6/25/18

The Commonwealth of Massachusetts
Commission Against Discrimination
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Date: 6/21/2018

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RE: Lynn Rivera v. Springfield Rescue Mission
MCAD Docket Number: 17SPA00221
EEOC/HUD Federal Charge Number:

PROBABLE CAUSE FINDING

Dear Parties/Counsel:

You are hereby notified that I have found probable cause to credit the allegations in the above-referenced complaint. A copy of the disposition is enclosed.

The Commission is charged by statute (G.L.c.151B, § 5) to try to enforce compliance with the Commonwealth's anti-discrimination laws without resort to a public hearing. To this end, **parties and counsel** are required to attend a conciliation conference at the Commission's office on August 6, 2018, at 9:30 a.m., with Commissioner Quiñones, or her designee.

Conciliation is difficult or impossible unless persons with authority to settle the case are present. The officer designated to appear for a business or other entity must be familiar with the case and authorized to offer an appropriate settlement.

Complainant's counsel should send a written proposal of settlement to Respondent's counsel not less than 10 days before the scheduled meeting. We also require that parties hold preliminary settlement discussions at least five days before the conciliation date.

You are advised that when a formal offer of settlement by a Respondent is acceptable to the Commission but not to the Complainant, the Commission may close the matter pursuant to 804 CMR 1.18. Parties should make a good faith effort toward resolution during these preliminary settlement discussions, and are encouraged to make reasonable settlement offers and demands.

Be prepared to spend one to two hours at the conciliation session. **Failure to attend the session may result in immediate certification to public hearing and/or imposition of sanctions for costs incurred by the Commission and the opposing party. Furthermore, Complainant's failure to attend may result in dismissal of the case.**

No continuances will be granted except upon written motion to the Conciliation Clerk with notice to the opposing party and upon a showing of good cause. Please direct correspondence to Carol Murchison at this office.

Very truly yours,

Monserrate Quiñones
Investigating Commissioner

INVESTIGATIVE DISPOSITION

Case Name:	Lynn Rivera v. Springfield Rescue Mission
MCAD Docket No.:	17SPA00221
No. of Employees:	N/A
Investigator:	Matthew Marotta, Compliance Officer
Recommendation:	**Probable Cause**

Introduction

On January 30, 2017, Complainant Lynn Rivera filed a charge of discrimination against Respondent Springfield Rescue Mission alleging discrimination on the basis of sex, gender identity, and race/color, in violation of M.G.L. c. 272, § 98. On March 22, 2017, Respondent submitted a Motion to Dismiss, which was denied on February 9, 2018.

Complainant's Allegations

Complainant Lynn M. Rivera ("Lynn" or "Complainant") alleges as follows. Complainant is a brown-skinned Puerto Rican transgender person who resides in Springfield, Massachusetts where Respondent operates the Give-Away Center ("the Center") to distribute clothing, food, and other items to those in need, free of charge.

Complainant was assigned female at birth and does not identify as female. Complainant is a gender nonconforming person who is transgender and uses gender-neutral or male pronouns or is solely referred to by their name. Complainant does not wear women's clothing and exclusively wears men's clothing.

Complainant received drug addiction rehabilitation and housing services and was assigned a case manager/social worker, Ms. Moulton, who is a white woman. Ms. Moulton took her clients, including Complainant, to Respondent's Center, which is open and advertised to the general public. In mid-April 2016, she scheduled an appointment for Complainant to obtain items from the Center at around 9:30 a.m. They arrived for the appointment, and signed in. About 7 or 8 other were there during Complainant's visit.

At the Center, clothing is separated by gender, with a women's section and a men's section. During their visit to the Center, Ms. Moulton assisted Complainant in selecting men's clothes. Ms. Moulton picked out a sweater and handed it to Complainant. Ms. Brooks, an employee at the Center, loudly announced that only men were allowed in the men's section, and only women were allowed in the women's section and that because Complainant's identification said female, they could not obtain men's clothing. Complainant was shocked and embarrassed by the announcement.

Ms. Moulton told Ms. Brooks that Complainant does not identify as a woman, prefers to be referred to by their name, and wears men's clothing. Ms. Brooks said the Center goes by what is on Complainant's identification, and they could only shop in the women's section. Ms. Brooks referred to Complainant using female pronouns. When Ms. Moulton said that Complainant's identification did not matter because they do not identify as a woman, Ms. Brooks became agitated and said it did matter because the Center gets less men's clothing than women's clothing. Ms. Brooks said Complainant could only shop in the women's section because their identification identified them as female. Ms. Moulton expressed that she felt Ms. Brooks' position was discriminatory. Ms. Moulton went back to the center to speak with Complainant about their options. Throughout this time, Ms. Brooks continuously used female pronouns despite having been made aware of Complainant not identifying as female and preferring to be referred to by name.

Ms. Moulton informed Complainant they could not shop in the men's section. They left without obtaining any items because the Center prohibited Complainant from selecting clothing from the men's section, which contains the only clothing Complainant wears. Ms. Moulton had brought white and non-transgender women clients to the Center. They were permitted to access the men's clothing section, trying on jackets, pants, and other items. Complainant was denied access to Respondent's publicly-available center.

Upon returning to Complainant, Ms. Moulton told Complainant they were not allowed to shop in the men's section and could only shop in the women's section. When Complainant responded they did not wear women's clothing, Ms. Moulton asked whether they needed other items at the Center. Then, Ms. Brooks said in front of staff and clients, "[Ms. Moulton], you need to just let this go, you need to just let it go." Ms. Moulton said she was letting Complainant know their options, at which point they said they no longer wanted anything from the Center. Ms. Brooks asked what Complainant would be taking, and they answered, "I don't want any of it."

Ms. Moulton was so upset at how Complainant was treated that she cried in her car and wrote a statement that day, April 28, 2016, to Ms. Maldonado, her supervisor at Tapestry. Prior to Complainant's visit to the Center, Ms. Moulton had White women who were not transgender use the men's section at the Center, and she once saw an incident where two Latina Spanish speakers were only permitted to take two bottles of shampoo but one of Ms. Moulton's White female clients was allowed to take several.

Respondent's Position

Respondent asserts as follows. Respondent asserts it is not a place of public accommodation, the Commission lacks jurisdiction, and Complainant had full access to the Center. Respondent is a non-profit organization that has existed since 1892 to meet the physical and spiritual needs of service recipients by providing food, shelter, clothing, Christian rehabilitation, and other services. One of its programs is the Center, a program providing clothing, shoes, coats and jackets, and household goods to the needy for free. It

is by appointment only with priority given to Respondent's residential and emergency programs.

When Respondent's inventory permits, other community recipients/agencies may also use the Center. Tapestry Health ("Tapestry") is a community health services agency that has worked with Respondent to fulfill Tapestry clients' needs. Ms. Moulton is a Tapestry social worker. She made appointments during the last several years to bring Tapestry clients to the Center. In mid-April 2016, she made an appointment for Complainant for April 28, 2016—without providing any special requests or other information. When Ms. Moulton brought Complainant in, Respondent believes there were four community guests and two resident helpers present. At no time was Complainant discriminated against or denied full and equal access. The charge complains of a single incident on April 28, 2016, which lasted less than 60 seconds and resulted in Complainant's full access to the Center.

Respondent checks all recipients in before they can access the Center. Ms. Brooks checked Complainant's identification. Thereafter, they proceeded to look at clothing and personal items. At one point, Ms. Brooks noticed Complainant and Ms. Moulton "shopping" in the men's section. She called their attention to the fact that the area was the men's section. Ms. Brooks was not previously informed that Complainant does not identify with the sex assigned at birth. The Center is a small room. It is not uncommon for recipients and first timers to become disoriented while looking for items and end up in the wrong section.

Respondent denies Ms. Brooks "loudly announced" only men were allowed in the men's section and women in the women's section, or that Ms. Brooks' intent was discriminatory. She did nothing that would have elicited a shocked or embarrassed response as she thought she was merely assisting Complainant.

Ms. Moulton asked to speak with Ms. Brooks in private. They went alone to the visitors' entry lobby where Ms. Moulton explained that this was a sensitive issue, and Complainant identified as male. Complainant omitted from the charge that Ms. Brooks and Ms. Moulton went alone to the separate private area. The interaction did not take place in Complainant's presence with others nearby as the charge suggests by omission.

Ms. Brooks indicated to Ms. Moulton that their identification indicated Complainant to be female. A discussion ensued about Respondent's policies and how the Center was dependent on donations and how clothing and personal items were given away in accordance with Respondent's inventory, with priority given to participants in the residential programs, e.g. the Men's Emergency Shelter Program, the Men's New Life Rehabilitation Program, and the Men's Transitional Living Program. As there was a greater demand for men's clothing, Respondent could be more liberal about allowing female community recipients use of the Center than male recipients. However, after this discussion, and the opportunity to process the information and understand the issue, Ms. Brooks indicated to Ms. Moulton that it would be okay for Complainant to take any clothing, male or female. She believed this ended the misunderstanding. It appeared

Complainant and Ms. Moulton continued looking. However, they approached the front desk and placed the plastic bag (used to receive donations) at the desk. They said they would not be taking anything that day and left.

Respondent denies all allegations of discrimination on the basis of sex, gender identity, or race/color. Of those served by the Give-Away Center in 2016, 243 were Caucasian, 293 were Black, and 635 were Hispanic. Complainant and Ms. Moulton made the decision to leave without taking anything. There was no denial of service or access. Ms. Brooks clearly indicated that Complainant could take whatever clothing they wished. It was the way Ms. Moulton handled the matter that caused avoidable confusion and perceived awkwardness.

Summary of Investigation and Analysis

Discrimination in a Place of Public Accommodation - sex, gender identity, and race/color
To establish a *prima facie* case of discrimination in a place of public accommodation, Complainant must demonstrate (1) membership in a protected class; (2) that they were denied access, restricted, or treated differently from others not in their protected class, and it occurred (3) in a place of public accommodation. If Complainant establishes the *prima facie* case, Respondent may show that legitimate, nondiscriminatory reasons exist for its actions. If Respondent succeeds in offering such reasons, Complainant must then show that Respondent's reasons are pretextual.

Complainant alleges membership in the protected classes. Complainant provided an affidavit from their case manager/social worker, Ms. Moulton, in support of the charge, and it is undisputed Ms. Moulton brought clients to the Center during a period spanning several years. In Ms. Moulton's affidavit, she stated she knew of no rule that only men were permitted to access the men's section. She stated some of her white, female, non-transgender clients tried on jackets, pants, and other items from the men's section whereas Complainant was only allowed to shop in the women's section. Ms. Moulton also stated she had also observed Latina individuals receiving more limited service with regard to personal care items (shampoo) than white women. This is evidence from a witness, Ms. Moulton, in the form of her affidavit, that others outside Complainant's protected classes received preferred treatment at the Center, and there are material facts in dispute regarding whether Complainant's own access was denied or limited. There is also evidence Respondent may be a place of public accommodation. Ms. Moulton stated that from her experience the Center provided services to anyone, and appointments are a formality. She stated she has never known anyone to be turned away. Respondent's website also does not indicate a limitation. The site instructs those in need to schedule an appointment. Complainant has established a *prima facie* case.

Respondent denies the allegations of discrimination and denied access, and it also asserts it has a legitimate, nondiscriminatory reason for concern over the inventory level of men's clothing, i.e. it has a more limited supply and the priority must be its own programs.

However, as discussed above, there are credibility determinations and material facts in dispute. Therefore, a probable cause finding is recommended to allow a find-finder to conclude whether Respondent is a place of public accommodation and, if so, whether Complainant was subjected to discrimination.

Conclusion

A finding of Probable Cause is recommended against Springfield Rescue Mission for discrimination based on sex, gender identity, color, and race.

Matthew Marotta
Investigator

Karen Erickson CC
Karen Erickson
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that **Probable Cause** exists for crediting the allegations of the complaint against Respondent(s). Pursuant to Section 5 of M.G.L. c. 151B, the parties will be afforded an opportunity to participate in a conciliation conference at the Commission.

Monserrate Quiñones
Investigating Commissioner

June 18, 2018
Date