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INVESTIGATIVE REPORT

Complainant: Kathryn & Allison Dersch - Vermont HRC Case HV18-0016
Respondents: Thom Porrier - Landlord
Charge: Discrimination based on minor children, [REDACTED] and retaliation

BACKGROUND AND SUMMARY OF COMPLAINT

In February 2017, Allison and Katherine Dersch decided to rent a house in Jericho, Vermont from Thomas Porrier and his wife Jen. They took possession of the house in March of 2017. Allison and Katherine Dersch are a married couple. At the time they rented the house, they had no children. Sometime in late spring of 2017, they decided to offer respite care to foster children and DCF placed two children into their home in June of 2017. As part of the licensing process, DCF informed the complainants that a full home inspection would need to be done of locked areas to ensure safety. On July 27, 2017, Allison Dersch emailed Thom Porrier and informed him that she and Katherine had decided to become foster parents and that DCF needed access to the garage and basement.

Mr. Porrier subsequently threatened to increase their rent, to deny DCF access to the garage and basement, allegedly threatened to evict them and allegedly refused to fix appliances. In February of 2018, Mr. Porrier decided not to renew their lease. The complainants subsequently filed a complaint with the Vermont Human Rights Commission alleging discrimination based on familial status, retaliation and [REDACTED]

SUMMARY OF RESPONSE

Mr. Porrier responded by stating he had rented to families with children without incident. He stated that he believed that the complainants had negotiated their lease in

bad faith to obtain the lower rent for a rent reflecting only two adults when they had in fact intended to have children. He stated that he was concerned that “extra people” in the house would result in additional wear and tear on systems and that the rental rate he offered the complainants would not be sufficient to cover any increased possible costs to those systems. He stated that DCF told him that he did not have to allow the garage and basement to be inspected. He made several other factual denials regarding the retaliation complaint. He claimed that he decided not to renew the lease because he and his wife were contemplating selling the house – a fact he stated he had shared with the complainants when they first rented the home.

PRELIMINARY RECOMMENDATION

This investigation makes preliminary recommendations to the Human Rights Commission to find the following:

1) There are **reasonable grounds** to believe that Thom Porrier discriminated against Kathryn and Allison Dersch based on **familial status** in violation of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(a)(1) and (a)(2).

2) There are **reasonable grounds** to believe that Thom Porrier **retaliated** against Kathryn and Allison Dersch because of their familial status in violation of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. § 4506(e)(1).



DOCUMENTS

- Lease
- DCF Documents Relating to Fostering
- 75 + email exchanges between the complainants and Thom Porrier
- Emails between DCF personnel and the complainants
- Texts between the complainants and Mr. Porrier
- Jericho Parking Ordinance

INTERVIEWS

- Kathryn Dersch (Complainant) – 3/24/18
- Allison Dersch (Complainant) – 3/24/18

law to protect families who have or want children from being financially or otherwise victimized by landlords who do not wish to rent to people who have children.

Landlords understandably want to protect the investment that a rental house represents and to charge rent that will cover repairs and upkeep while also realizing some financial gain. They want good tenants who will care for the property. However, those goals and concerns may run afoul of fair housing laws, and in this complaint, they have done exactly that.

It is easy to get bogged down in the “weeds” of the landlord-tenant relationship rather than the factual issues relevant to the Fair Housing issue under investigation. During the investigation, it became clear that there were and are continuing landlord-tenant grievances, many of which are not within the jurisdiction of the HRC. This report will endeavor to review only those issues germane to its analysis.

I. DISCRIMINATION BASED ON FAMILIAL STATUS

1. Dersch tenancy & decision to become foster parents

Vermont statute 9 V.S.A. §4503 reads in part:

(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, *or because a person intends to occupy a dwelling with one or more minor children....*

(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, or *because a person intends to occupy a dwelling with one or more minor children...*

In February of 2017, Allison and Kathryn Dersch rented a 3-bedroom single-family home in Jericho, Vermont owned by Thom Porrier and his wife, Jen Porrier. The Porrier’s own three single family homes.³ According to Mr. Porrier he “...negotiated

³ The Porrier’s own 3 single family homes which takes them out of the orbit of federal fair housing law because they are small landlords. However the provision regarding “statements against” could result in federal jurisdiction regardless and offer a complainant the option to file in state or federal court. See 9 V.S.A. § 4504. Rental of housing; exemptions: “The provisions of section 4503 of this title relating to the rental of a dwelling shall not apply: ... (2) if the dwelling unit is in a building with three or fewer units and the owner or a member of the owner’s

[rent] with the complainants on the basis of having only two adults in the property meaning minimal wear and tear.” This response is unfavorable to Mr. Porrier’s denial of discrimination since it suggests he offered them a lower rental rate specifically because they were “child-free.”

The couple moved into the house in March of 2017. The following month, the complainants decided that they wanted to offer respite care to minor children in the custody of the Vermont Department for Children and Families (DCF). In May of 2017, Cathy Frost, a Resource Coordinator from DCF contacted the couple for an interview and visited the house as required by DCF rules. The following month (June), DCF called the complainants and asked if they would be willing to become foster parents for two minor children. The complainants met with the children and decided to move forward with becoming their foster parents. On or about July 1, 2017, the two minor foster children were placed in their care.

During the process, DCF informed the complainants that a full home inspection would have to be performed for them to be fully licensed. This meant that Mr. Porrier would have to provide access to all areas at the house, including a garage and a basement, both of which he kept locked and off limits to the complainants. On July 27, 2017, Allison Dersch emailed Mr. Porrier telling him they had applied to become licensed foster parents and that that DCF required a full home inspection which required access to the basement and garage. In the email, Allison Dersch indicated that someone from DCF would be in touch with him to arrange a date and time to complete the inspection.

2. Thom Porrier’s response to the placement of foster children

Mr. Porrier’s response was swift and hostile. He told Allison Dersch that as her landlord, he should have been the first to know of their intentions to become foster parents. Additionally, he said he would increase their rent and that he had rented to them because they were “only” two adults. His email is as follows:

We applaud your desire to be a foster parent although the landlord should be the first to know your intentions as rental rate is driven from information received on rental application. Your rental rate will, of course, increase with an additional resident and at that time we can discuss additions to lease you wish to make. It was personally stated to you that we offered you rental, at lower rate, due to the fact that you were

immediate family resides in one of the units, *provided any notice, statement, or advertisement with respect to the unit complies with subdivision 4503(a)(3) of this title.*”

only two adults. With this said, we would no [sic] deny you the opportunity to move forward in the process to foster a child and just need to know some information on the additional resident. So let us know if you wish for to move forward with a lease amendment and if so, provide the contact number of adoption agency inspection person so I can clarify with them their process involved.

In his response the HRC complaint Mr. Porrier stated that he felt that the decision to become foster parents was “not a decision taken lightly,” however he then contradicted himself, accusing them of having schemed to get lower rent by not disclosing their intention to foster, writing “[the complainants] must have already known when they rented the premises that they were planning to take this step. I felt as if they negotiated with me in bad faith to obtain the lower rent based on only two adults occupying the house.” He went on to add “I was concerned that with extra people in the house, even if they were kids, there would be additional wear and tear on all the systems.”

A. Granting DCF Access to Inspect Premises – Interaction with Tina LaPier⁴
DCF’s Residential Licensing & Special Investigations Unit

Mr. Porrier’s response to the complaint also addressed the issue of providing DCF access for inspection:

I don't know anything about complainants' communication with DCF. Later that same day Tina LaPier from DCF contacted me by phone and we had a long conversation. She told me that the tenants needed to have all parts of the house inspected, as part of their approval as foster parents. I asked if I was obliged to allow the inspection and Ms. LaPier said I was not. She was trying to persuade me to agree and stated that they are good kids. I said that it was a leap of judgment to make statements about children she barely knows. I did not say that I have "worked with children in alternative schools and know[] the damage they can do". [sic]. ***I said I would not agree to the inspection.*** I asked for some details about the process of fostering and the number of kids who would be residing at the premises. Ms. LaPier said she couldn't give me that information. I felt it is essential for me to know how many individuals are residing in the premises, from a safety perspective if nothing else. (Emphasis is added).

⁴ Ms. LaPier has been an investigator for DCF for 10 years in Morrisville and a social worker for 28 years.

Mr. Porrier, of course, did not “have to” provide access to the two areas but this could have affected the Dersch’s long term ability to foster. His statement that he “would not agree” to the inspection was an effort to thwart the Dersch’s ability to become licensed and is direct evidence of discrimination based on familial status and evidence of retaliation.

Ms. LaPier’s email to the complainants provides more information on Mr. Porrier’s response. Later in the day on July 27, 2017, Ms. LaPier emailed the complainants that she had spoken to Mr. Porrier about inspecting the premises and that he had been very upset that the complainants had not disclosed their intent to become foster parents to him before deciding to take in foster children. Ms. LaPier characterized Mr. Porrier as “difficult” and told Allison Dersch that he had told her that he had “worked with children in alternative schools and knows the damage they can do so he’s now worried about that and his house.”⁵

Ms. LaPier stated that Mr. Porrier was resistant to allowing inspection of locked areas, which Ms. LaPier said she had told him was non-negotiable since there were two children present. Ms. LaPier said that Mr. Porrier became even more upset hearing that children were already in the house. Ms. LaPier said he “just seemed like he wanted to be difficult on some level.” DCF ultimately gained access to the necessary areas on August 14, 2017 – a month and a half after they informed Mr. Porrier they needed access, and the property was cleared.⁶

B. Mr. Porrier’s contact with Cathy Frost⁷ – DFC Children and Families Coordinator

On July 28, 2017, Cathy Frost of DCF contacted Tina LaPier and supervisor Beth Maurer by email and copied the complainants. In the email, Ms. Frost stated that she had spoken with Mr. Porrier by phone and that he was “very upset and not easy to talk to.”⁸ He told Ms. Frost he was not willing to allow DCF access to the basement and garage at that time and that those areas

⁵ Email from Tina LaPier to Allison Dersch, 7/27/17. Mr. Porrier denied making this statement.

⁶ Interestingly, during the interview with Mr. Porrier, he stated he had never agreed to provide access and was unhappy and suspicious that access had been provided. The basement apparently contained a septic control panel, access to the heating system, oil and hot water tank, fresh water tank and fuse box. There was no CO2 detector but there was a smoke detector. The complainants bought CO2 detector.

⁷ Ms. Frost has been in her current position for 4.5 years. One part of her job is finding foster homes, the other training prospective parents.

⁸ Email of Cathy Frost to the complainants, July 28, 2018.

“were not available” to the complainants.⁹ He requested confidential information about the children living in the home, including age, sex, and how much money the complainants would receive for their care.¹⁰

According to Ms. Frost’s email, Mr. Porrier told Ms. Frost that the complainants were in violation of their lease and that they did not have his permission to have children in the home. Ms. Frost wrote that Mr. Porrier had told her that he would start eviction proceedings against them if “the children are not moved in a timely manner.”¹¹ Ms. Frost reported that Mr. Porrier “asked me repeatedly what the time frame is to move children and I told him that as an agency, we try not to move children as it is disruptive to schooling, instills more trauma and that we want our foster homes to provide a sense of safety and security.”¹²

Furthermore, Ms. Frost informed Mr. Porrier that DCF worked with “many foster parents who rent properties and it is generally not a problem...” According to Ms. Frost, his response was that “foster children damage homes,” and “those children damage property” and that he did not want his “\$400,000 home” damaged. Ms. Frost ended the email by saying that Mr. Porrier was “not happy with me and asked to speak to my supervisor.”

C. Thom Porrier’s contact with Beth Maurer¹³ – Cathy Frost’s Supervisor and DCF District Director of Family Services – Burlington

Beth Maurer, Cathy Frost’s supervisor, spoke to Thom Porrier about his complaints. She told this investigation that Mr. Porrier asked her to request that the complainants pay \$300 extra a month because the children were in the home putting extra strains on systems and appliances. Ms. Maurer said that Mr. Porrier had said something like “Well, I guess if I don’t let you into the garage and basement” then “they” – the complainants – would not get a license.¹⁴

Ms. Maurer reported that Mr. Porrier threatened to evict the complainants. She told Mr. Porrier she was also a landlord and understood that while he might be upset, the names of minor children were not put on leases anyway in any

⁹ *Id.*

¹⁰ This statement suggested that he was trying to calculate how much more to charge them and actually ended up increasing their rent by that amount.

¹¹ *Id.*

¹² *Id.*

¹³ Ms. Maurer has been District Director for 2 years. Prior to that she coordinated a federal grant between DCF and the UVM looking at placement stability outcomes for children in custody and a supervisor before that.

¹⁴ Interview with Beth Maurer, May 4, 2018. Ms. Maurer said this was not a necessarily accurate statement, but it is Mr. Porrier’s intent – not the ultimate outcome that matters most.

rental situation. According to Ms. Mauer, Mr. Porrier persisted in his complaints and she responded by saying the issue was not within her purview. She said she cautioned that he might want to research landlord-tenant law before taking any action against the complainants.

Ms. Maurer stated that Mr. Porrier stated that if he had known that the complainants were going to foster he would not have rented the house to them. She could not recall any specifically disparaging comments about foster children. She said that it was the first time in the twelve (12) years she has worked at DCF, (two of those as Director), that she had encountered this type of issue with fostering and renting. Mr. Porrier did not provide any substantive information about communications with Ms. Maurer other than to say that she had texted him and asked him to call the DCF office.

D. Increase in the Dersch's Rent by Thom Porrier

On July 29, 2017, the complainants received an email from Mr. Porrier stating that he was increasing the rent from \$2,050 per month to \$2,350 per month due to the presence of the foster children. He wrote:

This is just another attempt, in less than four months, that you made statements of legal claims against me which is clearly not the case, I did expedite calls to D.C.F. in an attempt to eliminate/minimize disruption in the process of you fostering even though you were deceptive to us throughout your application process and not making us aware of your intent. At this point, we do expect an increase in rent to what it would have been had you come to us with a family of four. This is our rental policy that you were well aware of from start of rent negotiation, and in no way is there discrimination of children in the foster care system.

An increase of \$300 (retroactive to your change in circumstances) is needed to keep rate in line with four humans in our house. You were also explained that your rental rate for two adults had us in the red and adding two more humans to the household isn't acceptable without appropriate compensation. This increase puts your new rental rate right in line with our other rentals and they have less appliances, are responsible for yard maintenance and are not nearly as new and pristine. Your decision to take on fostering children will not put us further in the red and it is reasonable for us to request compensation due to your change in circumstances from the lease you entered into just months ago.

Another option to consider is to purchase the residence for 400k so you can make these very big decisions without scrutiny of the property owners. If you wish to ensue in a legal battle that is of your choice and hopefully it will not come to that as the children will be the ones to suffer the consequences based on your decisions alone.¹⁵

He closed with a threat to sell the house:

If we can come to terms with an amended lease that would be great otherwise we are forced to sell house sooner than later due to the financial strains put on us.¹⁶

3. Analysis: Evidence of discrimination based on familial status

The complainants must establish a *prima facie* case of discrimination based on familial status by proving three elements: 1) that they were members of a protected class; 2) they sought to exercise their rights as tenant to the “conditions, or privileges” associated with “the rental of a dwelling,” the “provision of services or facilities” of that dwelling including the right to extend their lease; and 3) that they were prevented from doing so by the actions of the respondent.¹⁷

Mr. Porrier’s own statements and acts clearly establish discrimination based on familial status.¹⁸ In addition, all three DCF employees separately, contemporaneously and credibly reported statements he made that were consistent with each other and those he made to the complainants.¹⁹ Evidence of these statements makes Mr. Porrier potentially liable under federal Fair Housing Law, not just Vermont Fair Housing law were a court to find the provision applicable to statements made during a tenancy rather than just prospectively. To review, those statements include:

- 1) Mr. Porrier was upset he had not been informed they were fostering before they agreed to provide care and thought he had the right to be informed to give permission and an opportunity to raise the rent.

¹⁵ Email from Thom Porrier to Allison Dersch, July 29, 2017.

¹⁶ *Id.*

¹⁷ *Khalil v. Farash Corp.*, 277 Fed.Appx. 81, 83 (2nd Cir. 2008).

¹⁸ *Human Rights Com’n v. LaBrie, Inc.*, 164 Vt. 237, 246 (1995) (“Courts have found privately imposed occupancy limits, such as the limit imposed by defendants in this case, to unreasonably limit or exclude persons with minor children, and therefore, violate the Fair Housing Act.”). Complainants in *LaBrie* were evicted due to the presence of a minor child in a mobile home park which the court found constructively denied them access to housing in the mobile home park because of the two-person occupancy limit.

¹⁹ These alleged statements included telling Tina LaPier that he had worked with children in alternative school and he “knows the damage they can do.”

- 2) Mr. Porrier felt the Dersch's failure to disclose they intended to have foster children was to get a lower rental rate, not understanding that it would have been unlawful to charge them more *because* they wanted to have the children.
- 3) Mr. Porrier allegedly asked Beth Maurer to ask the complainants for \$300 more rent from the complainants for him.
- 4) Mr. Porrier raised the Dersch's rent by \$300 because of the presence of the foster children.
- 5) Mr. Porrier tried to interfere with their licensure by denying access to the garage and basement.
- 6) Mr. Porrier allegedly stated to Ms. Maurer that he would not have rented to them if he had known they were going to have foster children.
- 7) Mr. Porrier allegedly threatened to evict them in a conversation with Cathy Frost.
- 8) Mr. Porrier threatened to sell the house early because of the financial impact the situation had on his bottom line.
- 9) Mr. Porrier informed them he would not renew their lease.

FINDING: There are reasonable grounds to believe that Thom Porrier violated the familial status provision of Vermont's Fair Housing and Public Accommodations Act by interfering with conditions, privileges, services and facilities of their rental.

II. RETALIATION

The Vermont statute fair housing retaliation provision reads as follows:

9 V.S.A. § 4506 Enforcement; civil action; retaliation prohibited
...(e) Retaliation prohibited. A person shall not discriminate against any individual because that individual:
(1) *has opposed any act or practice that is prohibited under section 4502 or 4503* of this title...

To prove retaliation, the complainants must prove the following: 1) that they were engaged in an activity protected by Vermont's fair housing law; 2) that Mr. Porrier took some adverse action against them; and 3) that there was protected activity closely followed in time by an adverse action.²⁰ Several of Mr. Porrier's actions constitute acts of retaliation as well as discrimination

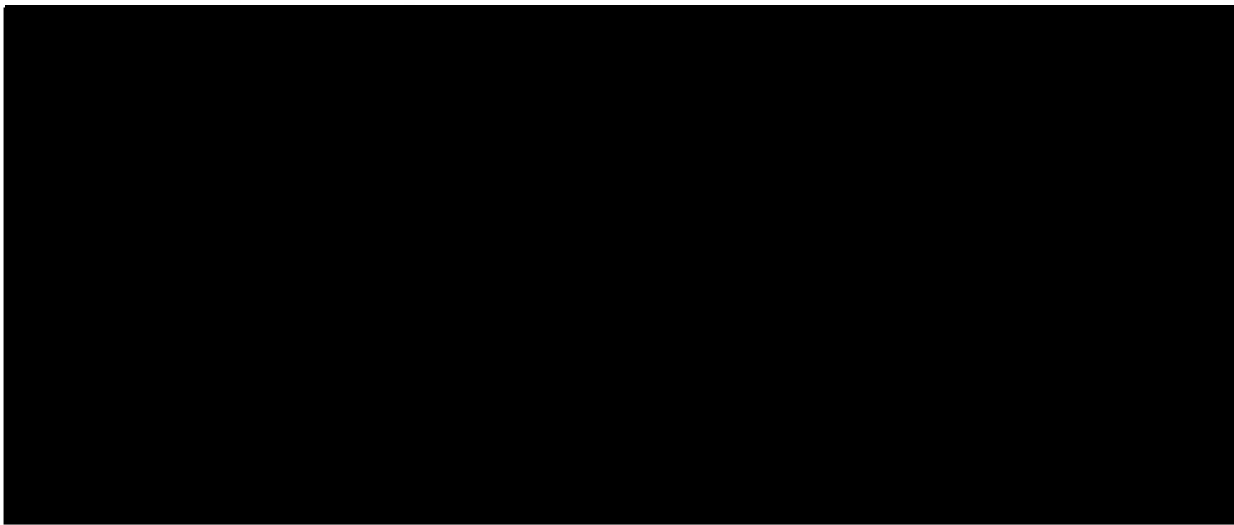
²⁰ *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 54 (2nd Cir. 2002) (Superseded by statute on unrelated grounds).

based on familial status. The complainants were engaged in a protected activity – i.e. having foster children in the home they rented. Mr. Porrier took adverse action against them, including trying to deny access to DCF for inspection in hopes that it would prevent the complainants from becoming licensed, as well as raising their rent, threatening eviction, threatening to sell the house out from under them and not renewing their lease. All those actions quickly followed the Dersch’s disclosure of their desire to foster to Mr. Porrier and him finding out there were already children in the home.

The complainants alleged numerous other acts of retaliation concerning maintenance and other issues that continued intermittently until Mr. Porrier decided not to renew the lease. According to the complainants, Mr. Porrier continued to threaten to sell the house, would show up unannounced and without an appointment - sometimes late at night - telling them he needed full access at any time. They stated that he threatened them because they refused to pay the illegal \$300 increase.

Mr. Porrier disputed these claims and/or alternately stated that the complainants were being unreasonable, untruthful or damaging the appliances through misuse. On January 24, 2018, he served them with a Termination of Tenancy. Many of Mr. Porrier’s own statements and actions clearly show that he took direct retaliatory action against them through non-cooperation with DCF and alleged other statements against them to both the complainants and DCF based on their familial status.

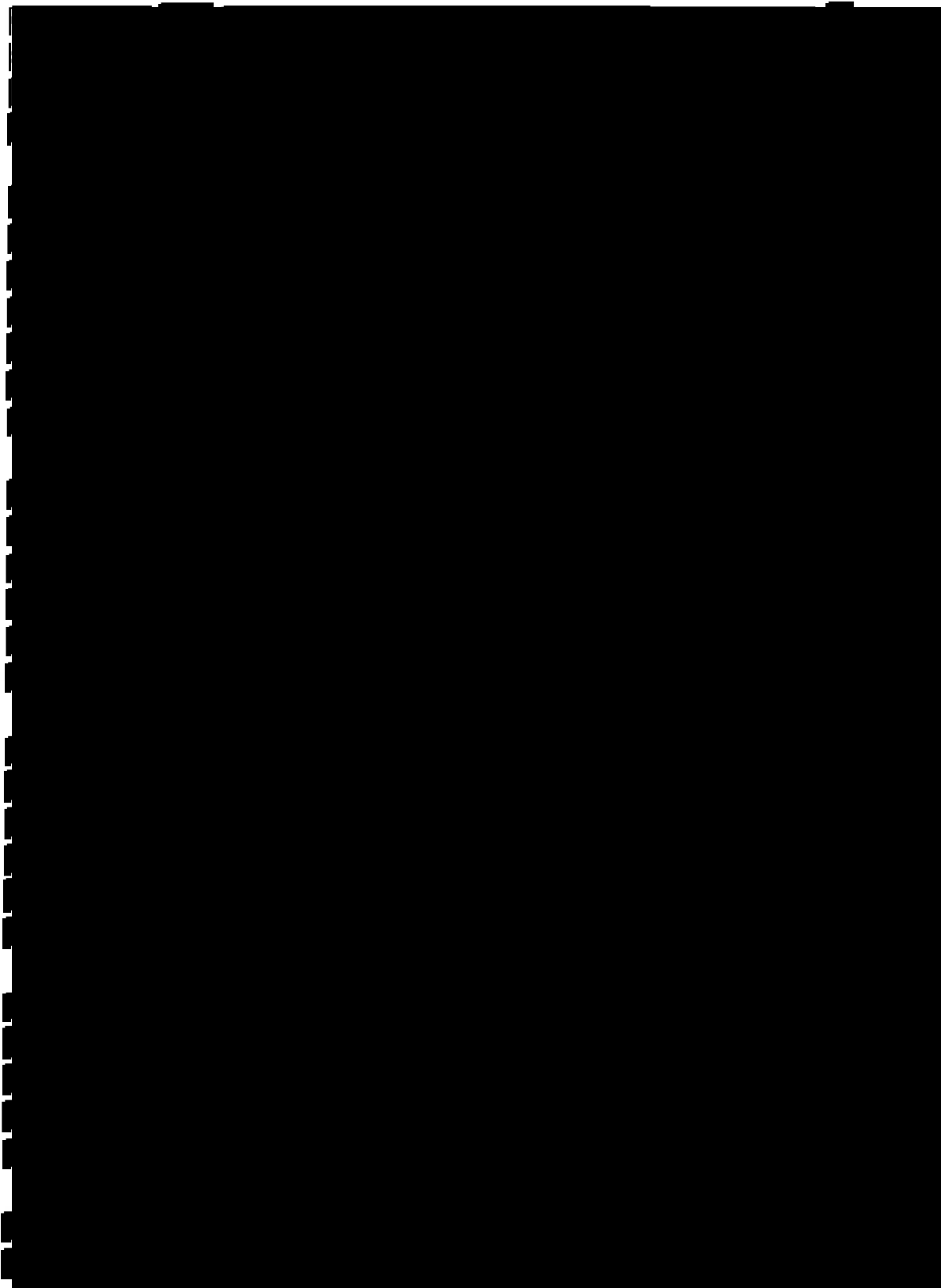
FINDING: There are reasonable grounds to believe that Thom Porrier violated Vermont’s Fair Housing and Public Accommodations Act by retaliating against the complainants for taking foster children into the home they rented from him.

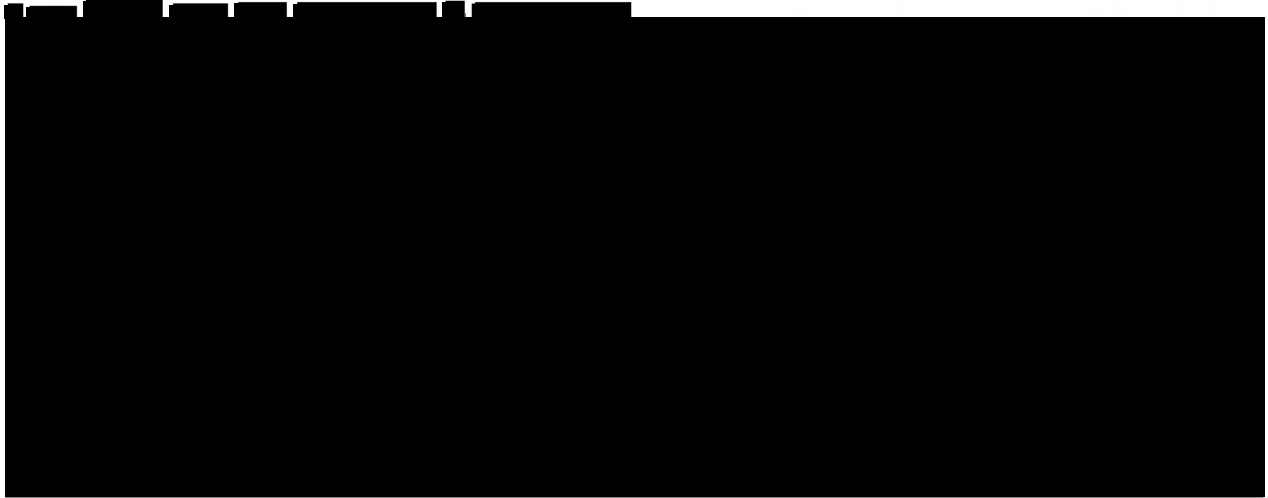
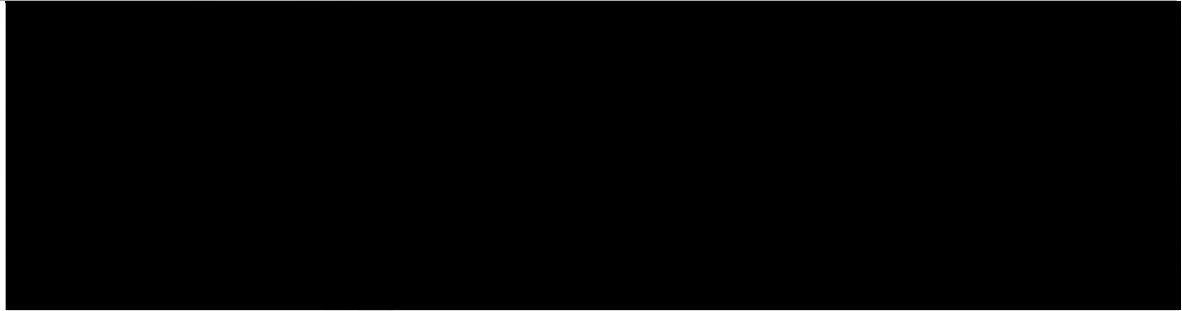
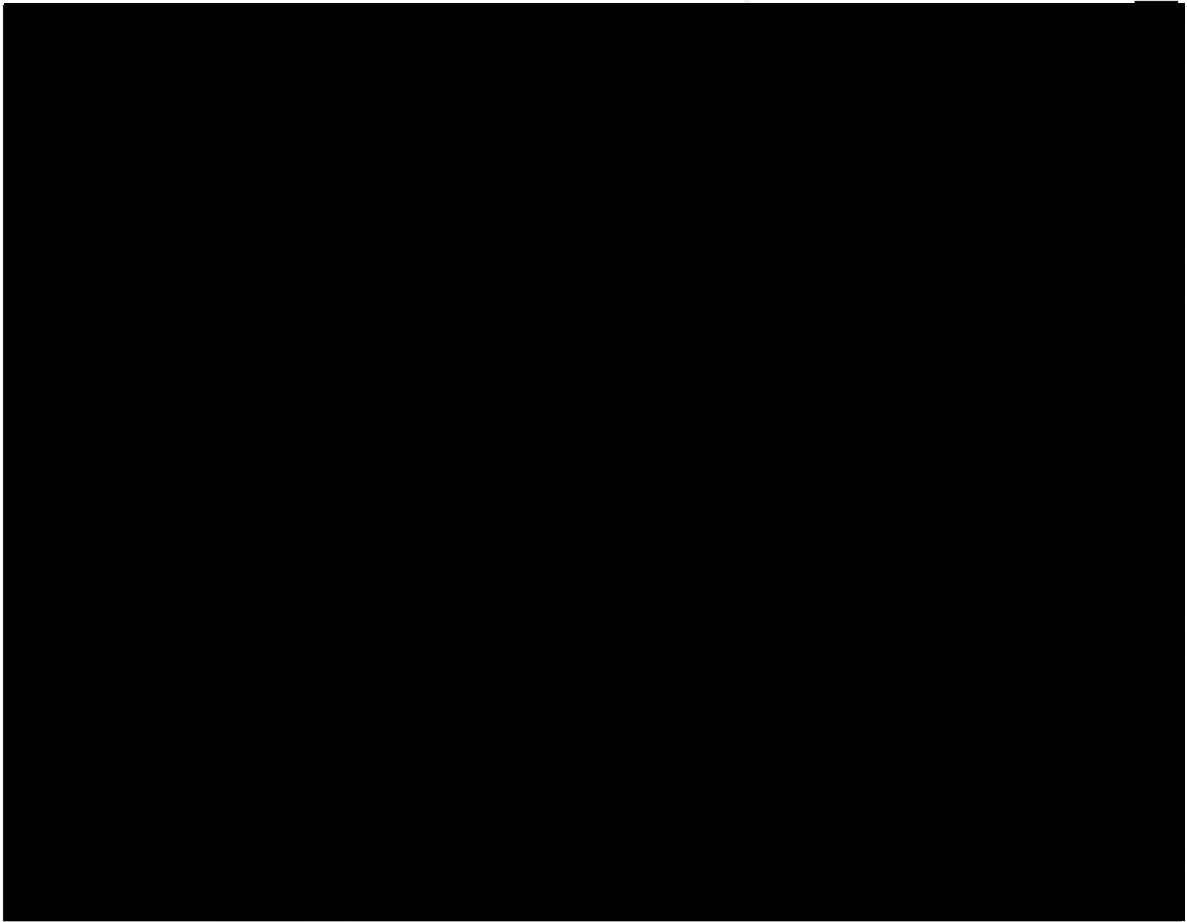


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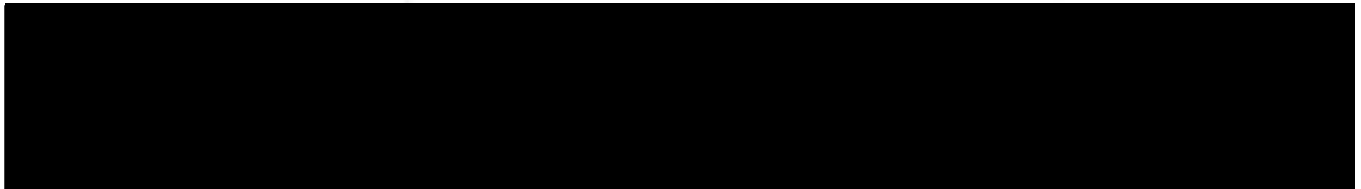




RECOMMENDATION

1) There are **reasonable grounds** to believe that Thom Porrier discriminated against Kathryn and Allison Dersch based on **familial status** in violation of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(a)(1) and (a)(2).

2) There are **reasonable grounds** to believe that Thom Porrier **retaliated** against Kathryn and Allison Dersch because of their familial status in violation of the Vermont Fair Housing and Public Accommodations Act in violation of 9 V.S.A. § 4506(e)(1).



 7/24/18

Nelson M. Campbell
Administrative Law Examiner

 7/24/18

APPROVED:
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