

[REDACTED VERSION]

INVESTIGATIVE REPORT

A.C. v. Annie Macy

VHRC Case #HV17-0011 & HUD Case #01-17-5773-8

Complaint: Housing–Disability - Reasonable Accommodation Request, Retaliation, and Harassment

Summary of Charge: On January 5, 2017, A.C. filed a housing discrimination charge alleging that he had been discriminated against by Annie Macy, because of his disability. Specifically, A.C. claims that Ms. Macy, his former landlady, made discriminatory statements about him regarding his disability and discussed his impairment with another tenant. He also claims that Ms. Macy attempted to evict him from his apartment because of his disability, and that Ms. Macy did not stop the other tenant from harassing him.

Summary of Response: Annie Macy (hereinafter the respondent) provided two responses to this charge. The first response was submitted on January 23, 2017. In that response, Ms. Macy denied making discriminatory statements, and denied that she encouraged the other tenant to harass A.C. Upon request, on February 22, 2017, Ms. Macy submitted a supplemental response to the charge. In this response, the respondent stated that it appears that A.C. expected her, at almost 75 years of age, to defend him

against a 6 foot 2 inches, 250-pound man. Additionally, Ms. Macy alleged that she and the other tenant were kind to A.C. and that A.C. never accepted responsibility for any wrongdoing. Finally, Ms. Macy alleges that A.C. filed the Charge of Discrimination with the Vermont Human Rights Commission (VHRC) after she served him an eviction letter on December 20, 2016.

PRELIMINARY RECOMMENDATION

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This investigation makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that respondent violated 9 V.S.A §4503(a)(2) of the Vermont Fair Housing & Public Accommodations Act by both harassing A.C. and through her failure to take prompt remedial action to stop tenant on tenant harassment.

This investigation makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that the respondent Annie Macy retaliated against A.C. after he made a reasonable accommodation request, threatened to lodge a complaint of discrimination and after he actually filed a complaint at the VHRC in violation of 9 V.S.A. §§4506(e)(2) or (3) and (4) of the Vermont Fair Housing & Public Accommodations Act.

Relevant Documents

11/29/2016 – Email sent by A.C.’s mother to Annie Macy

11/30/2016 – Email sent by Annie Macy to A.C.’s mother

12/19/2016 – Email sent by A.C.'s mother to Annie Macy

12/20/2016 – Actual Notice of Termination of Tenancy for Non-Payment of Security Deposit and Breach of Lease.

12/22/2016 – Statement by A.C.'s mother to the Vermont Human Rights Commission

01/05/2017 – Complaint Filed by A.C.

01/05/2017 – Text messages exchanged between A.C. and Annie Macy

01/05/2017 – Text messages exchanged between A.C. and Lyle Willett

01/05/2017 – Text messages exchanged between A.C.'s mother and Annie Macy

01/05/2017 – Text messages exchanged between A.C.'s mother and Lyle Willett

01/06/2017 – Vermont State Police, Law Incident Table, Incident Number: 17ST000084, Call Time: 01:47:14, Call Type: Assault

01/23/2017 – Answer to complaint

01/30/2017 – Response to answer to complaint

02/22/2017 – Clarifying answer to complaint

Interviews

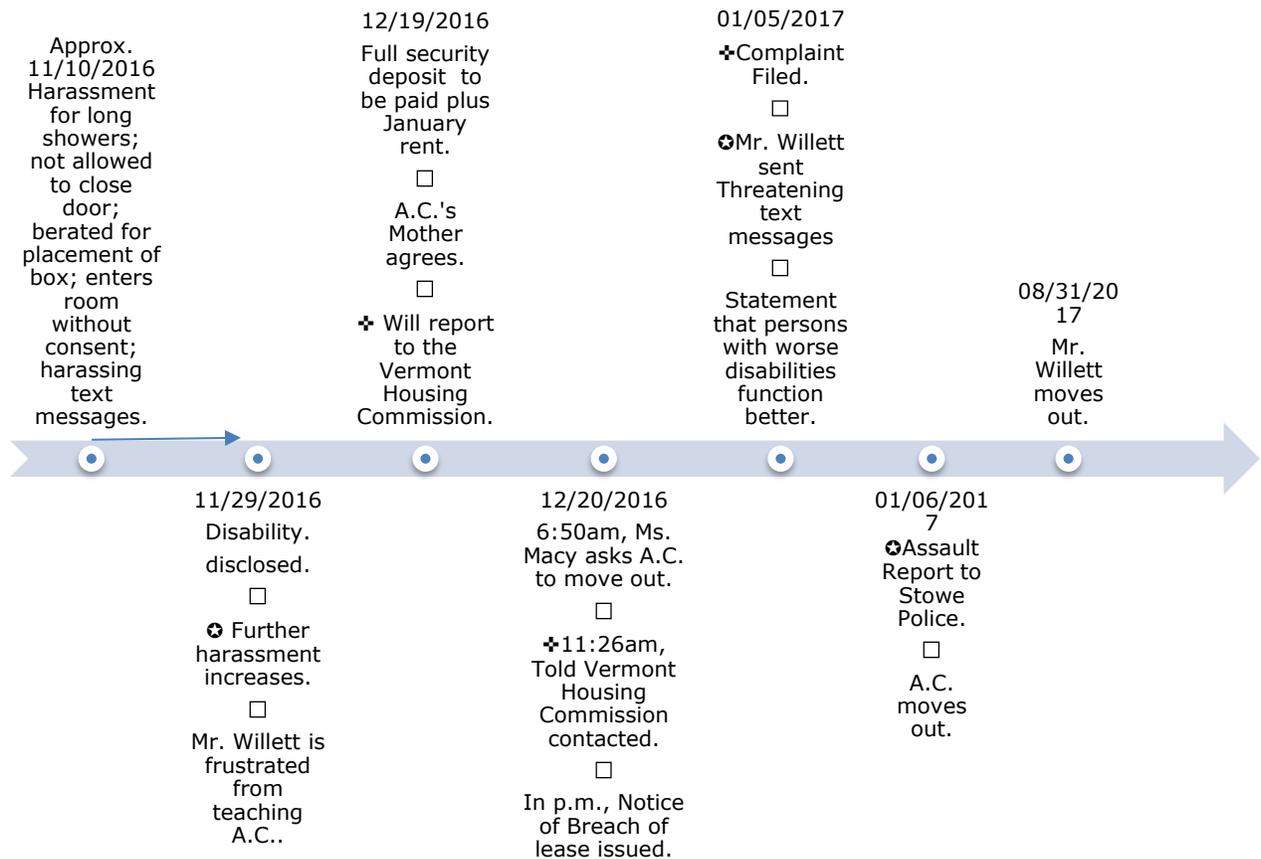
A.C. – Complainant- **04/17/2017**

Annie Macy – Respondent (Landlady and Roommate)- **03/22/2017;**

08/04/2017; 08/22/2017

Lyle Willett– Roommate- **09/07/2017; 09/10/2017**

TIMELINE OF EVENTS



ANALYSIS OF CLAIMS

I. UNDISPUTED FACTS

The following facts are not disputed by the parties:

1. A.C. has been medically diagnosed with Asperger's Syndrome, a High Functioning Autism.
2. On or about October 2016, A.C. saw an advertisement on Craigslist for a shared housing rental.
3. On or about early November 2016 A.C. became a tenant at 238 Worcester Road, Stowe, pursuant to a six-month lease that expired on April 30, 2017.
4. The property located at 238 Worcester Road, Stowe is owned by Annie Macy, who is also a resident at this property.

5. Ms. Macy rents four units in the property located at 238 Worcester Road, Stowe; two bedrooms and two apartments.
6. During A.C.'s tenancy, landlady, Ms. Macy, occupied a room located on the second floor, with access to a private bathroom, access to a shared kitchen and other general living areas.
7. During his tenancy, A.C. occupied a room located on the second floor, with access to a shared bathroom, access to a shared kitchen and other general living areas.
8. During A.C.'s tenancy, another tenant, Lyle Willett, occupied a room located on the second floor, with access to the shared bathroom, access to the shared kitchen and other general living areas.
9. Shortly before November 29, 2016, A.C.'s mother called Ms. Macy by phone, on his behalf, and disclosed that he had a disability.
10. During this conversation, Ms. Macy stated to A.C.'s mother that he had given her "incomplete information" when he applied for this rental.
11. On December 19, 2016, A.C. was sent an email asking him to leave the property by the end of December 2016.
12. On December 20, 2016, A.C. was issued a notice of breach of lease for nonpayment of the security deposit and breach of lease. The notice stated that his lease would terminate on January 23, 2017.
13. On January 5, 2017, A.C. filed a complaint with the Vermont Human Rights Commission against Ms. Macy alleging discrimination and retaliation based on disability.
14. After filing the complaint on January 5, 2017, A.C.'s mother made Ms. Macy and roommate, Mr. Willett, aware of the complaint.
15. On January 6, 2017 at approximately 1:47 a.m., A.C. went to the Stowe Police Department to report that he had been assaulted by his roommate, Mr. Willett.

16. On January 6, 2017, two officers responded to 238 Worcester Road, questioned Mr. Willett, placed him in handcuffs and transported him back to the Police Department.
17. On January 6, 2017, Mr. Willet was charged with simple assault.
18. On January 6, 2017 A.C., moved out of the shared rental housing.

II. REASONABLE ACCOMMODATION

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- 1. A.C. is a person with a disability under the law;**
- 2. Respondent knew of A.C.'s disability or should have reasonably been expected to know;**
- 3. A.C. requested an accommodation of a policy or procedure that was necessary to afford him an equal opportunity to use and enjoy the property**
[REDACTED]

In order for A.C. to make a successful complaint of discrimination, he must establish a prima facie case by a preponderance of the evidence.¹

A.C. is a person with a disability under the law?

A.C. is a person with two disabilities, including Asperger Syndrome, High Functioning Autism and Prostatitis Pelvic Pain Syndrome (CPPS). The definition of "disability" under the Vermont Fair Housing and Public Accommodation Act (Vermont Fair Housing Act) includes individuals who have (A) a physical or mental impairment that limits one or more major life activities, or (B) individuals with a history or record of being disabled.² A.C.

¹ See *In re Smith*, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications.")

² 9 V.S.A. §4501(2); "Disability," with respect to an individual, as –(A) a physical or mental impairment which limits one or more major life activities; (B) a history or record of such an impairment; or (C) being regarded as having such an impairment.

provided a psychological report from Dr. Gary M. Eisenberg diagnosing him with mild Asperger Syndrome, which applies to the mildest and highest functioning end of the autism spectrum. The report states that A.C. has “poor social skills,” “poor eye contact, and a poor ‘read’ of people and their rules”, including deficits in “oral comprehension.”³ This report supports A.C.’s claim of being a person with a disability under both Parts (A) and (B) of Vermont Fair Housing Act’s definition of disability. First, Asperger’s Syndrome is a mental impairment that limits A.C.’s ability to perform one or more life functions. Second, A.C. has a record of being disabled, since he has been classified as having a disability. Finally, this investigation’s own difficult experience⁴ in requesting information and an interview from A.C., which was always subject to the help of his mother, A.C.’s mother, adds credence to A.C.’s claim that he is a person with a disability.

Respondent knew of A.C.’s disability or should have reasonably been expected to know?

Ms. Macy acknowledged in her reply that A.C. is a person with a disability, since she accepted⁵ A.C.’s mother’s assertion that her son A.C. is a person with a disability. Therefore, the respondent knew or reasonably should have known that A.C. was a person with a disability.

Additionally, in email⁶ and phone⁷ correspondence exchanged between Ms. Macy and A.C.’s mother, there is reference to A.C.’s high Functioning

³ Gary M. Eisenberg, Ph.D (2002). Clinical and Consulting Psychology *Psychological Report*, pp. 11-13.

⁴ For example, on March 21, 2017 this investigation sent A.C. a letter of possible administrative dismissal of case by certified mail for failure to cooperate with this investigation’s repeated requests for an interview and information over the period February 23, 2017 through March 16, 2017.

⁵ Approximately one month after A.C. became a tenant, i.e. late November, A.C.’s mother contacted Ms. Macy by phone and disclosed that A.C. was a High Functioning Autistic adult.

⁶ In an email dated November 29, 2016 from A.C.’s mother to Ms. Macy, it is stated, “We generally don’t disclose A.C.’s high functioning Autism, but it is a factor in some of his behaviors.” In another email dated November 30, 2016 from Ms. Macy to A.C.’s mother, the respondent wrote, “In the future, I would encourage you and A.C. to be truthful about his adult autism.”

⁷ See above footnote.

Autism, which should have reasonably informed the respondent that A.C. is a person with a disability.

A.C. requested an accommodation of a policy or procedure that was necessary to afford him an equal opportunity to use and enjoy the property?

A.C.'s mother stated that on or about early December 2016, she called Ms. Macy and disclosed that her son, A.C. has High Functioning Autism. A.C.'s mother told Ms. Macy that when A.C. is overwhelmed, as he was at a new job with 12-hour shifts, moving into a new place, i.e. from Florida to Vermont, and recently experiencing a car accident, in Vermont, he may have to be told a couple of times the details of something Ms. Macy wanted him to do. Ms. Macy admitted that A.C.'s mother made this request. In response to the request, Ms. Macy told A.C.'s mother that at the end of a day of working as a caregiver to someone with memory loss, it was a burden to ask her to be a caregiver to her son.

This investigation believes that repeat instructions, assisted A.C. in better understanding requests communicated to him by Ms. Macy. Therefore, this accommodation was necessary, since without the accommodation, A.C. would not have been afforded an equal opportunity to use and enjoy the rental. See *Bronk v Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (the concept of necessity requires at a minimum that it is shown that the requested reasonable accommodation will improve the quality of life of a disabled person by making better the effects of the disability).

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III. HARASSMENT- BY THE RESPONDENT

Vermont's Fair Housing and Public Accommodations Act (VFHPAA), 9 V.S.A. §4503(a)(2) states:

It shall be unlawful for any person:

(2) To discriminate against, or to harass any person in the terms, conditions, or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance. [emphasis added].

The elements of a prima facie case under 9 V.S.A §4503(a)(2) are:

- 1. A.C. is a member of a protected class;**
- 2. A.C. was subject to unwelcome behaviors based on his disability;**
- 3. The unwelcome behaviors were sufficiently severe, pervasive, or objectively offensive to affect the terms, conditions or privileges of his housing;**
- 4. The harassment was carried out by the Respondent, or Respondent knew or should have known of the harassment and failed to take prompt remedial action.**

This investigation examined both whether A.C. was subjected to harassment by the respondent and/or whether respondent knew or should have known of the harassment and failed to take prompt remedial action.

A.C. is a member of a protected class?

As noted before, A.C. has been medically diagnosed with Asperger's Syndrome, High Functioning Autism. The respondent has accepted the fact that A.C. has a disability. Therefore, A.C. meets the first element required to establish a prima facie case of harassment.

A.C. was subject to unwelcome behaviors by Ms. Macy based on his disability?

A.C. states that immediately after moving into the rental, Ms. Macy began harassing him about the length of his showers, refused to allow him to lock or close the door to his room during the day, berated him for placement of a recyclable box, entered his room without his consent and sent numerous, harassing text messages.

As stated above, the facts show that A.C. moved into the rental on or around November 6, 2016. The facts also show that shortly before November 29, 2016, A.C.'s mother called Ms. Macy by phone and disclosed that A.C. has Asperger's Syndrome, High Functioning Autism.

Prior to the call, it is reasonable to believe that Ms. Macy had no knowledge of A.C.'s disability as this investigation has observed that A.C. does not present as someone with disabilities. This investigation therefore cannot find that any of the above allegedly harassing behaviors directed at A.C., between November 6, 2016 and November 29, 2016, were because of his disabilities.⁸

Only Ms. Macy's behavior post November 29, 2017 will be assessed for unwelcome behaviors towards A.C. based on his disabilities.

Length of showers

A.C. stated that the request to take limited showers began shortly after he moved in. There was a water shortage at the time which was the reason why Ms. Macy asked A.C. to conserve water.⁹ Ms. Macy also stated that she had no knowledge that A.C. had Prostatitis Chronic Pelvic Pain

⁸ Specifically, this investigation will also not make a determination on the container of soup that exploded, since A.C. stated this occurred less than one month after he began renting. A.C. stated that it is after the incident with the soup that he finally reached out to his mother to speak with Ms. Macy about the harassment.

⁹ Ms. Macy provided this investigation with a letter dated November 28, 2016 from Mansfield View Water Corporation. The letter stating that the water system experienced a combination of operating problems. As a result the Board of Directors was asking for a one-time assessment of \$250.00 to restore out depleted operating funds. Members were asked to fix all leaks and be sure that outside faucets are turned off and drained for the winter. An invoice from Mansfield View Water Corporation dated November 30, 2016 in the amount of \$250.00 was also provided to this investigation.

Syndrome (CPPS), until shortly before he moved out. It does not appear to this investigation that it was ever made clear to Ms. Macy that the hot baths/showers were needed specifically to alleviate symptoms of A.C.'s CPPS.¹⁰ On November 29, 2017, A.C.'s mother in an email to Ms. Macy stated that A.C. "finds alone time, playing music, and taking a hot bath most comforting to him," but she did not specifically reference his medical condition. In addition, due to the water shortage it was a reasonable demand by Ms. Macy for A.C. to limit the number and length of his showers.

Close the door

The statements made by A.C. and Ms. Macy on the issue of A.C. being banned from closing his door during the day for privacy could lead this investigation to believe either position. It is however A.C.'s burden of proof to show that there was a ban. There is no evidence available to this investigation that would substantiate this claim. Further, there is no evidence that he was specifically banned from closing his door, because of his disabilities, and therefore this claim fails.

Recyclable box

The terms of the lease stipulate that A.C. must keep the rental in a safe condition, which is a reasonable demand for a tenant to follow. The facts show that it is likely Ms. Macy berated A.C. for the placement of a recyclable box in front of a main door. While the box in theory could pose a safety hazard, a more appropriate response would have been to speak to him about the hazard. The record shows that this was the first and only time that A.C. left a box in front the door. Despite Ms. Macy's scolding, this investigation has found no proof that her actions were because of A.C.'s disabilities.

¹⁰ A.C. also stated that he needed to take long showers and baths because he has Prostatitis Chronic Pelvic Pain Syndrome (CPPS),¹⁰ and taking hot baths can temporarily bring relief.

Entered his room without consent

Ms. Macy admitted to this investigation that she entered A.C.'s room, without his permission, to look for a green bowl that was missing from the kitchen. Ms. Macy also entered A.C.'s room on other occasions, for example to search for the missing nightgown¹¹ and to take pictures of his room.¹² This investigation therefore believes that Ms. Macy repeatedly breached A.C.'s right to privacy, but there is no clear evidence that it was because of his disabilities.

Harassing Text messages

As discussed later in this report, this investigation concluded that A.C. was subject to harassing text messages by Ms. Macy in text messages exchanged between Ms. Macy and A.C. on January 5, 2017. (see discussion at pages 30-31). However, there is no evidence that the messages were sent by Ms. Macy because of A.C.'s disabilities.

Independent Living

A.C. stated that during a phone conversation, upon learning of his disability Ms. Macy made statements to his mother including (that), in her opinion, "[A.C.] should not be living alone" and "maybe he should be in a group home." These statements both indicate that A.C. was not considered or viewed as capable of living independently- solely because of his disability. Statements that A.C. was incapable of independent living also appear to have been at the forefront of discussion in the residence between Ms. Macy and Mr. Willett. A.C.'s mother, in an email to Ms. Macy on December 19, 2017, told Ms. Macy that her statements about A.C. not being able to live

¹¹ Ms. Macy stated that she searched the whole house, including Mr. Willett's for the nightgown, but not A.C.'s.

¹² Some of the pictures of the unclean and unsafe condition of A.C.'s room could only be taken if Ms. Macy was in A.C.'s room.

alone were insulting and border on discrimination. Ms. Macy in a response stated that, "A.C.'s ability to care for himself and live independently is a misstatement." This investigation does not believe that the statements were made by Ms. Macy with the intent to make A.C. feel bad. They seem to be a candid opinion or observation on A.C.'s ability to live independently. However, the statements were unwelcome and unwanted and were based on A.C.'s disability.

To prove his prima facie case, A.C. must also show that the behaviors were sufficiently severe, pervasive or objectively offensive to affect the terms, conditions of privileges of his housing.

The unwelcome behaviors were sufficiently severe, pervasive, or objectively offensive to affect the terms, conditions or privileges of his housing?

Whether behaviors amount to a severe, pervasive or objectively offensive hostile environment sufficient to establish hostile environment harassment depends on the totality of the circumstances.¹³

The factors that are considered in determining whether a hostile environment exists include the relationships of the parties involved in the complaint, the location of the conduct, and the context in which it occurred.¹⁴

This investigation believes the statements by Ms. Macy illustrate her assumptions that A.C. with High Functioning Autism required assisted living. As annoying as Ms. Macy found some of A.C.'s behaviors, there is nothing within those behaviors that objectively indicates that A.C. was unable to live

¹³ The HUD issued fair housing regulations addresses discriminatory behavior in housing. The new Section, 100.600(a)(2), states that Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive. Section, 100.600(a)(2)(i)(A) provides a list of factors to be considered.

¹⁴ HUD Regulation 100.600(a)(2) (i) (A) concerning factors to be considered in assessing the totality of the circumstances.

independently and certainly nothing to suggest that he needed to live in a group home. While A.C. may have not been well organized, he is no less capable of living on his own as compared to a person without disabilities. Ms. Macy's statements indicate a level of bias towards A.C. based on his disabilities.

Ms. Macy does not deny that she made the statements upon learning of A.C.'s disability. However, a one time or isolated statement, even if discriminatory, does not create a hostile housing environment. Case law suggests that the unwanted and unwelcome behavior must be sufficiently severe, pervasive or objectively offensive that it affects a person's ability to use and enjoy the housing. In HUD v. Simpson,¹⁵ the court held that a Peruvian family was discriminated against by a white neighbor due to several racial epithets and harassing complaints. The family were constantly referred to as "wetbacks," and "spics" and a specific family member was called a "damn Mexican" and "tortilla shuffling bitch."

Here, there is no direct evidence that Ms. Macy repeatedly commented on A.C.'s inability to live with others. However there exists circumstantial evidence from which one may infer that this in fact took place. For example, Ms. Macy in an email on November 29, 2016 stated that Mr. Willett was "not expecting to teach others what's it like to live with others." Further, on January 5, 2017, Mr. Willett himself stated to A.C.'s mother that if A.C. is so bad (referring to his disability), then "he should not be alone and [should] be with someone to take care of him like you."¹⁶ The facts show that after Ms. Macy made the initial statements that A.C. should not be living alone and maybe he should be in a group home, Mr. Willett made a similar statement.

This investigation believes despite Mr. Willett stating that he never discussed with Ms. Macy the need for A.C. to live with someone, an inference

¹⁵ HUD v. Simpson, Fair Housing-Fair Lending Reporter, ¶25,082 (HUD ALJ 1994), p. 17, and 21.

¹⁶ Text messages exchanged between A.C.'s mother and Lyle Willett on January 5, 2017.

can be drawn that this issue was a subject of discussion. Further, this investigation believes the statements had the effect of interfering with A.C.'s use and enjoyment of the residence by creating an environment that was hostile and offensive. The statements had the effect of demeaning and putting A.C. down based on his disability. A.C.'s mother stated in an email on December 19, 2017 that, "lately because of the constant harassment A.C. has opted to eat elsewhere." Additionally, Ms. Macy's statements appear to have created an environment where Mr. Willett felt it was appropriate to participate in making the remark of January 5, 2017.

This investigation believes this made the housing environment more hostile for A.C. who found the conduct unwelcome and unwanted.

The harassment was carried out by the Respondent?

There is direct evidence that on its face shows that Ms. Macy made demeaning and belittling statements about A.C. not being able to live alone, upon learning of A.C.'s disabilities. There is also circumstantial evidence from which one can reasonably infer that Ms. Macy discussed A.C.'s disability with co-tenant Lyle Willett, who then participated in many similar remarks to A.C.

IV. FAILURE TO TAKE PROMPT REMEDIAL ACTION TO STOP TENANT ON TENANT HARASSMENT

A.C. was subject to unwelcome behaviors based on his disability and the unwelcome behaviors were sufficiently severe, pervasive or objectively offensive to affect the terms, conditions and privileges of the housing?

A.C. stated that after the phone conversation between his mother and Ms. Macy, during which A.C.'s mother disclosed his disability, the harassment increased and Ms. Macy was encouraging further harassment of

him by Mr. Willett who locked him out of the residence, verbally assaulted him and attempted to physically bar him from leaving.

Mr. Willett denied locking A.C. out of the residence and denied verbally assaulting A.C. On January 5, 2017, Mr. Willett and A.C. exchanged a series of text messages. Mr. Willett was upset because A.C. allegedly got soap on Mr. Willett's shampoo bottle. In text message correspondence between A.C. and Mr. Willett, Mr. Willett tells A.C. to "get your f cking drug using ass home now and deal with this."¹⁷ In yet another text message, Mr. Willett again told A.C. to get "your f cking ass home now,"¹⁸ to discuss the issue of soap on his shampoo bottle. The sum total of statements made by Mr. Willett in the text correspondence show an overt and excessive amount of anger toward A.C. for his failure to keep the bathroom in a clean condition. The specific statements are direct evidence that verbal assaults existed in Mr. Willett's relationship with A.C. as a roommate.

The record also shows that during an approximately two-hour interview with this investigation, not only did Mr. Willett use profanity which was uncalled for, but he specifically used the word "f cking," multiple times, in a raised tone, at least one of which was directed at this Investigator. It is therefore reasonable to believe that Mr. Willett consistently yelled and used aggressive words towards A.C. while he was his roommate. The statements made in the January 5, 2017 text correspondence do not appear to be a one time isolated instance when Mr. Willett engaged in verbal assault. This investigation therefore found A.C. credible when he complained that Mr. Willett verbally assaulted him, on learning of his disabilities. This is further supported by a statement made by A.C.'s mother in an email dated December 19, 2016 to Ms. Macy, concerning threatening speech by Mr.

¹⁷ Documentary evidence includes text message correspondence exchanged between Mr. Willett and A.C..

¹⁸ Documentary evidence includes text message correspondence exchanged between Mr. Willett and A.C..

Willett. In the email A.C.'s mother stated, that A.C. told her that Mr. Willett, in a threatening tone screamed, "put your dishes away you little f_ck," owing to dishes that A.C. had just washed which were in the drying rack. This investigation therefore believes that it is reasonable to believe that verbal assaults occurred, however the question remains whether they were based on A.C.'s disabilities.

The record shows on January 5, 2017 in other text message correspondence between A.C.'s mother and Mr. Willett, she chided him with, "you have to be kidding for threatening an autistic kid over soap on a shampoo bottle." Mr. Willett replied, that "[i]f he is so bad he should not be alone and [should] be with someone to take care of him like you."¹⁹ Mr. Willett also told A.C.'s mother that she knew A.C. can't be in this kind of environment, but yet A.C.'s mother "pon him off on someone else to take care of." Mr. Willett went on to say, "[p]eople with worse disabilities function better than he does with others."

The statements made by Mr. Willett in the text correspondence show that Mr. Willett held the opinion that A.C.'s disabilities prevented him from effective functioning. Specifically, the statements confirm that Mr. Willett believed that A.C.'s inability to keep pieces of soap off his shampoo bottle in the bathroom was due to his disabilities.

Further, the statements confirm that A.C. was treated badly, i.e. subject to the verbal assaults for his failure to keep the bathroom in a continuously clean condition- because of his disabilities. Even if A.C. repeatedly left pieces of soap in the bathroom it provided no lawful justification for Mr. Willett to verbally assault him. In doing so, Mr. Willett treated A.C. less favorably or differently *because* he has disabilities.

¹⁹ On January 5, 2016, after learning that A.C.'s parents filed a complaint with the Vermont Housing Commission, Mr. Willett made these statements in text messages exchanged with A.C.'s mother. The record also shows in an email reply dated December 19, 2016, from A.C.'s mother to Ms. Macy, A.C.'s mother stated that the latest thing Mr. Willett told A.C. was to move back to Florida, "back to mommy and daddy."

Finally, Mr. Willett was asked by this investigation if he attempted to physically bar A.C. from leaving and he also stated no. As stated above, Mr. Willett was arrested for assault. A.C. told the police that Mr. Willett choked him in his bedroom then led him into the kitchen by his shirt and would not let him leave the room. This investigation believes the statements made to the police do not prove that Mr. Willet physically barred A.C. from leaving, but serve as circumstantial evidence that this likely took place. Given the timing of the alleged assault, mere hours after A.C. filed a complaint with the Vermont Human Rights Commission and after Mr. Willett openly stated his belief that A.C. does not function effectively because of his disabilities, this investigation considers it is reasonable to believe that the alleged assault took place *because* A.C. is a person with disabilities.

The unwelcome behaviors were sufficiently severe, pervasive, or objectively offensive to affect the terms, conditions or privileges of her housing?

The evidence shows that there were repeated verbal assaults owing to A.C.'s disabilities for a five-week period and that these were based on his disability. This ultimately culminated in an alleged physical assault that was reported to the Stowe police one day after A.C. filed a complaint of discrimination with the VHRC. All of these actions looked at individually or taken together are sufficient to show that the harassment was severe, pervasive or objectively offensive. One only needs to consider that each of the above conditions made A.C. so uncomfortable that he willingly left the residence and abandoned his rental contract.

Respondent knew or should have known of the harassment and failed to take prompt remedial action?

Knew of the Harassment

There are numerous statements made in emails to Ms. Macy by A.C.'s mother that the behavior by Mr. Willett was specifically out of control, threatening, and hostile. A.C.'s mother stated that Mr. Willett "needs to back off since he is not the landlord."²⁰ She also stated that any retaliatory behavior from either Ms. Macy or Mr. Willett "will be reported to the Vermont Housing Commission [sic]."

The statements made in the emails show that Ms. Macy was on notice that Mr. Willett was potentially engaging in harassment. Ms. Macy confirmed that she did not address with Mr. Willett each specific complaint. The facts show however that Ms. Macy followed up with A.C. concerning many complaints. This investigation therefore believes that upon receipt of the emails from A.C.'s mother, Ms. Macy approached the complaints as imagined or exaggerated acts of improper conduct by Mr. Willett, instead of proactively directing her attention to each one and determining whether there was any truth to the statements.

Despite this, the statements in the emails point to unwelcome behaviors, but not specifically because of A.C.'s disabilities. This investigation therefore does not believe that these statements are clear proof that Ms. Macy knew or should have known that the harassment by Mr. Willett was based on A.C.'s disabilities.

Mrs. Macy stated twice that she never saw the text messages exchanged between A.C. and Mr. Willett on January 5, 2017.²¹ Ms. Macy

²⁰ In the email dated December 19, 2016 sent by A.C.'s mother to Ms. Macy, A.C.'s mother also stated that the latest thing Mr. Willett told A.C. was to move back to Florida, "back to mommy and daddy." In another email dated December 19, 2016, at 9:02pm, A.C.'s mother stated Mr. Willett just banged on A.C.'s closed door and in a threatening tone screamed, "put your dishes away you little f_ck" after A.C. had just washed the dishes and they were in the drying rack. In an email dated December 20, 2016, sent by A.C.'s mother to Ms. Macy, she states that A.C. does not take orders from Mr. Willett and restates that Mr. Willett is not the landlord.

²¹ Documentary evidence includes text message correspondence exchanged between Mr. Willett and A.C. in which Mr. Willett stated to get "your f_cking drug using ass home now and deal with this."

inferred that she had no notice of the verbal assault on A.C., nor knew that the verbal assault was occurring. However, Mr. Willett confirmed that on January 5, 2017, he shared the content of the text messages exchanged between himself and A.C. with Ms. Macy. Mr. Willett stated that he did so because Ms. Macy was wondering what A.C. was saying to me, and what I was saying to A.C.²² Mr. Willett stated that Ms. Macy was “wondering why I was so pissed.” Mr. Willett confirmed that he and Ms. Macy had this conversation while seated watching television.

During this same timeframe, Ms. Macy was also texting A.C. with essentially the same messages being sent by Mr. Willett, albeit without the profanity. Ms. Macy demanded that A.C. return to the house to discuss repeat problems with soap in the bathroom. When A.C. did not respond affirmatively, she questioned what A.C. was doing that he could not get home and informed him that not coming home that night was not an option. After A.C. told Ms. Macy that he was hanging out with friends, she told him that he “had better come back as soon as possible, you need to respect the people with whom you live and we need to talk tonight.”

This investigation believes that Ms. Macy and Mr. Willett had developed a good roommate relationship.²³ This investigation also believes that on January 5, 2017, while Ms. Macy may not have literally seen the text messages exchanged between Mr. Willett and A.C., it is likely that Mr. Willett discussed the messages with Ms. Macy and that she had notice of the verbal assault statements made by Mr. Willett on January 5, 2017.²⁴

²² The record shows on January 5, 2017, A.C.’s mother also exchanged text message directly with Ms. Macy. She stated that this is insane, that she saw the pictures and that something is wrong with Mr. Willett if this kind of thing causes him to become so unglued that she and you are texting him threatening messages. A.C.’s mother stated that at this point I am asking you to stop texting these threatening messages.

²³ Mr. Willett remained a tenant at 238 Worcester Road in Stowe up until August 2017. Mr. Willett told this investigation that he recently moved to New Hampshire.

²⁴ Documentary evidence includes text message correspondence exchanged between Mr. Willett and A.C.

Considering all the above, there is no doubt for this investigation that Ms. Macy had adequate notice that the living situation was inadequate and unsatisfactory for A.C., because of harassment from Mr. Willett. The question then becomes whether Ms. Macy knew the harassment was specifically because of A.C.'s disabilities.

Text messages exchanged between Mr. Willett and A.C.'s mother on January 5, 2017 established that Mr. Willett treated A.C. unfavorably, i.e. verbally assaulted him because of his disabilities. It is also clear based on the same text messages that he held the attitude that A.C. was not capable of independent living- because of his disabilities.

Mr. Willett denied ever discussing with Ms. Macy this belief. This investigation however believes that it is likely that discussions on this subject took place. Based on the close relationship between Mr. Willett and Ms. Macy and the similarity in each of their expressed beliefs that A.C. lacked the ability to care for himself and live independently, this investigation finds it hard to believe that the statements were just a coincidence.

Should have known of the Harassment

The Department of Housing and Urban Development has stated that a housing provider "should have known" about harassment by one resident against another, when the housing provider had knowledge from which a reasonable person would conclude that there was harassment taking place.²⁵ See Neudecker v. Boisclair Corp., 351 F.3d 361, 364 (8th Cir. 2003) (owner may be liable for the actions of tenants and the children of management due

²⁵ Department of Housing and Urban Development, 24 CFR Part 100 [Docket No. FR-5248-F-02] RIN 2529-AA94 Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, Agency: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD, 2. Hostile Environment Harassment: § 100.600(a)(2), ii. Title VII Affirmative Defense: § 100.600(a)(2)(ii), C. Liability for Discriminatory Housing Practices: § 100.7, b. Direct Liability for Negligent Failure To Correct and End Discrimination: § 100.7(a)(1)(ii) and (iii).

to failure to respond to the plaintiff's complaints of harassing behaviors); and Bradley v. Carydale Enterprises, 707 F. Supp. 217 (E.D. Va. 1989) (finding that failure of both the owners and management to address a tenant's complaints of racial harassment by another tenant, was a claim under 42 U.S.C. 1981 and 1982).

In this case, over the period December 19 through December 20, 2016, A.C.'s mother sent Ms. Macy several emails detailing many belittling and threatening behaviors directed at A.C. by Mr. Willett.²⁶ It must be emphasized that the stated behaviors included both unwelcome verbal and physical conduct.

In one email sent on December 19, 2017, the totality of A.C.'s mother's statements²⁷ made it clear outright, or at a minimum an inference could have been made that A.C. was being subjected to harassment by Mr. Willett based on his disabilities, which was creating a hostile housing environment.

Additionally, in a response on December 19, 2017, Ms. Macy, stated to A.C. that Mr. Willett did get upset with you, but stated that she had not shown A.C. any animosity. This investigation believes that this response was an acknowledgement by Ms. Macy that she received, read and understood

²⁶First, in an email reply dated December 19, 2016, at 4:55pm, A.C.'s mother stated that the latest thing Mr. Willett told A.C. was to move back to Florida, "back to mommy and daddy." A.C.'s mother stated that Mr. Willett needs to back off since he is not the landlord and also informed Ms. Macy that because of the constant harassment, A.C. has opted to eat elsewhere. A.C.'s mother stated that any retaliatory behavior from either Ms. Macy or Mr. Willett will be reported to the Vermont Housing Commission.

Second, in an email dated December 19, 2016, at 9:02pm, A.C.'s mother stated Mr. Willett just banged on A.C.'s closed door and in a threatening tone screamed, "put your dishes away you little f ck." A.C.'s mother stated that this is unacceptable behavior by your out of control and hostile tenant.

Third, the next day, in an email dated December 20, 2016, sent by A.C.'s mother to Ms. Macy, she states that A.C. does not take orders from Mr. Willett, restates that Mr. Willett is not the landlord and that any threatening behavior will not be tolerated.

²⁷ A.C.'s mother stated your comments about him not being able to live alone are insulting and border on discrimination. A.C.'s mother stated that she disclosed the information about A.C.'s High Functioning Autism to get Mrs. Macy to ease up on him. A.C.'s mother stated instead you and Mr. Willett have stepped up your attacks.

well the emails of alleged harassment by Mr. Willett that were sent by A.C.'s mother. It was also an admission that she was aware that based on the description of behaviors Mr. Willett was subjecting A.C. to unwelcome behavior.

This investigation also believes that emails notifying Ms. Macy that A.C. intended to file a complaint²⁸ should have put Ms. Macy on clear notice that these were not just about a minor dispute, between A.C. and Mr. Willett. There was a far bigger problem concerning the two roommates that was rising to the level of legal action.

Finally, this investigation notes that the timing of the various emails concerning harassment took place after Mr. Willett and Ms. Macy learned of A.C.'s disabilities. Specifically, they were made after A.C.'s mother made the reasonable accommodation request for A.C. to be told twice the details of something Ms. Macy wanted, based on his disability.

Based on this information, this investigation believes that a reasonable person would conclude that the alleged harassment by Mr. Willett, was based on A.C.'s disabilities and therefore Ms. Macy knew or should have known that A.C. was being subjected to harassment by Mr. Willett, because of his disabilities.

Failed to take prompt remedial action

The spirit and black letter law of the VFHPAA provides for persons with disabilities to have the right to equal enjoyment of their housing. Ms. Macy as a landlady should be aware of these rights. This investigation believes

²⁸ On December 19, 2017 A.C.'s mother stated in an email to Ms. Macy that any retaliatory behavior from either of you, from here on, is against the law and will be reported to the Vermont Housing Commission.

On December 20, 2017, in another email to Ms. Macy, A.C.'s mother also stated any further harassment by you or your attack dog Mr. Willett will be dealt with through an agency dealing with Vermont housing discrimination.

that she should have then investigated to determine if there was any harassment specifically because of disabilities.

Ms. Macy stated that she works hard and a lot and therefore cannot be responsible for how other people are feeling nor pay attention to people's behaviors. This statement is not supported by the evidence as there is ample evidence showing that Ms. Macy frequently involved herself in the disputes between Mr. Willett and A.C., specifically supporting Mr. Willett.

This investigation has no doubt that Ms. Macy is a hard-working woman, who works many hours. Ms. Macy in a reply stated that she did five jobs,²⁹ including her primary job as a caretaker. This does not excuse her from her role as a landlady. While Ms. Macy acted in addressing problems with A.C.'s behavior she was far less involved in addressing the apparent tenant on tenant harassment. This investigation specifically believes she could have better addressed Mr. Willett's upset and frustrated feelings over the soap and other disputes. Ms. Macy was asked by this investigation what if any measures she took when she learnt from A.C. or his mother that Mr. Willett was being aggressive. Ms. Macy told this investigation that she would have to go look in her emails suggesting that she gave email responses. Ms. Macy then stated that she would either state that she would speak to Mr. Willett or she does not know what A.C.'s mother or A.C. were talking about. The record does not contain any email responses from Ms. Macy reflecting this information.

Asked by this investigation if Ms. Macy did in fact speak with Mr. Willett about the allegations of aggression, Ms. Macy stated that she did talk to Mr. Willett, when they were "commiserating" over problems. Ms. Macy's use of the word commiserating suggests that she sympathized with Mr. Willett. Ms. Macy admitted to this investigation that she empathized with Mr.

²⁹ Ms. Macy stated that she is a caregiver for an 87-year-old woman with memory loss, cleans luxury homes, works as a substitute selling tickets at the local movie theatre, babysits for the same family, and is a property manager for a second home owner.

Willett, especially as it concerned the issue with the soap. Ms. Macy also confirmed that she left it to Mr. Willett to find a solution.³⁰ Asked by this investigation whether she attempted to calm Mr. Willett down the evening of the January 5, 2017 threatening text messages, Ms. Macy stated that, "I am not renters' mother. I am not their mother."

The record shows on January 6, 2017, around 1:47 a.m., Mr. Willett was arrested for the assault of A.C. following a dispute over the soap. This investigation therefore believes that Ms. Macy failed to take prompt remedial action to address the harassment. Ms. Macy did not do all that was possible to prevent the harassment from happening by addressing earlier concerns raised by A.C.'s mother. This caused the escalation of events. This also left Mr. Willett as a tenant to address the problem directly resulting in the alleged assault.

Based on the evidence, this investigation believes that A.C. has proved a prima facie case of harassment based on both direct actions by Ms. Macy and on her failure to take prompt and effective action to stop the tenant on tenant harassment by Mr. Willett.

V. RETALIATION

The three applicable sections of Vermont's Fair Housing and Public Accommodations Act (VFHPAA) related to A.C.'s retaliation claim are 9 V.S.A. §§4506(e)(2)(3) and (4) which state respectively:

(e) Retaliation prohibited. A person shall not coerce, threaten, interfere, or otherwise discriminate against any individual:

(2) who is known by the person to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of acts or practices prohibited by chapter 139 of this title;

³⁰ Ms. Macy stated she left it to Mr. Willett because it was not my soap. Ms. Macy stated that she has a different bathroom, which is private.

(3) who has lodged a complaint or testified, assisted, or participated in any manner with the Human Rights Commission in an investigation of acts or practices prohibited by this chapter;

(4) who is exercising or enjoying a right granted or protected by this chapter. [emphasis added].

A.C.'s request for a reasonable accommodation pursuant to §4503(a)(10) constitutes the exercise of a right granted and protected under the law and triggers subsection (e)(4).

The elements of a prima facie case under V.S.A. §4506(e)(2)(3) and §4506(e)(4) are:

- 1. A.C. engaged in an activity protected by the Act;**
- 2. The respondent subjected A.C. to an adverse action;**
- 3. Circumstantial evidence exists of a causal link between the protected activity and the adverse action.**

A.C. engaged in an activity protected by the Act?

A.C. engaged in a total of three protected activities under the VFHPAA. First, as noted above, shortly before November 29, 2016 his mother A.C.'s mother made a reasonable accommodation request for Ms. Macy to tell A.C. a couple of times the details of something she wanted. Ms. Macy confirmed, that A.C.'s mother made this request on behalf of her son, A.C. These two statements taken together clearly show that A.C. meets the first element required to establish a prima facie case of retaliation by exercising a right granted by law pursuant to 9 V.S.A. §4506(e)(4).

Second, on December 19, 2017 A.C.'s mother stated in an email to Ms. Macy that any retaliatory behavior from Ms. Macy or the other tenant Lyle Willett, is against the law and "will be reported to the Vermont Housing Commission [sic]." On December 20, 2017, in another email to Ms. Macy,

she stated, “any further harassment by you or your attack dog Mr. Willett will be dealt with through an agency dealing with Vermont housing discrimination.” These two statements collectively and individually show that A.C. was prepared to lodge a fair housing complaint concerning the practices of both Ms. Macy and Mr. Willett, and that Ms. Macy had notice of this. A.C. therefore exercised the protected right under the Vermont Fair Housing Act to not be discriminated against as a person who is about to lodge a complaint.

Finally, A.C. filed a complaint with the Human Rights Commission on January 5, 2017. On same January 5, 2017, on or around 7:47 p.m., Mr. Willett sent A.C. verbally assaulting text messages concerning the alleged soap on his shampoo bottle. Additionally, Ms. Macy sent harassing text messages to A.C. to return home to discuss the problem. That night, after learning of both Mr. Willett and Ms. Macy’s text messages, A.C.’s mother sent Mr. Willett a text message stating that a complaint was filed today with the Vermont Housing Commission. Upon information and belief A.C. was assaulted later that night/morning. Thus, A.C. also meets the first element required to establish a prima facie case of retaliation because he filed a complaint.

The respondent subjected A.C. to an adverse action?

An adverse action refers to any action that is sufficiently harmful to make a reasonable person, in the complainant’s shoes, not engage in the protected activity.³¹ The most common examples of adverse actions are verbal harassment, threats by neighbors, and landlords imposing harsher terms and conditions, including the threat of eviction.³²

³¹ Cf. Burlington Northern & Santa Fe (BNSF) Railway Co. v. White, 548 U.S. 53 (2006).

³² Department of Housing and Urban Development, Title VIII Complaint Intake, Investigation, and Conciliation Handbook (8024.1), Chapter 8, Analysis of Specific Cases, p. 8-32.

Eviction

Ms. Macy's email of December 19, 2016, sent to A.C., constitutes an adverse action. In that email, Ms. Macy stated that A.C. needed to be out of the house by 5 p.m. on December 31, 2016. The email goes on to state, "I told you that I would not throw you into the cold, but if you stay beyond the end of December, I expect the full security deposit, plus rent."

One day later, on December 20, 2016, A.C. was issued a notice of termination of tenancy for nonpayment of the security deposit and breach of lease. Ms. Macy confirmed for this investigation that the notice was left attached to A.C.'s door. The issuing of the termination notice for breach of lease was an adverse action against A.C. since he was now expected to move out on or before January 23, 2017. This action interfered with his use and enjoyment of the residence through the full term of his lease, which ended April 30, 2017.

Increased Harassment

Ms. Macy took many actions which interrupted A.C.'s quiet enjoyment of the shared rental housing. Ms. Macy repeatedly entered his room without providing any notice of entry and when no emergency existed for the entry. Ms. Macy also made offensive statements about A.C.'s inability to live alone due to his disabilities and repeatedly complained that if A.C. could afford to purchase a guitar amplifier and foot pedal, then he should be able to pay the security deposit. There were also accusations that A.C. had stolen her night gown. The facts also show on more than one occasion A.C. was told to move out of the shared rental housing. These various actions taken by Ms. Macy created conditions that made it uncomfortable for A.C. to live in the rental. A few of the actions were ongoing and not just isolated actions. This

investigation therefore believes that the increase in harassment amounts to an adverse action.

Harassing Text Messages

In text messages dated January 5, 2017,³³ Ms. Macy demanded that A.C. return to the house to discuss repeat problems with soap in the bathroom. When A.C. did not respond affirmatively, she questioned what A.C. was doing that he could not get home and informed him that not coming home that night was not an option. After A.C. told Ms. Macy that he was hanging out with friends, she told him that he “had better come back as soon as possible, you need to respect the people with whom you live and we need to talk tonight.”

The full length of the text correspondence on January 5, 2017 shows repeated, and unwanted contact by Ms. Macy. A.C. was clearly not able to message her at length, but Ms. Macy stated again and again, or rather no less than four times, the need for A.C. to come home. The text messages appear to be annoying and no doubt scary and bullying for A.C.. The text messages were received on the same date and around the same time that messages were sent from Mr. Willett telling A.C. to get “your f_cking drug using ass home now and deal with this.”³⁴ There is ample evidence to show that A.C. was subjected to harassing text messages.

Assault

On January 6, 2017 on or around 1:47 a.m., A.C. contacted the Stowe Police Station to report that he had been assaulted by Mr. Willett, his roommate.

³³ This investigation made a request for all relevant text messages sent to or received from Ms. Macy. A.C. provided this investigation with text messages dated January 5, 2017.

³⁴ Documentary evidence includes text message correspondence exchanged between Mr. Willett and A.C..

The record, specifically, a police report,³⁵ states as follows:

- A.C. told an officer that he came home at approximately 22:30 hours, on January 5, 2017 to go to sleep when Mr. Willett started screaming at him about soap on Mr. Willett's shampoo bottle.
- A.C. was choked and thrown against the wall of his room. The officer observed red marks on A.C.'s back and the top of his neck.³⁶
- Two officers responded to 238 Worcester Road in Stowe and Ms. B. a person living in the bottom apartment answered the front door. Ms. B was asked if she heard any disturbances. Ms. B. stated that she heard yelling and what sounded like fighting at approximately 00:00.
- The officers questioned Mr. Willett who admitted to going into A.C.'s bedroom and also stated he probably did put his hands on Mr. Willett's shoulders but not his neck. Mr. Willett stated that from the bedroom he and A.C. went to kitchen for an extended period of time to talk. Mr. Willett admitted to being in the kitchen at approximately 00:00, which was the same time that Ms. B. stated that she heard the fighting.
- One of the officers did not see any visible marks or indication that Mr. Willett was assaulted by A.C.
- Mr. Willett was put in handcuffs and transported back to the police department.
-

³⁵ 01/06/2017 – Vermont State Police, Law Incident Table, Incident Number: 17ST000084, Call Time: 01:47:14, Call Type: Assault

³⁶ On January 10, 2017, on or around 19:30 A.C. went to the police station for a follow up interview. A.C. informed then that he went to the UVM medical center in Waterbury for back x-rays. The report states a copy of his x-rays and the discharge paperwork were attached.

Constructive Eviction

This investigation asked Ms. Macy what if any action she took the night A.C. was assaulted. Ms. Macy told this investigation that she was asleep insinuating that she heard nothing. Ms. Macy stated that she uses a continuous positive airway pressure (CPAP) machine, and that night she put on the machine, which makes noise, and fell asleep.

This investigation conducted an onsite visit at 238 Worcester Road in Stowe to confirm that Ms. Macy uses a CPAP machine. Ms. Macy turned the machine on at the request of the investigator. It was striking how little noise the CPAP machine actually made.

Asked further by this investigation about what if any sounds she could hear when asleep, Ms. Macy admitted that she is awoken from the sounds of fisher cat screaming. Ms. Macy stated the fisher cats usually are attacking animals in the woods.³⁷ This investigator observed that the woods are located approximately 50 feet behind Ms. Macy's room. This investigator also observed that the bedroom and the kitchen where the altercation between Mr. Willett and A.C. occurred was a mere 1 foot and 12 feet respectively, from Ms. Macy's room. This investigation therefore found it difficult to believe that Ms. Macy did not hear A.C. screaming the night of the alleged assault. The record shows that even Ms. B., a tenant downstairs, could hear yelling and fighting. This investigation believes that Ms. Macy chose not to take any action in the matter, but left it to Mr. Willett to take out his frustration and anger on A.C. concerning the soap.

Ms. Macy in a response stated that it appears that A.C. expected her, at almost 75 years, to defend him against a 6 foot 2 inch, 250 pound man. While Ms. Macy would not have been able to physically stop the confrontation this investigation believes that given her relationship with Mr. Willett, Ms. Macy could have intervened in an attempt to calm the situation

³⁷ Ms. Macy stated this in an interview approximately four months later at her residence.

and bring about an agreement. It is reasonable to believe that had Ms. Macy done so, the dispute would not have escalated into the alleged assault. In the absence of that, she certainly had the option to call 911. This investigation therefore believes that Ms. Macy's failure to act allowed the assault to take place. Further, the failure to act created a hostile circumstance that literally forced A.C. out of the residence, which was an adverse housing action.

Circumstantial evidence exists of a causal link between the protected activity and the adverse action?

HUD v. Simpson and Sec. v. Quintana, Robert & Virginia state that there must be a causal link between the adverse action and the protected activity.³⁸ The 11th Circuit Court of Appeals in Secretary, HUD On Behalf Of Heron v. Blackwell, 908 F.2d 864 (11th Cir. Aug. 9, 1990), established a three-part test to be applied in the absence of direct evidence of discrimination. In a case where the evidence is circumstantial, the complainant has the burden of proof to establish a prima facie case of housing discrimination, after which the burden shifts to the respondent to provide a legitimate, nondiscriminatory reason for the adverse action. If the respondent articulates such a reason, the burden returns to the complainant to show that the reason is pretext.³⁹

³⁸ HUD v. Simpson, Fair Housing-Fair Lending Reporter, ¶25,082 (HUD ALJ 1994); Sec. v. Quintana, Robert & Virginia HUDALJ 08-91-0230-1 see also Sec. v. Quintana, Robert & Virginia HUDALJ 08-91-0230-1.

HUDALJ 08-92-0239-1 11/12/94

³⁹ This three-part burden shifting standard set forth in McDonnell Douglas Corp. v. Green 411 U.S. 792, 802 (1973), which governs employment discrimination cases is also applicable in fair housing claims. See Bouley v. Young-Sabourin, 394 F. Supp. 2d 675, 678 (D. Vt. 2005) (once a plaintiff has established a prima facie case of discrimination, the burden shifts to the defendant to assert a legitimate, nondiscriminatory rationale for the challenged decision. If the defendant makes such a showing, the burden shifts back to the plaintiff to demonstrate that discrimination was the real reason for the defendant's action); See also Lindsay v. Yates, 578 F.3d 407, 415 (6th Cir. 2009).

Some of the factors that courts consider in determining the sufficiency of circumstantial evidence of retaliation include how close in time the adverse action is to the protected activity (temporal proximity) and the level of harassment that occurs and/or whether harassment increases.

Temporal Proximity

Courts have different standards for determining temporal proximity. In general, the closer in time that the adverse action is to the protected activity the stronger the claim of causal connection. As stated above, on or around November 29, 2017, A.C.'s mother made a reasonable accommodation request for her son to have the details of something Ms. Macy wanted repeated to A.C. which is a protected activity. Ms. Macy knew about the request for the accommodation since the request was made to her.

Approximately three weeks later, on December 19, 2017, at 8:15 a.m., Ms. Macy expressly stated that if A.C. stayed in the residence beyond the end of December, she expected the full security deposit, and the rent. On that same date at 4:55 p.m., A.C.'s mother agreed that A.C. would pay the deposit "as now requested" by December 31, 2017,

Despite the agreement to pay the deposit by December 31, 2016, one day later on December 20, 2017, A.C. was issued a notice of breach of lease for nonpayment of the security deposit, stealing, and not keeping the property in a clean and safe condition. A.C. stated that on December 20, 2017 he was prepared to pay the rent in full, and had a check, but found the eviction notice on his door.

On December 19, 2016, A.C.'s mother also advised Ms. Macy that retaliatory behavior by either Ms. Macy or Mr. Willett was against the law and would be reported to the Vermont Housing Commission [sic]. Finally on January 5 and 6, the same day more or less that A.C. filed his complaint and the respondent learned of it, A.C. was subjected to increased harassment

and a physical assault. Thus, temporal proximity is established with regard to the retaliation provisions in 9 V.S.A. §§4506(e)(2)(3) and (4).

In Cifra v. General Electric Co., 252 F.3d 205 (2d Cir. 2001) the court held that the twenty-day period between the protected activity and adverse action was sufficient to establish the causal connection necessary to establish a prima facie case of retaliation. Based on Cifra, it is reasonable to believe that the approximately twenty days that passed between A.C.'s protected activity (reasonable accommodation request) and Ms. Macy's adverse action (notice of breach of lease) is also sufficient to establish a causal link.

Increase in severity of harassment

In HUD v. Simpson, the court rejected a retaliation claim based on a lack of evidence in the record to establish that the respondents either increased the severity of the campaign, or continued it, even in part, because HUD issued the Charge.⁴⁰

In this case there was an increase in activity between the time Ms. Macy and Mr. Willett learned of A.C.'s disability and the issuing of the termination notice for breach of lease.

A.C. confirmed for this investigation that Ms. Macy retaliated against him with the threat of eviction. The record is clear that Ms. Macy began eviction proceedings by issuing a notice of breach of lease. This was new behavior engaged in by Ms. Macy which chronologically took place after learning of his disability and the accommodation request.

A.C. also stated that the harassment increased⁴¹ and Ms. Macy encouraged further harassment of him by Mr. Willett, who locked him out of

⁴⁰ HUD v. Simpson, Fair Housing-Fair Lending Reporter, ¶25,082 (HUD ALJ 1994), p. 22.

⁴¹ A.C. confirmed that immediately after moving in the residence, Ms. Macy began harassing me about the length of my showers, refused that I be allowed to lock or close the door to my rental during the day, berated me for placement of a recyclable box, entered my room without my consent and sent me numerous harassing text messages.

the residence, verbally assaulted him and attempted to physically bar him from leaving. However, as stated previously this investigation has established above that it is reasonable to believe that verbal harassment took place, because of A.C.'s disabilities and that Mr. Willett physically barred him from leaving. See discussion at pages 14-19. This investigation therefore finds that A.C. has established that there was a change in Ms. Macy's behavior, once she learned of his disabilities and the reasonable accommodation request. Specifically, there was an increase in harassment by Ms. Macy.

This investigation therefore finds that A.C. has established a causal link and therefore satisfied all the elements for a prima facie case of retaliation.

Was there a legitimate non-discriminatory reason for Ms. Macy's actions?

Ms. Macy told this investigation that she had a legitimate right to issue A.C. the notice of termination based on breach of lease, nonpayment of the security deposit, stealing her nightgown and not keeping the house in a safe condition. Each of the reasons for the termination will be examined in detail.

Security Deposit

Ms. Macy stated that A.C. told her that he had just graduated from college and she felt sympathetic towards A.C. for this reason. She also stated that she told A.C. to pay the deposit at the beginning of December 2016 and that A.C. failed to pay the security deposit by December 19, 2016.

Stealing

Ms. Macy alleged that A.C. stole her nightgown and that stealing her clothing was not acceptable.

Clean and Safe Condition

Ms. Macy provided several photographs as evidence that A.C. kept his room in an unclean and unsafe condition.

Kitchen

Ms. Macy alleged that A.C. created potential fire hazards by leaving the oven on and leaving a black spatula in a pan so that it burned the end.

Bedroom

Ms. Macy also alleged that A.C. never used the vacuum and had too many things in his room, including items in front of the heating vents.

Bathroom

Ms. Macy stated that A.C. left soap on many surfaces in a shared bathroom, including on top of Mr. Willett's shampoo.

Were the stated reasons for the termination notice for breach of the lease pretext?

Security Deposit

A.C. stated that he signed the lease on November 1, 2016 and agreed to move in on November 6, 2016 subject to a prorated rent. A.C. indicated that he had no knowledge of the security deposit until he signed the lease as the Craigslist advertisement did not mention a deposit. When he inquired about the deposit, Ms. Macy told him, "it is ok," that he did not have to pay at that point but could pay later on, "as you go," without a specific due date.

On December 19, 2016, at 8:15 a.m., Ms. Macy expressly stated that if A.C. stayed in the residence beyond the end of December, she expected the full security deposit, and the rent. On that same day at 4:55 p.m., A.C.'s mother agreed that A.C. would pay the deposit by December 31, 2016 "as

now requested.” This investigation believes that at this point, there was a clear acceptance of the offer for when the security deposit was to be paid. It was therefore not only unnecessary, but also disproportionate for Ms. Macy to issue a breach of lease the following day for nonpayment of the security deposit.⁴²

Stealing

A.C. denied stealing Ms. Macy’s nightgown. He said that he found the nightgown in his clothes in his room during the night and wondered where it came from. Not knowing what to do with it, he carried it downstairs to the shared laundry and placed it on the table so whoever it belonged to would find it.

Health and Safety Concerns

The several pictures submitted by Ms. Macy to this investigation to show that A.C. kept the house in a condition that violated health and safety requirements ranged from mainly trivial to somewhat more serious. Evidence included several pictures showing small pieces of soap in the bathroom, including on a shampoo bottle. Additionally, Ms. Macy provided a picture of a dirty plate to show A.C.’s inability to wash dishes and cutlery.

Ms. Macy also provided a picture of a black spatula. Asked by this investigation what was wrong with the spatula, Ms. Macy stated that it had cheese on it. The record shows that there was a small white substance in a corner of one of the mid-sections of the spatula. To further prove her point, Ms. Macy produced a picture of a gray spatula from a friend which she stated had a broader border than the black spatula. The picture of the gray spatula

⁴² The next day, December 20, 2017, at 6:50am, Ms. Macy sent A.C.’s mother an email stating that A.C. needs to move out by December 31, 2016 since the “living situation is stressful for all of us.” This email was followed by the notice of termination of tenancy dated and issued on December 20, 2016 for nonpayment of the security deposit, stealing, and failure to keep the place in a safe and clean condition.

(next to the black spatula) was used to show the effects of A.C. leaving the black spatula in a pan, which allegedly burnt the end.

A.C. confirmed for this investigation that the wear and tear of the spatula was because of using it all the time. A.C. also said that he offered to buy a new one. The black spatula was made of plastic, which unlike metal spatulas, would inevitably melt or change when subject to heat. The ends of the black spatula did not appear to be unusually distorted or changed.

Shared housing, especially in a roommate situation with shared facilities including the kitchen and bathroom can be challenging and keeping everything clean all the time can be a struggle for anyone. Small pieces of soap falling in the bathroom is common, and inevitable and a single dirty plate, if it in fact was used by A.C. is not clear proof that he kept the residence dirty.

This investigation does not doubt that Ms. Macy and Mr. Willett needed to live in a clean environment⁴³, since a clean environment helps in their recovery as cancer survivors. However, this investigation does not believe that the pictures of the soap, spatula with cheese and one dirty plate are proof that A.C. kept the house in an unclean condition.

The lease for the shared residence only stipulates that the residence be kept in a clean condition. This investigation believes that people have different standards for what is considered clean, based on their choice of lifestyle. Further, there are no additional provisions in the lease which require the tenant to clean and maintain the property to a certain standard.

Evidence however of A.C.'s room showed it was kept in a messy and cluttered manner. There were computer wires running along the length of the middle of the room. There was an open drawer with items spilling out of it. There was a pile of clothes on the ground.

⁴³ Ms. Macy stated in her answer to the complaint received on January 23, 2017 that both Mr. Willett and herself had cancer (both in remission) and they therefore explained to A.C. that they needed a clean environment.

A.C. stated that one picture showed his room, when he moved out since the sheets were in a bundle on the ground and others show his room when he left beer cans and 2 glasses around his room in the night. A.C. stated that the next day, in the night when he returned home, he cleaned up the room. Mr. Willett confirmed for this investigation that Ms. Macy was always asking A.C. to empty the trash from his room to avoid rodents.

The record shows that what made the room seemingly unclean was not just the beer cans and glasses, but also an electronic box, CD, deodorant bottle, sheet of folded newspaper, a pair of sun glasses and bottle cover on the ground in the room. There are an inadequate number of pictures for this investigation to confirm that A.C.'s room was always untidy and unclean, as compared to a few occasions. However, when A.C. visited the police station in Stowe to report the alleged assault, he stated that he suffers from Aspergers Syndrome which makes it hard for him to maintain cleanliness and keep things neat.⁴⁴ Given A.C.'s own admission, it is reasonable to believe that A.C. may have kept the room in an unclean and disorganized manner.

That stated, this investigation did an onsite visit of the residence for purposes of inspecting Ms. Macy's CPAP machine. This investigation observed no evidence that Ms. Macy was the kind of landlady who has unusually high standards for maintaining a residence because the residence looked averagely maintained and the things Ms. Macy complained of concerning A.C.'s room, were not far from how her own bedroom appeared. To be clear, this investigation makes no judgment about the condition of Ms. Macy's room, except to state that it was not much different from the state of A.C.'s room in terms of tidiness. Therefore, it is difficult to understand why Ms. Macy would hold A.C. to a high cleaning standard and seek to evict him

⁴⁴ Vermont State Police, Law Incident Table, Incident Number: 17ST000084, Call Time: 01:47:14, Call Type: Assault.

for a dirty room, allegedly not washing one plate and spatula properly, and leaving pieces of soap in the bathroom, unless it was pretext to remove him from the residence.

Further evidence of A.C.'s room shows it with items partly in front of the vent which may have been cause for concern but more likely contributed to less heat in A.C.'s room. Mr. Willett stated that there were things in front of the vent which he told A.C. to move so more heat could circulate in his room.

Ms. Macy stated that A.C. burned the black spatula and left the oven on one time after cooking pizza. Ms. Macy stated that she was in constant fear that A.C. would burn the house down. Asked about leaving the oven on, A.C. told this investigation that he had the oven on without anything in it most likely to preheat the oven.

This investigation was also struck that in approximately five weeks, Ms. Macy never once corresponded with A.C., or certainly his mother by email or text message, or even a strongly worded letter to express her concern about the items in front of the vent, or any other fire hazards. Yet, Ms. Macy sent many emails pointing out A.C.'s shortcomings as a tenant, such as letting soap fall on the carpet in the shared bathroom, eating in his bedroom and finding a bowl in his closet. The record shows that Ms. Macy sent an email to A.C.'s mother, literally the next day, to express anger and alert her about the missing nightgown but it is devoid of statements concerning the unclean condition of A.C.'s room.

This investigation finds that Ms. Macy suddenly sought to strictly enforce those provisions upon learning of A.C.'s need for a reasonable accommodation for him to be told things twice. This investigation therefore believes that all of the legitimate reasons given by Ms. Macy for terminating the lease were pretextual.

PRELIMINARY RECOMMENDATIONS

[REDACTED]

This investigation makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that respondent violated 9 V.S.A §4503(a)(2) of the Vermont Fair Housing & Public Accommodations Act by both harassing A.C. and through her failure to take prompt remedial action to stop tenant on tenant harassment.

This investigation makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that the respondent Annie Macy retaliated against A.C. after he made a reasonable accommodation request, threatened to lodge a complaint of discrimination and after he actually filed a complaint at the VHRC in violation of 9 V.S.A. §§4506(e)(2) or (3) and (4) of the Vermont Fair Housing & Public Accommodations Act.

SIGNATURE ON FILE

Ayn Lee Sing, Investigator

Date

Approved by:

SIGNATURE ON FILE

**Karen Richards, Executive Director
& Legal Counsel**

Date

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Alex Chefan,)
Complainant)
)
)
v.) VHRC Complaint No.: HV17-0011
) HUD Case No.: 01-17-5773-8
)
Annie Macy,)
Respondent)

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

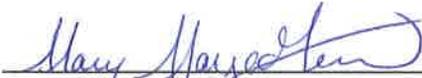
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Annie Macy, the Respondent, illegally discriminated against Alex Chefan, the Complainant, by her failure to take prompt remedial action to stop tenant on tenant harassment, in violation of Vermont's Fair Housing and Public Accommodations Act.

Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mary Brodsky	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Dawn Ellis	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>

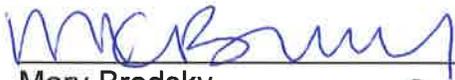
Entry: Reasonable Grounds Motion failed

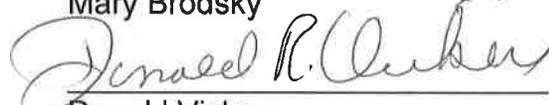
Dated at Montpelier, Vermont, this 19th, day of October 2017.

BY: VERMONT HUMAN RIGHTS COMMISSION


Mary Marzec-Gerrion, Chair


Nathan Besio


Mary Brodsky


Donald Vickers


Dawn Ellis

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Alex Chefan,)
Complainant)
)
)
v.) VHRC Complaint No.: HV17-0011
) HUD Case No.: 01-17-5773-8
)
Annie Macy,)
Respondent)

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Annie Macy, the Respondent, illegally retaliated against Alex Chefan, the Complainant, after he made a reasonable accommodation request, threatened to lodge a complaint of discrimination and filed a complaint of discrimination in violation of Vermont's Fair Housing and Public Accommodations Act.

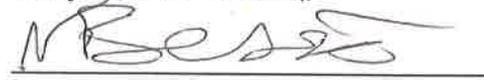
Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mary Brodsky	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Dawn Ellis	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>

Entry: Reasonable Grounds Motion failed

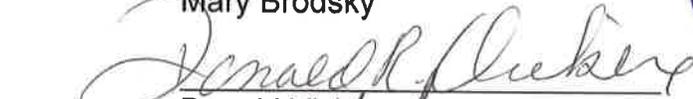
Dated at Montpelier, Vermont, this 19th, day of October 2017.

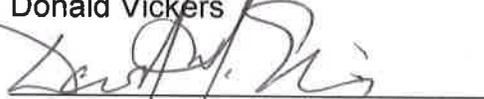
BY: VERMONT HUMAN RIGHTS COMMISSION


Mary Marzec-Gerrior, Chair


Nathan Besio


Mary Brodsky


Donald Vickers


Dawn Ellis