



MAINE HUMAN RIGHTS COMMISSION  
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September 30, 2011

JOHN P. GAUSE  
COMMISSION COUNSEL  
ACTING EXECUTIVE DIRECTOR

Colleen Taylor (New Gloucester)

v.

Center for Behavioral Health ME, Inc. dba Discovery House (South Portland)

## I. COMPLAINANT'S CHARGE

Complainant, Colleen Taylor, alleges that Respondent retaliated against her for reporting unlawful sexual harassment at work and continued to retaliate after she filed her charge of discrimination by refusing to respond to multiple requests for certification paperwork.

## II. RESPONDENT'S ANSWER

Respondent, Center for Behavioral Health ME, Inc. dba Discovery House ("Respondent"), denies any unlawful retaliation. Complainant was terminated for not being a good fit, exhibiting "constant negativity" and disrupting its business operations.

## III. JURISDICTIONAL DATA

- 1) Date(s) of alleged discrimination: July 16, 2009.
- 2) Date of filing of complaint with the Maine Human Rights Commission: December 31, 2009. The complaint was amended on December 29, 2010.
- 3) Respondent employs 24 employees and is subject to the Maine Human Rights Act, the Whistleblowers' Protection Act, and state and federal employment regulations.
- 4) Chad T. Hansen, Esq. represents Complainant. Robert V. Hoy, Esq., represents Respondent.
- 5) Investigative methods used: A review of the written submissions provided by the parties, responses to request for information, 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.

#### IV. DEVELOPMENT OF FACTS

1) The parties and issues are as follows:

- a) On or about September 4, 2007, Complainant started working as a substance abuse counselor at Respondent's clinic in Westbrook, Maine.
- b) Respondent operates treatment centers in Maine and other states and offers clinical services and outpatient treatment for persons affected by addiction.
- c) Relevant third parties: Clinical Supervisor LS ("Supervisor") directly supervised Complainant. Complainant also reported to Clinical Director RS ("Clinical Director"), HR Director KP ("HR") and Medical Director PJ ("Medical Director"). Chief Operating Officer MP ("COO") made the termination decision.
- d) Complainant alleges that Respondent terminated her in retaliation for engaging in protected activities - reporting unlawful conduct, advocating for others' rights, pressing for change, and filing complaints with government agencies. After termination, Respondent continued to retaliate by refusing to provide the necessary paperwork for her professional certification. Respondent denies any unlawful retaliation and states that Complainant was terminated for being negative and disrupting business operations with her ongoing questioning of company's actions.

2) Undisputed Facts:

- a) Respondent contracted with ACE Security (ACE) to provide services, and the security guard ("Guard") hired was an ACE employee.
- b) Two employees wrote comments regarding inappropriate behavior by Supervisor. On January 26, 2009, Complainant filed a written complaint alleging inappropriate, sexually-harassing behavior by Supervisor directed toward coworkers CP and PK ("Coworkers"). Respondent investigated and issued a warning to Supervisor. Respondent investigated Complainant's complaints, which led to the dismissal of Supervisor and Clinical Director.
- c) Complainant had no verbal or written reprimands or disciplinary actions in the past two years.
- d) Complainant met with Medical Director to discuss concerns about past and ongoing harassment and hostile environment in the work place. On July 15, 2009, Complainant also met with COO to discuss the same concerns.
- e) On July 16, 2009, she was terminated.

3) Complainant provides the following relevant information:

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- a) During the summer of 2008, Complainant expressed concerns to Supervisor about inappropriate, sexual and personalized comments made by the Guard toward patients. She also discussed the Guard's behavior with Clinical Director, who stated that nothing could be done.
- b) In October 2008, Complainant discussed with Supervisor a patient's report of the Guard's sexual harassment of patients. Supervisor stated that he would raise the report at the next counselor meeting. When he did not do so, Complainant quoted from Respondent's handbook and harassment policies and suggested sexual harassment training at work.
- c) In the same month, coworker CP discussed Supervisor's inappropriate conduct with Complainant. He commented about her shirts and body parts; he also touched her and invaded her personal space. CP She did not say anything out of fear for her safety.
- d) In November 2008, another counselor reported Supervisor's inappropriate sexual comments to Complainant, who later reported the complaints to the Maine Human Rights Commission ("Commission").
- e) At a staff meeting on December 16, 2008, Complainant read her letter to Respondent to put it on notice of her dissatisfaction of its handling of the sexual harassment issues.
- f) In January 2009, she reported sexual harassment directed at her and filed complaints with Respondent. She met with her supervisor to discuss concerns about Supervisor's sexual harassment and the administration's failure to address these issues. They then met with Administrator where Complainant expressed her concerns about the hostile environment and prior history of sexual harassment. She informed Administrator of the sexual harassment complaints of co-workers CP and KP. She also referred Administrator to the information contained in the anonymous employee surveys completed by four counselors and conducted by Respondent on December 19, 2008.
- g) In February 2009, Complainant described the sexual harassment issues and hostile environment to HR during interviews.
- h) In March 2009, no corrective actions seemed to have been taken in the workplace. In her annual evaluation, she was criticized for being a "spokesperson" for her co-workers by having raised the sexual harassment complaints.
- i) In or about May 2009, co-worker PK informed Complainant that she had reported Supervisor's inappropriate behavior to HR and feared that she would be terminated. Complainant advised her to file a complaint with the Commission.
- j) In June 2009, Complainant consulted with the Androscoggin County Sexual Assault Services and obtained information for SARSSM, a hotline for support. Subsequently, Medical Director advised Complainant not to meet or discuss the alleged sexual harassment and hostile environment directly with Supervisor or Clinical Director.

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- k) In a meeting in June 2009, Clinical Director was angry and hostile toward her. She did not feel safe as a result.
  - l) Medical Director advised Complainant to discuss the sexual harassment issues with COO during his visit to Maine. Medical Director assured her that she would not be penalized for discussing these issues.
  - m) On July 15, 2009, Complainant expressed her concerns to COO. She informed him that she had contacted the Commission about the sexual harassment at the Clinic. He stated that it was time to move on and if she disagreed, it was probably time for her to leave.
  - n) On July 16, 2009, she was terminated. Respondent's initial explanation was that she was "not a good fit." Subsequently, Respondent stated that the reason for the termination was that she was "disruptive" and "negatively impacted the environment at the clinic."
  - o) After filing the Charge of Discrimination ("Charge"), Complainant through counsel sent multiple letters, including two certified letters that were confirmed as received, to Respondent over the course of six months regarding verification required for her professional certification. Respondent refused to complete the verification forms ("Forms") relating to course waiver and clinically supervised experience.
- 4) Respondent's allegations:
- a) Employees review the general policy against sexual harassment in the Associate Handbook at the time of hire. The HR Director or Director provides subsequent in house training, which includes a short video presentation on diversity and harassment.
  - b) There have been no similar complaints of sexual harassment in the last five years.
  - c) On June 25, 2009, MA became interim director. "Coworkers" indicated they had informed Complainant they were satisfied with Respondent's corrective actions, but Complainant persisted in demanding they made complaints consistent with her belief about sexual harassment. After Supervisor's termination, Complainant was advised to stop disrupting the company's ongoing operations and put the matter behind her. After other employees complained that she was pressuring them to file new complaints about the same prior events, Respondent investigated the matter further and terminated her subsequently. (*File, Resp. Ex. F.*)
  - d) Although not the primary reason for termination, Complainant had attendance issues.
  - e) Respondent never received Complainant's written requests relating to course waiver forms and had no opportunity to respond timely. Correspondence was sent to incorrect addresses. Further, Respondent declines to complete the forms; it does not have any staff member with the appropriate expertise necessary to complete such forms.

- f) In July and October 2010, Respondent received Complainant's requests for verification of clinically supervised experience. Respondent could not track the status of the requests after receipt and acknowledged a need for a better system to document response to requests. With respect to Complainant's follow-up requests for course waiver, Respondent never received them and had no opportunity to respond to them before receipt of the amended Charge. Regardless, Respondent did not have any staff member within its organization with the appropriate expertise necessary to complete the course waiver form.
  - g) Respondent's counsel denied receiving any forms after he entered his appearance in May 2010. Counsel never received any follow-up email or call enquiring about Respondent's lack of response. Upon receipt of the forms and the amended complaint in January 2011, Respondent's counsel had caused such forms to be completed and mailed to Complainant's attorney!
- 5) Relevant documents provided by both parties:
- a) Copy of Respondent's Personnel Policies in the Associate Handbook - Employees are notified of the sexual harassment policy at the time of hire, during training and upon any updates to the Handbook. Signature pages are collected from each employee indicating receipt and understanding of the policy. Types of disciplinary action include verbal warning, written warning, and termination. Respondent has the right to use progressive discipline at its own discretion and can bypass any of the steps any time. The section "Associated Grievance Process" allows employees the opportunity to pursue a resolution to any concerns. (Resp. Ex. A.)
  - b) Copy of Investigation Notes (2/12/09) regarding Supervisor - HR recommended a written warning for Supervisor. He also observed the staff to be "fractured" and no have confidence in management's ability to resolve issues. Further, one employee felt that speaking up would result in being labeled "troublemaker." (Resp. Ex. B)
  - c) Copy of Complainant's Performance Evaluations - The latest evaluation (3/20//09) indicates she helped "staff focus on policies and procedures and has advocated for co-workers not so inclined." She was not referenced as being a "spokesperson" for her co-workers. There was no indication of any negative attitude. (Resp. Ex. C)
  - d) Copy of Complainant's Email (1/26/2009) - Correspondence relating to the grievance filed by Complainant following the meeting between Complainant, her supervisor RM and Administrator on January 21, 2009, which reflects the agreement that Complainant was entitled to protection from retaliation for making her complaints.
  - e) Copy of Notes of Employee Interviews (6/24/2009) and Email Communications - Documentation of interviews of various employees regarding Supervisor and work environment. Employees expressed a tense work environment and management issues. (Resp. Exhs. E & F.)

- f) Copy of Letters of termination - HR stated the reason for termination was "because her behavior was disruptive, and negatively impacted the environment at the clinic." (Resp. Ex. C; *See also*, Ex. D.)
- g) Copy of Forms Submitted to Maine Bureau of Unemployment Compensation (7/30/2009) – Respondent listed the reason for Complainant's separation as "Discharge." (Resp. Ex. G.)
- h) List of Other employees who have been separated in the past 2 years and reasons for their separation – Supervisor was terminated on June 12, 2009, for "Poor Performance." Program Director was terminated on June 25, 2009, for "Poor Performance." (Resp. Ex. H.)

## V. ANALYSIS

- 1) The Maine Human Rights Act ("MHRA") requires the Commission to "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.A. § 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.

### *Retaliation and Whistleblower Retaliation*

- 2) The MHRA makes it unlawful for "an employer . . . to discriminate in any manner against individuals because they have opposed a practice that would be a violation of [the MHRA] or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under [the MHRA]." 5 M.R.S.A. § 4572(1)(E).
- 3) The MHRA further defines unlawful discrimination to include "punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for complaining of a violation of this Act. . . ." 5 M.R.S.A. § 4553(10)(D).
- 4) The Maine Whistleblowers Protection Act ("WPA") prohibits discrimination against an employee in compensation or the terms, conditions or privileges of employment because the employee reports what she had a reasonable cause to believe is a violation of local, state or federal laws or rules. 26 M.R.S.A. § 833(1)(A). The MHRA prohibits employment discrimination because of previous actions that are protected under the WPA.
- 5) Protected activity includes if "[t]he employee, acting in good faith, or a person acting on behalf of the employee, reports to the employer or a public body, orally or in writing, what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual . . ." 26 M.R.S.A. § 833(1)(B).
- 6) Here, Complainant alleges that Respondent terminated her in retaliation for engaging in protected activities - reporting unlawful conduct, advocating for others' rights, pressing for

change, and filing complaints with government agencies. After termination, Respondent continued to retaliate by refusing to provide the necessary paperwork for her professional certification.

- 7) Respondent denies any unlawful retaliation and states that Complainant was terminated for being negative and disrupting business operations with her ongoing questioning of company's actions.
- 8) The Maine Human Rights Commission regulations provide as follows:

No employer, employment agency or labor organization shall discharge or otherwise discriminate against any employee or applicant because of any action taken by such employee or applicant to exercise their rights under the Maine Human Rights Act or because they assisted in the enforcement of the Act. Such action or assistance includes, but is not limited to: filing a complaint, stating an intent to contact the Commission or to file a complaint, supporting employees who are involved in the complaint process, cooperating with representatives of the Commission during the investigative process, and educating others concerning the coverage of the Maine Human Rights Act.

Me. Hum. Rights Comm'n Reg. 3.12 (July 17, 1999).

- 9) In order to establish a *prima facie* case of retaliation,<sup>1</sup> Complainant must show that she engaged in statutorily protected activity, she 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 48, 56; *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006). The term "materially adverse action" covers only those employer actions "that would have been materially adverse to a reasonable employee or job applicant. In the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *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.*
- 10) In the instant case, Complainant has established a *prima facie* case of retaliation or whistleblower retaliation. She engaged in protected activities when she reported sexual harassment at work, advocated others' legal rights and filed complaints with government agencies. She was terminated. In addition, Respondent allegedly continued to retaliate with respect to her post-termination effort to obtain certification paperwork. There seems to be a causal connection given her discussions with management relating to the protected activities and termination.
- 11) The *prima facie* case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1<sup>st</sup> Cir. 1995). Respondent must then produce some probative evidence to

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<sup>1</sup> The analytical framework for a whistleblower retaliation claim is similar.

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 her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See Id.*

- 12) Respondent has provided a nondiscriminatory reason for Complainant's termination, namely, that Complainant was negative and posed an ongoing disruption of its business operations.
- 13) At the final stage of the analysis, Complainant has demonstrated that Respondent's reason was false or irrelevant and that unlawful retaliation brought about her termination, with reasoning as follows:
  - a) Complainant alleged retaliation when she spoke up and tried to address and eliminate the unlawful sexual harassment and ongoing hostile work environment. She felt that management had failed to adequately address complaints of sexual harassment. Further, she was retaliated for counseling Coworkers about their rights with respect to unlawful harassment at work.
  - b) Respondent offered different explanations for terminating Complainant. Respondent showed evidence of pretext by its shifting reasons for terminating Complainant. Pretext can be shown with "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons such that a fact finder could infer that the employer did not act for the asserted non-discriminatory reasons." *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 55 (1st Cir. 2000). The unemployment paperwork indicates that Complainant was simply discharged. Respondent clarified that Complainant was terminated for "pressuring" Coworkers into filing sexual harassment complaints. Coworkers were uncomfortable because she allegedly "pressured" them to file charges. Complainant allegedly contributed to the ongoing hostile environment by agitating Coworkers. Respondent acknowledged terminating Complainant for being "unable to put" the past incidents of harassment "behind [her]." Further, termination was allegedly justified because she continued to question the company's corrective measures and disrupt its operations.
  - c) Complainant denied that she unduly pressured any Coworkers into filing complaints with the MHRC or to contact other agencies. She simply informed them of their rights and advocated for the protection of those rights. Here, encouraging another employee to file a valid claim did not justify termination. Advocating for others' rights also did not justify termination. Given Complainant's dispute, Respondent had not provided any competent evidence to support its position that Complainant contributed to the hostile environment by acting inappropriately or unreasonably pressuring coworkers.
  - d) Respondent did not follow its progressive discipline as stated in its employment policies. Before termination, Complainant received positive reviews and did not have any prior discipline. Respondent did not discuss with Complainant any alleged discomfort experienced by any coworkers. Respondent seems to have disciplined Complainant differently than Supervisor, who was investigated for unlawful harassment yet received a



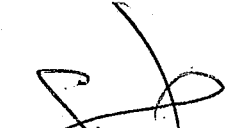
mere warning. He was eventually terminated for "poor performance." With Complainant, Respondent seemed to have bypassed many of the disciplinary steps. Respondent's different application of progressive discipline is suspect given Complainant's alleged misconduct as compared to Supervisor's harassing acts.

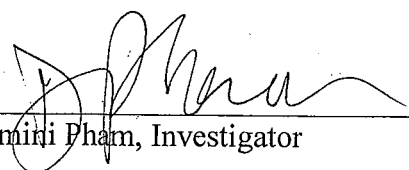
- e) The sequence of Complainant's various discussions with management relating to any concerns and the company's remedial measures and her termination after meeting with the COO supports a causal connection between Complainant's protected activities and retaliation. Respondent admittedly took issue with how Complainant engaged and continued to engage in protected activities. But, engaging in protected activities which might create discomfort in the workplace does not justify Respondent's actions here.
- f) With regard to Complainant's allegation that Respondent's failure to return the Forms timely despite multiple good faith requests, Respondent denied that it had disregarded Complainant's requests to complete the Forms. Respondent's counsel did respond within a reasonable time after receipt of the Amended Charge notifying him of Complainant's unsuccessful efforts. Given that some requests were initially directed to incorrect third parties with no follow-up calls nor email, and Respondent's acknowledgement of its flawed internal recordkeeping system, it is not possible to ascertain at this time that Respondent continued to retaliate against Complainant because she filed the Charge.

## VI. RECOMMENDATION

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

- 1) There are **Reasonable Grounds** to believe that Respondent, Center for Behavioral Health ME, Inc. dba Discovery House, retaliated against Complainant, Colleen Taylor, for engaging in protected activity under the Whistleblowers' Protection Act and the Maine Human Rights Act by terminating her employment; and
- 2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).
- 3) There are **No Reasonable Grounds** to believe that Respondent, Center for Behavioral Health ME, Inc. dba Discovery House, continued to unlawfully retaliate against Complainant, Colleen Taylor, by refusing his requests for certification paperwork after his termination.
- 4) This portion of the case should be dismissed in accordance with 5 M.R.S.A. §4612(2).

  
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John P. Gause  
Commission Counsel  
Acting Executive Director

  
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Domini Pham, Investigator