



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 No. H21-0422; HUD No. 01-22-9985-8

January __, 2022

Felicia Marie King (Hancock)

v.

Sunrise Assisted Living, LLC (Jonesport)

I. Summary of Case:

On October 21, 2021, Complainant filed this Complaint with the Maine Human Rights Commission ("Commission") alleging that Respondent discriminated against her on the basis of her sex and sexual orientation or gender identity by denying her a spot at its assisted living facility at 11 Ocean Street in Jonesport, ME ("the Premises"). Respondent denied discrimination and stated that Complainant never applied for a spot at the Premises and that Respondent merely expressed concern for Complainant's well-being. Based upon the information gathered during the course of the investigation, the Investigator recommends a finding that there are reasonable grounds to believe that Respondent discriminated against Complainant on the basis of her sex and sexual orientation or gender identity.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: April 1-15, 2021.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): October 21, 2021.
- 3) Respondent is both a housing provider and a public accommodation under the Maine Human Rights Act ("MHRA") and is therefore subject to the MHRA, and the federal Fair Housing Act ("FHA") as well as state and federal housing regulations (as a housing provider only).
- 4) Complainant is represented by [REDACTED], Esq., [REDACTED], Esq., and [REDACTED] Esq.
Respondent is represented by [REDACTED], Esq.

III. Analysis:

A. Development of Facts:

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

Complainant is a transgender woman. On March 29, 2021, she was hospitalized after [REDACTED] at the assisted living facility where she had been residing. Medical staff determined that she could not

safely return to that facility. Instead, she was admitted to the hospital so hospital staff could initiate the process of finding a new place for her to live. During late March and early April, a hospital social worker (“Social Worker”) reached out to Respondent’s administrator (“Administrator”) about the possibility of Complainant moving to the Premises. Administrator requested that various of Complainant’s medical records be faxed to her, which happened on April 1, 2021. On April 7, 2021, Social Worker and Administrator spoke about whether Respondent would be a good fit for Complainant. Social Worker disclosed that Complainant is transgender. Administrator stated that Respondent would not accept Complainant because Complainant wanted to reside in a room with a female roommate. Social Worker therefore did not continue with the application process. She informed Complainant, who was disappointed but not surprised. Hospital staff continued to search for an appropriate placement for Complainant, and eventually found her a spot at her current residence on or about July 27, 2021.

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

Administrator does not remember the conversation with Social Worker well, but as she recalls, Social Worker told Administrator that she was looking for a private room for Complainant, and told Administrator that Complainant was transgender even though that was not relevant to their conversation. Administrator told Social Worker that Complainant’s health insurance would not pay for a private room, and Social Worker said Complainant needed a private room. Administrator was also concerned about Complainant’s [REDACTED] because she had been admitted to the hospital after [REDACTED]. If Administrator said anything about Complainant being transgender, it was just that she was worried about Complainant’s well-being if a potential female roommate was not accepting.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the interviews conducted at the Conference:

- a) Complainant is a transgender woman.
- b) On March 29, 2021, Complainant was admitted to a local hospital after she [REDACTED] at the assisted living facility where she had been residing. Complainant’s [REDACTED] was related to the way she was treated at that facility due to being transgender.
- c) Staff at the hospital determined that Complainant could not safely return to the previous facility. She was admitted so they could begin the search for an appropriate placement for her.
- d) On March 31, 2021, Social Worker received a message from Administrator, which stated that Respondent might accept Complainant once she was stabilized. Social Worker received another message from Administrator later that day, stating Respondent had openings and requesting various of Complainant’s medical records.
- e) On April 1, 2021, those records were faxed to the number provided by Administrator.
- f) On April 8, 2021, Social Worker and Administrator had a phone conversation. Social Worker disclosed Complainant’s gender identity early in the conversation, because of Complainant’s experience at her prior facility and her life experience generally. Social Worker wanted to be sure that Respondent would be respectful and understanding. Administrator then stated that she had concerns about Complainant wanting to reside in a room with another woman, in case such a roommate was not accepting of Complainant’s gender identity. Social Worker inquired as to whether there were private rooms available, even though she knew that Complainant’s insurance would not pay for such a room, just to see if it were

possible. None of the hospital staff believed Complainant needed a private room or had any concerns about her having a roommate. No private rooms were open at that time.

- g) Social Worker informed Complainant that Respondent would not accept her because she is transgender.
- h) Hospital staff continued to search for a bed for Complainant, and eventually found one on or about July 27, 2021.

B. Legal Analysis:

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.

1. Discrimination on the basis of sex and sexual orientation or gender identity: Direct evidence

The MHRA makes it unlawful “For any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these, to...[r]efuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any person the housing accommodation because of...sexual orientation or gender identity...” 5 M.R.S. § 4581-A(1)(B).

The MHRA further makes it unlawful “[f]or 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 to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of...sexual orientation or gender identity...any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodations, advantages, facilities, goods, services and privileges may depend.” 5 M.R.S. § 4592(1).

A mixed-motive analysis applies in cases involving “direct evidence” of unlawful discrimination. *Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment case); *Texas v. Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d 722, 730 (D. Tex. 2000) (Fair Housing Act). “Direct evidence” consists of “explicit statements by [Respondent] that unambiguously demonstrate [Respondent’s] unlawful discrimination. . .” *Doyle*, 2003 ME 61, ¶ 14, n.6. Where this evidence exists, Complainant “need prove only that the discriminatory action was a motivating factor in an adverse [housing] decision.” *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1st Cir. 2002) (employment); *Doyle*, 2003 ME 61, ¶ 14, n.6. Upon such a showing, in order to avoid liability, Respondent must prove “that it would have taken the same action in the absence of the impermissible motivating factor.” *Id.*; *Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d at 730. *Cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O’Connor, J., concurring).¹

¹ The continued application of the mixed-motive analysis has been called into question as a result of the U.S. Supreme Court’s decision in *Gross v. FBL Financial Services, Inc.*, 129 S.Ct. 2343, 2348 (2009), in which the Court held that the burden of persuasion does not shift to defendant even with “direct evidence” of unlawful discrimination in a federal Age Discrimination in Employment Act case. That decision did not interpret the Maine Human Rights Act, however, and the guidance from the Maine Supreme Court in *Doyle* will continue to be followed.

Here, Administrator made an explicit statement that unambiguously demonstrated Respondent's unlawful discrimination against Complainant on the basis of her sex and sexual orientation or gender identity. When told Complainant wanted to have a female roommate, Administrator stated that she was concerned for Complainant's well-being in case that roommate was not accepting of Complainant because she is transgender. This is equivalent, for example, to being concerned that a roommate might not be accepting of a roommate of a different race, or religion, or that an able-bodied roommate might not be accepting of a disabled roommate.

Respondent has argued that Complainant was not denied housing because she never finished the application process. However, to do so would have been futile when Respondent had made clear that this would not be a safe and appropriate placement for Complainant. Complainant has shown that Respondent's statement was, clearly, a motivating factor in determining whether or not she would be a good fit for the Premises. Respondent, for its part, has given several shifting reasons for its hesitancy about Complainant. Initially, Respondent simply stated that one, Social Worker only asked about private rooms and two, Administrator and her husband have gay relatives and neighbors and would never participate in discrimination. At the Issues and Resolution Conference, Administrator stated that she was concerned about Complainant's [REDACTED] after her [REDACTED] [REDACTED]. However, this was never mentioned in Respondent's initial answer, written by Administrator and her husband, to the instant complaint. Finally, Respondent stated that in any event, there were no shared rooms with female roommates available when Social Worker and Administrator spoke. It is clear from the record that Social Worker and Administrator did discuss shared rooms, at least hypothetically, and that Social Worker did not pursue that avenue any further after Administrator expressed her concerns about Complainant's gender identity. Respondent cannot show that it would have made the same assessment if Complainant were a cisgender woman instead of a transgender woman.

Discrimination on the basis of sex and sexual orientation or gender identity is found.

III. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that Sunrise Assisted Living, LLC discriminated against Felicia Marie King on the basis of sex and sexual orientation or gender identity, and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Kit Thomson Crossman, Investigator