assignments under Complainant's FHIP grant.
- 4) Respondent provided the following with regard to its property management practices:
- a) [REDACTED] contracts with Level One, a call center specific to the multifamily housing industry, to answer leasing calls in three instances: after office hours, overflow, and during hours when there is not a [REDACTED] associate available to take a call. Level One gathers information on the caller's preferences and needs, answers questions, gives a sales presentation, and forwards the callers' information via email to the appropriate [REDACTED] leasing office for setting an appointment.
  - b) In addition, [REDACTED] uses Lease Hawk, a third party call tracking system, to monitor the effectiveness of its marketing efforts and provide training. Through Lease Hawk, incoming calls to the office that are made from advertised contact numbers are recorded. Callers hear a recording at the beginning of the call advising them that their calls will be recorded for quality control or training purposes.
  - c) Respondent submitted audio recordings of calls made by each of the testers described in the complaint.
- 5) The parties provided the following with regard to Tester A's inquiries about renting a unit at [REDACTED] [REDACTED] in Portland:
- a) (C) Tester A called 888-812-1097 on April 18, 2013 at or around 2:30 P.M. She asked about a one-bedroom apartment at [REDACTED] [REDACTED] that she had seen advertised on Craigslist. Tester A was asked if she had any children. She was also asked about her price range, when she was looking to move, and if she had pets. Tester A answered these questions and was told about the property's amenities. She was also told that availability was subject to change and that units were offered at a range of prices. Tester A was asked for her contact information and was told that she would be called back to schedule a showing.
  - b) (R) Tester A's call was answered by Level One and recorded by Lease Hawk. The recording establishes that during the call, Tester A was not asked if she had any children as alleged in the complaint.
  - c) (C) Tester A called again on May 3, 2013 at or around 3:30 P.M. and stated that she was interested in a unit at [REDACTED] Village. She was told about the property. She was asked if she had disabilities. She was

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also asked how many people were moving, the number of pets if any, when she wanted to move, and her price range. She answered the questions and was told about the procedure for being shown a unit. Some of the units were described to her. Tester A was asked for her contact information and an appointment was made to show her an apartment. Tester A arrived at the site on May 7, 2013 at or around 9:00 A.M. and was shown a unit. She was told about another [REDACTED] Properties apartment community in Portland. She was told that other similar units would be available soon for a slightly higher price.

- d) (R) On May 3, 2013, Tester A called the Craigslist call tracking number. The call was answered by a [REDACTED] Leasing Consultant TR and recorded by Lease Hawk. The recording establishes that Tester A was not asked if she had disabilities as alleged in the complaint. TR asked Tester A, "Do you have any special needs or requirements for your apartment?" This is an open-ended question that all leasing professionals are expected to ask. Examples of an applicant's special needs might include (1) owning a dog and needing a pet-friendly apartment, (2) needing space for a piano, (3) needing wall space for art, (4) only wanting a first floor (or top floor) apartment, (5) needing a southern exposure for plants.
- e) (C) Tester A interpreted the question regarding her "special needs" to be an inquiry into disability as the phrase is frequently used as a euphemism for disability.
- f) (Test reports) The test reports completed by Tester A indicate that she was asked if she had "any children" and if she had "any disabilities."
- 6) The parties provided the following with regard to Tester B's inquiries about renting a unit at [REDACTED] Falmouth, Maine:
- a) (C) Tester B called [REDACTED] on April 27, 2013 at or around 10:59 a.m. and spoke with a leasing consultant about [REDACTED]. Tester B was asked about how many people would be living in the unit, his reason for moving, and if he had pets. He answered these questions. The leasing consultant described the area. Tester B was told to call the rental office at [REDACTED] to schedule a tour.
- b) (R) This call was answered by Level One, not by a [REDACTED] leasing consultant as alleged in the complaint. When asked when he needed an apartment, Tester B responded, "beginning of May." Level One may have mistakenly given Tester B the impression that something would be available at [REDACTED] for a May move-in date. When Tester B asked to visit the property, Level One properly suggested that Tester B contact [REDACTED] directly to schedule an appointment. This call was recorded.
- c) (C) Tester B called the rental office and left a message. His call was returned at or around 12:05 p.m. He was told that the person he was speaking to was from [REDACTED]. He asked if a one bedroom apartment would be available soon and was told that the next one bedroom would be available in June.
- d) (R) [REDACTED] Leasing Consultant CI spoke to Tester B. This call was not recorded. CI recalls talking to Tester B about what he was looking for and when he wanted to move. CI told Tester B that the soonest availability in Falmouth for a one bedroom was June 7, 2013. CI also mentioned that [REDACTED] had four other properties in the Portland area and discussed those locations with Tester B to determine if they were suitable given the lack of a unit available at [REDACTED] on Tester B's desired move in date.

- e) (C) Tester B called back around May 2, 2013 and was again told that the next one bedroom would be available on June 7th and was told that other one bedroom units might be available in Portland. The rental office did not offer to show Tester B a unit.
- f) (R) Tester B did not ask to view a unit after being told that one was not available until June 7<sup>th</sup>.
- 7) The parties provided the following with regard to Tester C's inquiries about renting a unit at [REDACTED] in Falmouth:
- a) (C) Tester C called [REDACTED] on April 29, 2013. He asked about the size of the unit. Tester C was asked if he was single. He was also asked where he currently lived. He was told about the area and given an appointment to view a unit the next day.
- b) (R) [REDACTED] Leasing Consultant JP answered the call from Tester C. The call was recorded. The recording establishes that JP asked Tester C, "Is the apartment just for yourself?" not if he was single. When JP asked Tester C when he needed the apartment, he replied, "Well, fairly soon, within a few weeks, I suppose. I'd really like to take a look at the property." JP also asked Tester C, "Is there anything special that you wanted to have in your apartment, or a price range that you're trying to stay within?" When Tester C questioned what she meant by this, if there were options in the apartment, she began to explain that "I have five different properties to choose from ... you mentioned that you were looking at the [REDACTED] property, but didn't know..." Tester C cut her off to say "Clearwater Drive<sup>1</sup>." JP responded, "Okay, okay," and Tester C continued, "Well, that's what was advertised in Craigslist. [REDACTED]." Tester C was told that [REDACTED] would have a one bedroom apartment available on June 7.
- c) (C) Tester C arrived at the site visit at or around 2 p.m. on April 30, 2013. He was told that the unit would be available in a couple of weeks at the end of May and was urged to fill out an application after seeing the unit. He was also told about the procedure for holding a unit and the application fee. Tester C was given an application and materials about the property. The materials the tester received indicated that there was a one bedroom unit available on June 7<sup>th</sup>.
- 8) The following concerns Complainant's claims that Respondent's rental application contains illegal inquiries:

a) (Rental application)

Animals that will be in the apartment (include age and breed information) \_\_\_\_\_  
Is this animal necessary because of a disability of a resident of the apartment?<sup>2</sup> ( ) Yes ( ) No

Please list all other persons who will occupy the apartment:

<sup>1</sup> [REDACTED] is located at 100 Clearwater Drive.

<sup>2</sup> Hereinafter, "Question #1."

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Name	Relationship to applicant <sup>3</sup>	18 or over? <sup>4</sup> (Yes/No)	Full-time student?
_____	_____	_____	_____
_____	_____	_____	_____

- b) (C) Question #1 is an illegal inquiry into disability. Question #2 is an illegal inquiry into sexual orientation. Question #3 is an illegal inquiry into familial status.
- c) (R) The questions at issue are not discriminatory on their face or in their application. Respondent asks Question #1 because it charges an additional pet deposit or fee for pets but not for service animals. Housing providers may ask whether a person is entitled to be exempt from an otherwise established requirement of tenancy. Respondent asks Questions #2 and 3 because its occupancy policy allows more occupants in an apartment if those occupants are related and/or have familial status and because all occupants over the age of 18 must be signatories to the lease.

**V. Analysis:**

- 1) 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.
- 2) The MHRA, 5 M.R.S. §4581-A(1), provides, in part, that it is unlawful housing discrimination for any managing agent or other person having the right to rent or manage a housing accommodation, or any agent of these, to:
- A. Make or cause to be made any written or oral inquiry concerning the . . . sexual orientation, physical or mental disability . . . or familial status of any prospective . . . tenant of the housing accommodation;
  - B. Refuse to show . . . or otherwise deny to or withhold from any person the housing accommodation because of race or color . . . ancestry, [or] national origin or familial status...
- 3) The Commission's Housing Regulations, 94-348 C.M.R. ch. 8, §8.06(A)(3), provides in part:
- It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person, has a physical or mental disability or to make inquiry as to the nature or severity of a disability of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have physical or mental disabilities.
- (a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy.

<sup>3</sup> Hereinafter, "Question #2."

<sup>4</sup> Hereinafter, "Question #3."

(b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with physical or mental disabilities or to persons with a particular type of physical or mental disability. ...

4) The MHRA, 5 M.R.S. §4583, also provides as follows:

Nothing in this Act may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to . . . rent, lease or manage a housing accommodation to set up and enforce specifications in the . . . renting, leasing or letting or in the furnishings of facilities or services in connection with the facilities that are consistent with business necessity and are not based on the . . . sexual orientation, physical or mental disability, . . . or familial status of . . . any prospective or actual . . . lessee, tenant or occupant. . . .

- 5) The term “consistent with business necessity” is not defined in the MHRA. The Commission interprets the standard to mean that specifications “that are consistent with business necessity” must be shown by objective evidence to be necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of a respondent, and those interests could not be served by another practice that has a less discriminatory effect. *See* 24 C.F.R. § 100.500(b)(1)(i, ii) (standard for “legally sufficient justification” in federal Fair Housing Act regulation). *Cf. Langlois v. Abington Housing Authority*, 207 F.3d 43, 51 (1<sup>st</sup> Cir. 2000) (interpreting federal Fair Housing Act) (“a demonstrated disparate impact in housing [must] be justified by a legitimate and substantial goal of the measure in question; but beyond that, we do not think that the courts' job is to ‘balance’ objectives”). “Objective evidence” may not be hypothetical or speculative. Respondent has the burden of proving that the specifications are necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the Respondent, and the Complainant has the burden of proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect. *See* 24 C.F.R. § 100.500(c)(2, 3).
- 6) Complainant here alleged that Respondent engaged in housing discrimination (a) by denying a tester an equal opportunity to view an apartment on the basis of race, color and national origin; (b) by making unlawful oral inquiries about disability and familial status; and (c) by using a rental application that makes unlawful written inquiries about disability, sexual orientation and familial status.
- 7) Respondent denies that Complainant has standing to maintain this complaint. Respondent also states that the facts alleged are inaccurate, that there was no unequal treatment of the tester based on race, color or national origin, and that no unlawful inquiries were made.
- 8) On the threshold matter [REDACTED] standing to maintain this complaint, Respondent’s arguments against standing are not persuasive. [REDACTED] has standing to proceed here.

#### Unlawful Oral Inquiries

- 9) Complainant here alleged that Tester A was asked if she had children (familial status) and if she was disabled. Respondent disproved this allegation by producing recordings of Tester A’s calls with its employees and agents. The recording prove that Tester A was not asked if she had children and or if she was disabled. Complainant was asked if she had “any special needs or requirements for your apartment?”

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- 10) It is troubling that Tester A, who is allegedly neutral and trained to perform fair housing tests, provided inaccurate information about critical facts.<sup>5</sup> Complainant did not dispute that Tester A provided inaccurate information (and thus lacks credibility) yet continued to insist that Tester A asked an unlawful question.
- 11) Complainant's theory is that Tester A reasonably interpreted the question about "special needs" to be a euphemism for disability and that the question is unlawful.
- 12) It is true that, in certain settings, "special needs" is a euphemism for disability. However, in this context, Respondent asked if a prospective tenant had any "special needs or requirements" in the context of matching a prospective tenant with available units and the unit's unique amenities. A caller who needs space for a grand piano may not be interested in renting an efficiency apartment. Complainant's theory is undermined by the fact that Tester C, who was similarly asked if there was "anything special" that he wanted, did not interpret the question as an inquiry about disability. Complainant was not persuasive on this point.
- 13) No unlawful oral inquiries were made.

### Unlawful Written Inquiries

- 14) The Commission publishes a Housing Applicant Inquiry Guide ("Guide") to help housing providers comply with 5 M.R.S. § 4581-A(1)(A). The Guide provides examples of unlawful inquiries about, among other things, the ages of persons in household, the relationship between household members, and whether a household member has a service animal unless first identified by the applicant. The Guide specifies that inquiries are not unlawful if they are consistent with business necessity and are not based on protected-class status.
  - a) The rationale for prohibiting a question about age is that answering the question will inform the housing provider about the applicant's familial status, that is, whether he or she has one or more minor children.
  - b) The rationale for prohibiting a question about relationships is that answering the question may inform the housing provider about the applicant's sexual orientation. For example, two adult men seeking housing together may be, or may be perceived as, gay.
  - c) The rationale for prohibiting the question about service animals is that by responding "yes," the applicant will disclose that a household member has a disability.

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<sup>5</sup> Complainant's process in this case also is troubling, as it proceeded with these allegations based on inaccurate information without any corroboration from the other testers. When a tester reports that a housing provider made statements that violate fair housing laws, a testing program should verify the test by repeating it and getting the same results. Here, Complainant did conduct further tests by having Tester B and Tester C make calls to Respondent; the other testers did not corroborate Tester A's claims. This series of events led to a false complaint against Respondent for violating the MHRA.



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- 15) Respondent here uses an application form that asks (a) if the applicant will have an animal in the household that is a service animal, (b) the relationship between occupants and the applicant, and (c) whether occupants are over 18 years of age. Respondent identified business reasons for asking all three questions.
- 16) Respondent asks if any animal in the household is a service animal because it charges an additional pet deposit or fee for pets but not for service animals. This question is impermissible because Respondent could accomplish the same objective by asking whether the applicant has a pet coupled with a statement that service animals are not pets.
- 17) Respondent asks if occupants are over the age of 18 and about their relationship to the applicant because (a) its occupancy policy allows more occupants in an apartment if those occupants are related and/or if the occupants have familial status and (b) because all occupants over the age of 18 must be signatories to the lease. These questions are permissible because they do not directly ask about familial status or sexual orientation and because legitimate business reasons are the motivation for the questions. Those interests could not be served by another practice that has a less discriminatory effect.

Discriminatory Terms and Conditions Based on Race, Color, National Origin and Ancestry

- 18) Because the race/color/national origin/ancestry discrimination claim does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination with respect to the price, terms, conditions, or privileges of the rental or lease of a housing accommodation by showing (1) that its tester applicant is a member of a protected class, (2) that its tester applicant was not offered the same terms, conditions or privileges of rental of a dwelling or not provided the same services or facilities in connection therewith made available to others, and (3) under circumstances giving rise to a reasonable inference of prohibited discrimination. *See Khalil v. Farash Corp.*, 260 F. Supp. 2d 582, 588 (W.D.N.Y. 2003).
- 19) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondent to articulate a legitimate, nondiscriminatory reason its action. *See United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep't of Human Servs*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. 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 housing 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 its 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.
- 20) In order to prevail, Complainant must show that the tester applicant would not have suffered the adverse action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 21) Complainant here established a prima-facie case of race/color/national origin/ancestry discrimination by showing (a) that Tester B, an African immigrant, was not invited to view a unit, whereas Tester C, a white person born in the United States was given an appointment to view a unit the day he called; (b) that Tester B

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(but not Tester C) was "steered" away from the property in Falmouth and directed to inquiry about properties available in Portland; and (c) that Tester B he was correctly told that it would be a while before a unit was available for rent, which allegedly discouraged him from applying, whereas Tester C was misled regarding the availability of units which encouraged him to apply.

22) Respondent was able to articulate legitimate, nondiscriminatory reasons for its actions. Respondent stated that any difference in treatment between the two testers was caused by differences in the testers' behavior.

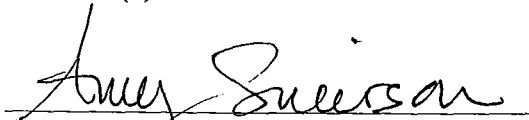
23) At the final stage of analysis, there is insufficient evidence to support Complainant's claim of race/color/national origin/ancestry discrimination, with reasoning as follows:

- a) When Tester B called on April 27, 2013, he said he wanted to move at the beginning of May, i.e., in a couple of days. When Tester C called on April 29, 2013, he said he wanted to move "fairly soon, in a couple of weeks." This inconsistency is enough to invalidate the test results.
- b) When Tester B asked to view the property, he was properly instructed to contact [REDACTED] directly to speak to a Leasing Consultant about an appointment. By chance, Tester C's first contact with Respondent was with a Leasing Consultant, so no referral was necessary.
- c) Tester B and Tester C were both given accurate information about the availability of units at [REDACTED] [REDACTED] they were both told that June 7, 2013 was the earliest date that a one-bedroom unit would be available.
- d) No steering occurred. Testers A, B and C were all given information about other apartments that Respondent had available for rent. Tester C behaved differently than Testers A and B in that he cut off the Leasing Consultant who was attempting to describe other properties and insisted on viewing an apartment at [REDACTED]
- e) There is no evidence that Tester B asked to view an apartment in Falmouth after being told that no one-bedroom units were available there until June 7.
- f) Tester C was given an appointment to view an apartment at Foreside Estate because he behaved differently than Tester B after being told that a unit there would not be available until June 7. Tester C cut off any discussion about other options and insisted on viewing an apartment at [REDACTED] whereas Tester B did not ask to see the apartment again.
- g) In this investigator's extensive training and experience regarding testing programs, when a test is properly constructed, the "control" tester is slightly less eager or qualified as an applicant than the "protected" tester. Here, the opposite was true. The "control" tester - white U.S.-born Tester C - pushed harder to view a unit than the "protected" tester - African immigrant Tester B. The results are not surprising. Tester C, who repeatedly asked to see a unit even though one was wasn't available for rent, was shown a unit. Tester B, who did not ask to see a unit when he was told one wasn't available for rent, was not shown one.
- h) No discrimination in the terms and conditions of rental based on race, color, national origin, or ancestry occurred.

**VI. Recommendation:**

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

1. There are **No Reasonable Grounds** to believe that Respondent [REDACTED] Inc. made unlawful oral inquiries based on disability, sexual orientation, or familial status, or that Respondent discriminated in the terms and conditions of rental based on race, color, national origin or ancestry;
2. There are **No Reasonable Grounds** to believe that Respondent's application form contains unlawful written inquiries concerning familial status or sexual orientation; and
3. Those portions of the complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).
4. There are **Reasonable Grounds** to believe that Respondent's application form contains unlawful written inquiries concerning physical or mental disability; and
5. The Commission should attempt conciliation of that aspect of the complaint in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Spierston, Executive Director

  
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Barbara Lelli, Chief Investigator