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## **INVESTIGATIVE REPORT**

### **Pam and Bonnie Barrows v. Dawn Briggs**

#### **VHRC Case #HV17-0026**

**Complaint:** Housing–Sex/Sexual Orientation – Harassment, Coercion, Threats and Intimidation

**Summary of Charge:** On May 25, 2017, Bonnie Barrows and Pam Barrows (Complainants) filed a complaint with the Vermont Human Rights Commission (VHRC) alleging that Dawn Briggs (Respondent) discriminated against them on the basis of sex and sexual orientation. Complainants, a same sex, female couple, alleged that on April 13, 2017, while Complainant Bonnie Barrows was standing in her driveway, Ms. Briggs walked up toward her and yelled, “We burn dykes around here.” The Complainants also allege that Ms. Briggs placed a sign in her mobile home window- which is just outside of their bedroom, with wording including: “snitches,” “bitches,” “we are going to put our fists up your ass,” and “you haven’t seen anything yet.” Due to the escalating nature of these and other incidents and the explicit threats of harm, they were in fear of physical violence from Ms. Briggs.

**Summary of Response:** On June 12, 2017, Dawn McCoy, a/k/a Dawn Briggs stated that she did not discriminate against the Complainants on the basis of sex or the fact that they are a same sex, female couple. Specifically, the Respondent denied stating, “We burn dykes around here.” Rather, the

Respondent admitted that she stated, "Shut your mouth you fucking dyke." In addition, the Respondent stated that the language in the signs is protected under freedom of speech, explaining that the signs contained no slurs and made no reference to sexual orientation. In fact, the Respondent stated that she and her family were being discriminated against because of the presence of minor children.

### **PRELIMINARY RECOMMENDATIONS**

This investigative report makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that the Respondent Dawn Briggs violated 9 V.S.A §4503(a)(2) of the Vermont Fair Housing & Public Accommodations Act by harassing Complainants Bonnie and Pam Barrows based on their sexual orientation.

This investigative report makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that the Respondent Dawn Briggs violated 9 V.S.A §4506(e)(4) of the Vermont Fair Housing & Public Accommodations Act by threatening and intimidating the Barrows in the exercise of their housing rights based on their sexual orientation.

### **RELEVANT DOCUMENTS**

05/25/2017 – Complaint

06/12/2017 – Briggs Response to the Complaint

06/18/2017 - Addison County Community Trust (ACCT) Response<sup>1</sup>

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<sup>1</sup> The original case was brought against Ms. Briggs and ACCT. ACCT entered into a pre-conciliation agreement that was previously approved by the Commission.

02/27/2018– Clear image of signs in window sent by Jason Briggs

## **INTERVIEWS**

02/22/2018 – Respondent- Bonnie Barrows<sup>2</sup>

02/22/2018 – Respondent- Pam Barrows

02/26/2018 – Respondent's Husband- Jason Briggs<sup>3</sup>

03/01/2018 – Respondent- Dawn Briggs aka Dawn McCoy<sup>4</sup>

05/10/2018 – Neighbor/ Friend of Ms. Briggs- Melissa Preston aka Missy.

## **FACTS**

### **I. UNDISPUTED FACTS**

The following facts are not disputed by the parties:

1. Bonnie and Pam Barrows are a same sex, female couple.
2. In August 2016 they purchased and moved into the residence located at 20 Bluebird Lane in Starksboro, Vermont.
3. The residence is located within the Brookside Mobile Home Park in Starksboro, Vermont.
4. Brookside Mobile Park is owned and managed by Addison County Community Trust (ACCT).

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<sup>2</sup> This investigation conducted individual interviews by phone on February 22, 2018 with Bonnie and Pam Barrows. Due to medical and other reasons it was not possible for Bonnie and Pam Barrows to come to the VHRC office in Montpelier, nor was it possible for this investigation to meet them in person.

<sup>3</sup> A phone interview was also undertaken for Mr. Briggs since a busy work schedule did not allow for an in-person interview.

<sup>4</sup> Ms. Briggs explained that her schedule, much like her partner, Mr. Briggs, is extremely busy. Ms. Briggs added that she and Mr. Briggs only have one vehicle and therefore could not attend in person on any of the requested interview dates. Ms. Briggs welcomed the opportunity to do the interview by phone if that was an option.

5. Dawn Briggs was the Barrows next door neighbor. Her residence is located at 38 Bluebird Lane in Starksboro, Vermont.
6. On April 13, 2017 Bonnie Barrows was waiting in her driveway for Pam Barrows. While standing in their driveway Ms. Briggs walked toward her and yelled, "Shut your mouth you fucking dyke."
7. This incident was reported to Mary Blacklock Jackman, Director of Ownership Programs with ACCT.
8. Bonnie and Pam Barrows also, in person, filed a report about this incident with Trooper Jacqueline June at the Vermont State Police (VSP), New Haven Barracks.
9. On April 24, 2017 while adjusting their bedroom curtain the Barrows saw a sign in Ms. Briggs window which was just outside their bedroom with wording including: "snitches," "bitches," "I will try to keep my foot out of your ass."
10. Bonnie Barrows reported this incident to Ms. Blacklock Jackman and Trooper June of the VSP.
11. On or around August 28-29 2017, Bonnie Barrows and Pam Barrows moved out of the residence, selling their rights to the residence and moving into another property.

## **II. DISPUTED FACTS**

### Derogatory Statements

Ms. Briggs engaged in a number of instances of unwelcome behavior, with Bonnie and Pam Barrows, during the time that they lived at the residence. The first incident occurred on April 13, 2017 when Ms. Briggs has admitted to stating to Bonnie Barrows, who was standing in her driveway,

"Shut your mouth you fucking dyke."<sup>5</sup> Bonnie and Pam Barrows allege in their complaint of discrimination that Ms. Briggs also made additional statements and engaged in several other behaviors, that made Bonnie and Pam feel fearful and targeted because of their sexual orientation.

Bonnie Barrows alleges that during the same incident on April 13<sup>th</sup>, Ms. Briggs walked up to her and yelled, "We burn dykes around here." In shock, Ms. Barrows responded, "Excuse me, do you have a problem?" and Ms. Briggs replied, "Yes, we kill carpet munching lesbians."

Ms. Briggs denies making these statements. In her answer to the complaint, Ms. Briggs stated that she told Bonnie Barrows that she was a joke, to which Bonnie Barrows replied, "Excuse me." Ms. Briggs then stated, "You heard me, you are nothing but a joke." Further, Ms. Briggs stated that Bonnie Barrows replied, "Keep your kids contained to your lot" and in response she admitted calling Bonnie Barrows a "dyke."<sup>6</sup> Ms. Briggs admitted to being upset because she had just received a lease violation involving her children, which she attributed to the Barrows.<sup>7</sup>

While Ms. Briggs' account to this investigation is consistent with her account in the Response and what she told Trooper June about the incident,<sup>8</sup>

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<sup>5</sup> Law Incident Circumstances: Contributing Circumstances Seq Code 1 BM42 Bias Anti-Female Homosexual, Seq Code 2 LT20 Residence/Home, Law Incident Responders Detail, Responding Officers, Seq 1 June, Jacquelin, Unit 468. Time/Date 16:21:14 04/13/2017.

<sup>6</sup> This account is generally consistent with the account she gave to Trooper June who investigated this matter by getting the number of Ms. Briggs from Addison County Community Trust (ACCT).

<sup>7</sup> Letter dated April 10, 2017 from ACCT calling on Dawn and Jason Briggs to "[p]lease be sure that your children are aware of where they should and should not be playing" and also stating "[c]lean lots are a great way to also improve the look and feel of the park."

<sup>8</sup> Law Incident Circumstances: Contributing Circumstances Seq Code 1 BM42 Bias Anti-Female Homosexual, Seq Code 2 LT20 Residence/Home, Law Incident Responders Detail, Responding Officers, Seq 1 June, Jacquelin, Unit 468. Time/Date 16:21:14 04/13/2017. Narrative:

"Bonnie Barrows (DOB [Redacted]) and Pamela Barrows (DOB [Redacted]) came to the New Haven Barracks to report a threat. P. Barrows wasn't there for the incident. B. Barrows provided a written statement.

B. Barrows explained that she was standing outside her home when her neighbor, Dawn Briggs (DOB [Redacted]), came outside and yelled "we burn dykes" at her. B. Barrows said "excuse me, do you have a problem?" To which D. Briggs replied "we kill

Complainant's claims are supported by sufficient evidence pointing towards intolerance of sexual orientation in the mobile home park. Ms. Briggs confirmed that she casually uses derogatory terms, based on sexual orientation, even giving the example of how she has spoken to another mobile home park resident who is a homosexual. In 2017, the mobile home park sign which ordinarily reads "Brookside" was defaced with red paint to read, "Fagside."

Additionally, this investigation finds that the alleged statements are so specific that it is unlikely that Bonnie Barrows made them up. Ms. Briggs has the greater incentive to minimize what was said. There are couple of pieces of circumstantial evidence which collectively make it more than likely that the statements were made. In an email dated May 6, 2018 at 1:48 p.m., Pam Barrows stated to Ms. Blacklock Jackman that she just got notice that fire pits would be allowed in the mobile park. Concerned, Pam Barrows states, "We have neighbors as you are aware who have threatened to burn us and our house down and now they can have a fire pit???"<sup>9</sup> This email was sent less than a month after the Complainants asserted that Ms. Briggs engaged in the hostile behavior. Ms. Blacklock Jackman's response on May

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carpet munching lesbians," started laughing, and walked inside her home. B. Barrows was concerned for the safety of their home while they're gone.

I contacted the trailer park manager, Mary, to obtain contact information on the neighbors since B. Barrows said they have never met before.

I attempted to contact D. Briggs and spoke with her husband Jason Briggs (DOB [Redacted]) about the matter. D. Briggs called back and explained that she has had an ongoing problem with the Barrows since they moved in last fall. D. Briggs said she called B. Barrows a joke. When B. Barrows responded by saying "excuse me do you have a problem?" D. Briggs said "you're nothing but a joke. B. Barrows then said "keep your kids contained to your lot." D. Briggs then called B. Barrows a dyke and went inside her home."

<sup>9</sup> Additionally, in an email response on May 8, 2017, Ms. Blacklock Jackman in addressing Pam Barrows' complaint about the fire pit stated: "The fire pits are something that ACCT decided last year and decided to implement this summer. I was hoping to have a new lease out to everyone and therefore not have to do a postcard, but I have been unable to finish a new lease due to its time demand."

8, 2017, which was sympathetic, suggests she found The Barrow's version of events to be credible.<sup>10</sup>

Ms. Briggs' statements, concerning her recollection of the incident are self-serving and subject to question for accuracy. The reality is that Ms. Briggs did not give an immediate statement to Officer June concerning the incident. An immediate statement is an important step to ensure that all of the details are documented and are as accurate as possible. Officer June contacted ACCT to obtain contact information for Ms. Briggs in order to investigate the matter.<sup>11</sup> In Ms. Briggs's answer to the complaint she stated that "a day or two later" she received a voice message from Mr. Briggs advising her to contact Officer June, which she attempted without success.<sup>12</sup> Ms. Briggs makes it a point to note that on the day she got Mr. Briggs's voicemail to contact Officer June, she had left her cell phone in the car so she got the message late. Ms. Briggs then goes on to state that the following day Officer June called her back, at which point in time she apparently made a statement of the incident. A total of two to three days passed, before Ms. Briggs gave her statement to the police, which is a substantial amount of time for her to come up with a defense, specifically a different account of what took place.

This investigation finds Complainant, Bonnie Barrows to be credible and her recollection of the derogatory statements on April 13, 2017 to be accurate.

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<sup>10</sup> By email dated May 8, 2016, Ms. Blacklock Jackman also stated "I am sorry that you are experiencing so many problems living in Brookside. It sounds as though the seller may have not been truthful in why he was selling the home. It is obviously ideal to have everyone follow the rules, but I don't know if that ever happens in any situation. I am sure you were expecting things to go easily, but when living in such a close environment to others [sic] things can be difficult."

<sup>11</sup> Law Incident Circumstances: Contributing Circumstances Seq Code 1 BM42 Bias Anti-Female Homosexual, Seq Code 2 LT20 Residence/Home, Law Incident Responders Detail, Responding Officers, Seq 1 June, Jacquelin, Unit 468. Time/Date 16:21:14 04/13/2017.

<sup>12</sup> In Ms. Briggs' answer to the complaint dated June 12, 2017, she stated that "Officer June wasn't in. [S]he was out on the road so I left a voicemail for her to call me back."

## The Sign in the Trailer Window

On April 23, 2017, just ten days after the initial incident, Ms. Briggs put up five signs in her daughter's bedroom window, intentionally directed at the Complainants, Bonnie and Pam Barrows,' mobile home.<sup>13</sup> There were a total of five square shaped signs, with a white background and handwriting in black which read as follows: 1. Hi Stalker!! (top left) 2. Twinkle, twinkle little snitch, mind your own business, you nosey Bitch [two exclamation marks forming a smiley face] (bottom left) 3. Hypocrite: Someone who conveniently forgets their faults to point out someone else's (top right) 4. Dear Haters, I have so much more for you to be mad at. Just be patient. (bottom right) 5. Keep your nose out of my business and I will try to keep my foot out of your ass... Deal?" (bottom middle).

Ms. Briggs asserted that her statements and actions are speech that is protected by the First Amendment<sup>14</sup> and that they were not motivated by hatred of the Barrows' sexual orientation or gender but were in direct response to her belief that Bonnie and Pam Barrows had filed a number of complaints with ACCT concerning her and Jason Briggs' children playing on other residents' lots.<sup>15</sup> The record confirms on April 10, 2017, ACCT issued a

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<sup>13</sup> This investigation interviewed Ms. Briggs on March 1, 2018 concerning the complaint of discrimination in housing. See also Law Incident Circumstances: Contributing Circumstances Seq Code 1 BM42 Bias Anti-Female Homosexual, Seq Code 2 LT20 Residence/Home, Law Incident Responders Detail, Responding Officers, Seq 1 June, Jacquelin, Unit 468. Date 04/23/2017. Narrative:

"On April 23, 2017 at approximately 2024 hours I received a voice message from B. Barrows advising that D. Briggs has now posted notes in her trailer window directed at B. Barrows and facing the Barrows residence."

Mr. Briggs in an interview with this investigation confirmed that his partner, Ms. Briggs had placed the signs in the window.

<sup>14</sup> A legal analysis of that claim is analyzed at pages 21-23.

<sup>15</sup> In her answer to the complaint dated June 12, 2017 Ms. Briggs confirms that by a process of elimination she concluded that Bonnie and Pam Barrows were the cause of Ms. Blacklock Jackman issuing a letter dated April 1, 2017 stating that "multiple items around our house had to be taken care of like a refrigerator." In an interview with this investigation Ms. Briggs also confirms that she knew that neither Missy nor Bruce made the complaints.

letter to Dawn McCoy (Ms. Briggs) and Jason Briggs asking them to address the matters of their children playing in lots that are not theirs, and the multiple items around their home that should be cleaned up.<sup>16</sup> Given the very close proximity of time between ACCT's issuance of the letter (April 10, 2017) and Ms. Briggs' adverse action, it is highly possible that this action was in part due to Bonnie and Pam Barrows' perceived involvement in the complaints and was directed at them to discourage further complaints about her and Jason Briggs' children entering others' lots.

This was not the first time Ms. Briggs has put signs up against her neighbors. In June 2016, two months prior to the Complainants moving into Bluebird Lane, Ms. Briggs placed a sign, this time in her kitchen window directed at Bruce and Tina Carter, in an effort to get them to mind their own business. The sign included "DON'T fucking worry about what's in my -YARD If you have something to say bring your bitch ass to [rest of sign cannot be read]." Like the five signs directed at the Complainants, this earlier sign to Bruce and Tina Carter uses the word "bitch" to specifically refer to the neighbors. Further, the earlier sign to Bruce and Tina Carter, like the sign to the Complainants, also calls on them to mind their own business.<sup>17</sup>

Having been subjected to a barrage of threatening language based on their sexual orientation a mere 10 days earlier, it is not unreasonable that statements such as "I have so much more for you to be mad at," and "Keep your nose out of my business and I will try to keep my foot out of your ass," were viewed by the Complainants as escalating threats.

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<sup>16</sup> Letter dated April 10, 2017 from ACCT calling on Dawn and Jason Briggs to "[p]lease be sure that your children are aware of where they should and should not be playing" and also stating "[c]lean lots are a great way to also improve the look and feel of the park."

<sup>17</sup> Twinkle, twinkle little snitch, mind your own business, you nosey Bitch [two exclamation marks forming a smiley face] (bottom left) 5. Keep your nose out of my business and I will try to keep my foot out of your ass... Deal?" (bottom middle)

### Throwing rocks at window

On April 15, 2017, Bonnie and Pam Barrows reported to Ms. Blacklock Jackman that some of Ms. Brigg's minor children were running around their front yard and appeared to be chasing a cat.<sup>18</sup> Ms. Brigg's yelled to the children "don't go over there, we don't want to be reported to Mary."<sup>19</sup> Ms. Brigg's children then went to the road and began throwing rocks at their windows. Ms. Brigg's did not correct or otherwise stop this. Still, when Bonnie Barrows was asked by this investigation whether she knew why the rock throwing occurred, she shared her belief that the children were throwing rocks at the living room area in order to get their cats to go home.<sup>20</sup> Additionally, when asked, Bonnie Barrows confirmed that there was no physical contact of the rocks with their mobile home.

In her answer to the complaint, Ms. Briggs explained that on April 15, 2017, her children were standing around her car as she was getting ready to leave for New York. Ms. Briggs acknowledged telling her children "Don't go over there because they will turn us into ACCT."<sup>21</sup> However, Ms. Briggs has denied that the children were throwing rocks, but admitted that the 3 and 5-

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<sup>18</sup> There was another VHRC investigation between the Complainants and ACCT, concerning their alleged failure to address the claims of harassment experienced by Bonnie and Pam Barrows, by Ms. Briggs. In the answer to the complaint, dated June 8, 2017, Ms. Blacklock Jackman acknowledges that the incident was reported to her by Bonnie and Pam Barrows. She goes on to state that she had previously sent the Briggs a letter on April 10, 2017 regarding their children playing on other residents' lots to address Bonnie and Pam Barrows' concerns. Ms. Blacklock Jackman later stated that on May 24, 2017 a written warning of lease violation was issued to the Briggs, which again addressed Bonnie and Pam Barrows' concerns about the children going onto their lot.

<sup>19</sup> This information was confirmed in individual interviews with Bonnie and Pam Barrows, on February 22, 2018.

<sup>20</sup> Interview with Bonnie Barrows on February 22, 2018 concerning her joint complaint, with Pam Barrows, of housing discrimination. See also email [redacted] dated September 15, 2017 from Bonnie and Pam Barrows which includes, "This a.m. around 9:30 the neighbors [sic] older children were in the road in front of our place throwing rocks towards our living room windows, supposedly to get their cats to go home."

<sup>21</sup> On June 12, 2017 this investigation received Ms. Briggs' written answer to the complaint of discrimination in housing.

year-old children have previously thrown rocks, which were directed at puddles in the street.<sup>22</sup>

### Cat tethered to tree

Bonnie Barrows also stated, on or around April 27, 2017, it was reported to Ms. Blacklock Jackman that she found a cat tied to a tree by a leash in her front yard, which appeared to have been intentionally tethered there in an attempt to hang or harm the animal. While trying to free the cat, another neighbor, Bruce Carter, came over to assist her. Mr. Carter told her the leash belonged to Ms. Briggs and he threw it on Ms. Briggs' front porch, after freeing the animal. The incident was reported to Ms. Blacklock Jackman<sup>23</sup> who Complainants allege, indicated that she would report the matter to the Vermont State Police.<sup>24</sup> Complainants also allege, because Ms. Jackman did not report the incident to the Vermont State Police, they reported the incident directly to Trooper June.

In an interview with this investigation Pam Barrows made it clear that she did not witness the incident. When asked to clarify, Bonnie Barrows explained that she looked out of the window and saw the cat tethered to the

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<sup>22</sup> Ms. Briggs's answer to the complaint of discrimination in housing dated June 12, 2017.

<sup>23</sup> There is an email dated April 27, 2017 at 5:54 p.m. from a joint email account used by Bonnie and Pam Barrows in which the Complainants state that "Just now...The neighbor, off our bedroom, older children put a dog leaz[s]h around one of their catz[s] and it waz[s] near our porch. It was being strangled! Why over to [our] place, we do not know... I, Bonnie, went out and Bruce came over to help me free the cat and he threw the leaz[s]h back onto the neighborz[s] lawn." The email goes on to state that the Complainants, Bonnie and Pam wanted Ms. Blacklock Jackman to be aware, and ends with "Pam and Bonnie" as the authors of the email.

<sup>24</sup> In the answer to the complaint dated June 18, 2017, Ms. Blacklock Jackman has denied that she told Bonnie that she would report the incident. Like the April 15, 2017 concerning the throwing of rocks, Ms. Blacklock Jackman stated that it is tenant's responsibility to contact the police if police assistance is required.

In an interview with this investigation, Bonnie Barrows appeared uncertain about whether Ms. Blacklock Jackman said that she would contact the police. Bonnie Barrows stated words to the effect that she believed that Ms. Blacklock Jackman informed her that she would contact the police.

tree but did not actually witness anyone tether the cat. It appears that Bonnie Barrows' understanding that there was an intentional tethering of the cat is based solely on the fact that a dog leash was tied around the cat's neck, and the leash belonged to Ms. Briggs. Additionally, Bonnie Barrows stated that while she was attempting to free the cat, Mr. Carter who was on his porch, came over to assist her. Mr. Carter informed Ms. Blacklock Jackman, the ACCT Director of Ownership Programs that he did not feel that the cat was put on the Barrows' lawn intentionally, and that he thought the cat got away from one of Ms. Briggs' children.<sup>25</sup> Bonnie Barrows alleged that Mr. Carter stated this out of fear of retaliation from Ms. Briggs, with whom the record shows he had a bad relationship.<sup>26</sup> Mr. Carter refused to be interviewed by this investigation.

Moreover, Ms. Briggs has consistently provided a plausible reason to account for the incident with the cat. Ms. Briggs explained that her daughter was playing with two puppies in the yard, and upon unleashing one to take it back inside their residence, the cat got scared and ran over the leash, which was left behind in the yard. At that point, the leash retracted, causing the cat to become entangled in it and the cat, who appeared increasingly

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<sup>25</sup> In the answer to the complaint dated June 18, 2017, concerning the alleged failure of ACCT to address the claims of harassment, Ms. Blacklock Jackman stated that upon receiving the email notifying about the cat incident, she called Bonnie Barrows who told her she should contact Mr. Carter. When contacted, Mr. Carter stated "that he did not feel that the cat was put on the Barrows' lawn intentionally, and that he thought it got away from one of the kids."

<sup>26</sup> The record supports a conclusion that Mr. Carter may be fearful of Ms. Briggs, as claimed by Bonnie Barrows.

First, Ms. Preston, who resides on Bluebird Lane confirmed that Bruce and Tina Carter are not liked at the mobile park, adding that they often spoke with the Complainants.

Second, in an interview with this investigation on March 1, 2018, Ms. Briggs stated that when she first moved into her residence, she placed a sign in her kitchen window that was directed to neighbors, Bruce and Tina Carter, calling on them to mind their own business.

Third, Bonnie Barrows stated in an interview with this investigation that Ms. Briggs "knows pretty much everyone" in the mobile home park, explaining that a number of her relatives live there.

Finally, Bonnie Barrows also stated that she and Bonnie did not interact with most residents, but for Bruce and Tina Carter.

frightened, ran off towards the Complainants' residence with the leash wrapped around it. Since there is no evidence that anyone, including Ms. Briggs, tethered the cat to the tree, Complainants allegations could not be established conclusively.

#### Defacing Mobile Home Sign

Bonnie and Pam Barrows also stated during the investigation that someone had defaced the mobile home park sign, which read "Brookside," to reflect "Fagside," using red spray paint. While this issue was not raised in their complaint, it is addressed here because of its relevance to their claims of harassment. Pam Barrows pointed out that a number of other properties were defaced. A neighbor, Ms. Preston, explained that the defaced properties included the town library, a town preschool, a town road speed sign and a "Slow, Children Crossing" sign, that is located in the mobile home park, on her property.<sup>27</sup> Further, Ms. Preston stated that on the library were written words to the effect of "Trump sucks," the speed limit sign was changed from 35mph to 85mph, and the "Slow Down, Children Crossing" sign was completely painted in red.

The specific defacement of the mobile home park sign to read "Fagside;" and the "Slow, Children Crossing" sign, which was located on Bluebird Lane, approximately three mobile homes obliquely opposite from Ms. Briggs lends support to a theory that someone in the park may have been responsible. However, there is no clear evidence that Ms. Briggs did it and because the defacement of signs and property was wide-spread, it's just as likely that someone else was responsible. Nevertheless, it was not

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<sup>27</sup> In an interview with this investigation on May 10, 2018, Ms. Preston added that another "Slow, Children Crossing" sign, on another street in the mobile home park may also have been defaced with red spray paint.

unreasonable for the Barrows to view this as further evidence that their presence in the park was unwelcome.

## LEGAL ANALYSIS

### I. APPLICABLE LEGAL STANDARDS

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. Bonnie and Pam Barrows are members of a protected class;**
- 2. Bonnie and Pam Barrows were subject to unwelcome behaviors because of their sexual orientation;**
- 3. The unwelcome behaviors were sufficiently severe, pervasive, or objectively offensive to affect the terms, conditions or privileges of their housing;**
- 4. The harassment was carried out by the Respondent.**

The VFHPAA further provides in 9 V.S.A. §4506(e)(4) that:

(e) **Retaliation prohibited.** A person shall not coerce, threaten, interfere, or otherwise discriminate against any individual:  
(4) who is exercising or enjoying a right granted or protected by the chapter...

The elements of a *prima facie* case under this section are:

1. **Bonnie and Pam Barrows are members of a protected class;**
2. **The Respondent coerced, threatened, interfered, or otherwise discriminated against Complainants;**
3. **The conduct involved a right protected under 9 V.S.A. § 4503 and/or Complainants' enjoyment of their housing right;**
4. **The behavior was because of the Complainants' sex or sexual orientation.**

## **II. HARASSMENT**

### 1. Bonnie and Pam Barrows are members of a protected class.

In their charge of discrimination, Bonnie and Pam Barrows stated that they are a "same sex, female couple." The Respondent does not dispute this fact. Complainants made their complaint based on both sex and sexual orientation. In some circumstances, a complaint may present a claim under both categories. Here, however, the allegations are clearly about sexual orientation and therefore the claims will be analyzed solely on that basis.<sup>28</sup> Bonnie and Pam Barrows meet the first element of a *prima facie* case of housing discrimination by showing protected status based on sexual orientation.

### 2. Bonnie and Pam Barrows were subject to unwelcome behaviors by the Respondents because of their sexual orientation.

Understandably, Complainants found the multiple statements and the posted signs to be unwelcome behavior. Alarmed, they contacted the ACCT, the police, the VHRC and sought different housing as a result. However, Complainants must also show that the unwelcome behavior was *because of* their sexual orientation.

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<sup>28</sup> The Complainants' sex claim was administratively dismissed at the time of issuance of this report for lack of a *prima facie* case.

Intent is inferred from the use of the words "dykes" and "lesbians" and thus the analysis need not delve into Ms. Briggs's motivations for making these oral statements: "Shut your mouth you fucking dyke," "We burn dykes around here," and, "Yes, we kill carpet munching lesbians."

However, the threats and statements made on the posted signs are not clearly attributed to Complainants' sexual orientation. While Ms. Briggs admitted to posting these signs on purpose and specifically to targeting Pam and Bonnie Barrows, she said her motivation was to prohibit them from further complaining about her children, which is supported by the record. Furthermore, Ms. Briggs has posted similar signs targeting other neighbors. Nevertheless, Ms. Briggs must overcome the fact that she posted these signs only days after making derogatory statements about the Complainants' sexual orientation and that she intended to target them specifically.

The law does not require that Complainants prove that Respondents were motivated only by discrimination. A respondent can have mixed motives for their behaviors. It is well-settled in cases involving a refusal to rent, that protected status does not need to be the sole reason.<sup>29</sup> This approach has been endorsed in a majority of federal circuit courts but the U.S. Supreme Court has not yet decided this issue under fair housing law.

The analysis is less clear in cases involving harassment and there is less consensus as to the approach. The waters were muddied by the U.S. Supreme Court's decision in the employment sexual harassment case of *Price Waterhouse v. Hopkins*.<sup>30</sup> While *Price Waterhouse* was an employment case under Title VII, courts interpreting the fair housing act frequently look to Title VII precedent for interpretation. The Court condemned decisions made based on a mixture of legitimate and illegitimate considerations,<sup>31</sup> but

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<sup>29</sup> *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1042-43 (2d Cir. 1979)(Fair Housing Act is violated even if race is only one of the motivating factors," and "racial motivation must not play any role in the decision to deny [plaintiff's] rental application.").

<sup>30</sup> 490 U.S. 228, 109 Sup.Ct. 1775 (1989)

<sup>31</sup> 490 U.S. at 241.

it endorsed an affirmative defense by which the employer would not be liable if it could show by a preponderance of the evidence that it would have made the same decision or taken the same action even if the illegal considerations had not been taken into account.<sup>32</sup>

The question for this investigation then is whether the Respondent has proved by a preponderance of the evidence that she would have put up the signs and otherwise directed the statements she made at the Complainants regardless of their protected status. This is a close call. The signs were put up in close temporal proximity to both the letter Respondent received from management and the statements made to Bonnie Barrows in her driveway that were directed at protected status, so this factor could go either way. The signs are also consistent, however, with signs Respondent had directed at other neighbors and were aimed, at least in part, at getting both neighbors to "mind their own business."

As such, this investigation concludes that there is sufficient evidence to support that Ms. Briggs would likely have taken the same action regardless of the Barrows' sexual orientation. Thus the signs, like the other alleged incidents, are not part of the analysis of the next factor, which is whether the behaviors were severe or pervasive.

3-4 The unwelcome behaviors were sufficiently severe, pervasive, or objectively offensive to affect the terms, conditions or privileges of their housing and were carried out by the Respondent.

In harassment cases involving neighbor-on-neighbor harassment, federal courts have held that conduct must be unwelcome and "sufficiently severe or pervasive so as to interfere with or deprive [the tenant] of her right to use or enjoy her home."<sup>33</sup> As a matter of law, Ms. Briggs's single

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<sup>32</sup> 490 U.S. at 242-245.

<sup>33</sup> *Quigley v Winter*, 598 F.3d 938, 946, (8th Cir. Mar. 16, 2010). See also *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir.1996) (which recognized a Fair Housing Act claim for

admitted statement, calling Bonnie Barrows a "fucking dyke," does not attain a level of severity or pervasiveness sufficient to create a hostile housing environment. However, all of the oral statements, viewed together may reach the level of pervasiveness under the law. In *Gnerre v. Massachusetts Comsn. Against Discrimination*,<sup>34</sup> it was determined that substantial evidence supported a finding that a landlord had subjected the tenant to sexual harassment based on four separate incidents of offensive speech of a sexual nature made by the landlord.

In that case, the offensive incidents occurred over time. Here all of the relevant offensive statements occurred on a single day, April 13th, and while the Barrows perception of the other incidents analyzed herein was that they were undertaken by Respondent and based on their sexual orientation, the evidence does not support that.

However, in *Gnerre*, it was also noted that the more offensive the speech, the fewer the incidents of harassment that are required towards showing that the tenancy was made unattractive to a reasonable person.<sup>35</sup> Moreover, evidence of whether unwelcome behavior is severe or pervasive is judged from the standpoint of whether a person, in the protected class would find the behavior created a hostile housing environment.<sup>36</sup> Ms. Briggs's statements were clearly very offensive and threatening to Bonnie Barrows since it led her to file a police report, that same day, i.e. April 13, 2017, and report it to the landlord. The Barrows later correspondence with the landlord regarding the fire pits indicated their on-going fear of physical harm to themselves or their residence. On or around August 28-29, 2017, they moved out of their home, sold their rights to the home to the park and moved out of the park.

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hostile housing environment created by sexual harassment). See also *Honce v. Vigil*, 1 F.3d 1085, 1089-90 (10th Cir.1993) (same).

<sup>34</sup> 402 Mass. 502, 524 N.E.2d 84 (MA Sup. Ct. 1988)

<sup>35</sup> 402 Mass. at 508, 524 N.E.2d at 89

<sup>36</sup> 524 N.E.2d at 88.

Using the analytical framework in *Gnerre*, where it was reasoned the more offensive the speech, the fewer incidents of harassment that are required towards showing that it interfered with a reasonable person's enjoyment of her home, complainants have met their burden of proving that the harassment was severe or pervasive.

**III. The Respondent engaged in conduct that was coercive, threatening or interfered with the Complainants' enjoyment or exercise of a right granted or protected by [fair housing laws] in violation of 9 V.S.A. §4506(e)(4).**

1. Complainants are members of a protected class based on their sexual orientation.

This is undisputed.

2. The Respondent coerced, threatened, interfered, or otherwise discriminated against Complainants.

In order to constitute coercion, threats or interference under §4506(e)(4), the conduct must be sufficiently severe or pervasive so as to affect the Complainants' enjoyment of their housing rights.<sup>37</sup> As previously found in section II, 3-4 above, the Respondent's action were sufficiently severe or pervasive to constitute harassment under 9 V.S.A. §4503(2) so this element is met.

3. The conduct involved a right protected under 9 V.S.A. § 4503 and/or Complainants' enjoyment of their housing right.

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<sup>37</sup> *Gourlay v. Forest Lake Estates Civic Association*, 276 F. Supp.2d 1222, 1235 (M.D.Fla. 2003)

As the above stated facts indicate, this investigation finds that it is more likely than not, that the Respondent made statements and posted signs that reasonable persons in the Complainants' position would find to be threatening and that interfered with their enjoyment of their mobile home sufficiently that they contacted the police and landlord to report the statements and ultimately sold their home and moved from the park within four (4) months of the April incidents.

The Second Circuit Court of Appeals in *Frasier v. Rominger*,<sup>38</sup> (in a decision that is contrary to decisions in the Eleventh and Ninth Circuits), determined that in order to make a claim under the equivalent section of the federal Fair Housing Amendments Act (FHAA)<sup>39</sup>, the Complainants must prove a violation of one of the other sections of the FHAA. In this case, the recommended finding under 9 V.S.A. §4503(a)(2) would meet this requirement. However, in contrast to the Second Circuit decision, HUD regulations indicate that a violation of §4506(e)(4) can be independently based on "[t]hreatening, intimidating or interfering with persons in their enjoyment of a dwelling because of [protected status]."<sup>40</sup> Thus, either way, Complainants meet this standard.

4. The actions by the Respondent were based on Complainants' sexual orientation.

As stated previously, the statements themselves indicate that they are based on Complainants' sexual orientation. Further, the placement of the signs in the windows containing additional threats would be interpreted by reasonable persons in Complainants' protected category as escalating threats.

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<sup>38</sup> 27 F.3d 828, 834 (2d Cir. 1994).

<sup>39</sup> 42 U.S.C. §3617.

<sup>40</sup> 24 C.F.R. §100.400(c)(2)- Prohibited interference, coercion or intimidation.

#### **IV. Respondent's Actions are Not Protected by the First Amendment.**

Ms. Briggs has raised a constitutional claim that her speech is protected by the First Amendment to the Constitution, confirming that it has been her common practice to put up signs in the window. Relatedly, Mr. Briggs has focused on the fact that any sign placed in the window is inside their mobile home,<sup>41</sup> and not a public or common area. While the five signs were outside other mobile home residents' general view, they were clearly made visible to Bonnie and Pam Barrows, outside of Ms. Briggs' residence.

In analyzing claims under 9 V.S.A. §4605(e)(4) and 42 U.S.C. §3617 that are based on statements, enforcement agencies must be cognizant of protected First Amendment rights. Any speech addressed to government in redress of rights, regardless of content is protected under most circumstances.<sup>42</sup> Here the statements by Ms. Briggs were not made in that context.

The U.S. Supreme Court has determined that any regulation that allows the government to discriminate against speech or expressive conduct on the basis of the content of the message is presumptively invalid.<sup>43</sup> At the same time, certain categories or modes of speech fall outside of First Amendment protection. It is well-settled that threats are one of those categories of unprotected speech.<sup>44</sup> Under the fair housing act, the law is not directed at speech per se, but at threatening behavior in connection with

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<sup>41</sup> Email dated June 14, 2016 2:08pm sent from Mr. Briggs to Ms. Blacklock Jackman include the statement "I understand you asking me to remove the sign is the limit of what can't be done, especially since it's inside my home."

<sup>42</sup> *White v. Lee*, 227 F.3d 1214 (9<sup>th</sup> Cir. 2000)(HUD's pursuit of a claims against individuals opposing placement of a low-income development in their neighborhood and made to the City of San Francisco or the press ran afoul of the First Amendment).

<sup>43</sup> *Simon & Schuster, Inc. v. Members of NY Crime Victims Board*, 112 S.Ct. 501, 508 (1991).

<sup>44</sup> *R.A.V. v. City of St. Paul*, 112 S.Ct. 2538, 2546 (1992)(threats of violence are outside the First Amendment); *Watts v. United States*, 89 S.Ct. 1399, 1401 (1969)(per curium).

the exercise of federally (and state) protected rights.<sup>45</sup> Where the basis of content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, the distinction is judged to be content neutral.<sup>46</sup>

While the *R.A.V.* and *Watts* cases were brought under 42 U.S.C. §3631<sup>47</sup> against juveniles accused of multiple cross burnings, the same analysis applies to the civil provisions at issue in this case. As the court in a companion case to *R.A.V.*<sup>48</sup> pointed out, threats of violence or intimidation pose "no significant danger to the idea of viewpoint discrimination."

In cases where the threatening speech is accompanied by physical conduct that would put a reasonable person in the individual's shoes in fear, the inquiry need go no further. However if the speech, as in this case, was unaccompanied by conduct that is directly threatening it is necessary to determine whether a reasonable person would find the behavior sufficiently intimidating that he or she would abandon their housing rights.<sup>49</sup> In *Sofarelli v Pinellas*<sup>50</sup>, the court acknowledged that the neighbors' alleged actions of leaving a threatening note "to break Sofarelli in half" for failure to leave the neighborhood, shouting obscenities, running up to his truck and spitting at him, constitute intimidation and coercion, and therefore do not constitute free speech.<sup>51</sup> In this case, Ms. Briggs' use of the derogatory and

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<sup>45</sup> *R.A.V.* at 2550.

<sup>46</sup> *R.A.V.* at 2445.

<sup>47</sup> 42 U.S.C. §3631 allows the government to bring criminal charges against individuals who coerce, intimidate, or threaten individuals in the exercise of their fair housing rights.

<sup>48</sup> *U.S. v. J.H.H.*, 22 F.3d 821, 825 (8<sup>th</sup> Cir. 1994)(citing *R.A.V.* at 2545).

<sup>49</sup> *Gourlay* at 1235 (use of the phrase intimidation extends only to discriminatory conduct that is so severe and pervasive that it would have the effect of causing a reasonable person to abandon his or her housing rights).

<sup>50</sup> 931 F.2d 718, 722 (11<sup>th</sup> Cir. 1991)

<sup>51</sup> See also *Mills v. Western Washington University*, 150 Wash.App. 260, 274 (2009), it was made clear that speech can be limited when it entails "verbally abusing faculty colleagues with discriminatory and sexual innuendo; harassing, intimidating, demeaning, and insulting students outside of the classroom... brandishing weaponry; or threatening others with bodily harm or death." In *Gourlay*, at 1236, the District Court approved the approach of using Title VII employment standards to interpret First Amendment protections as the Supreme

threatening remarks about killing and burning dykes coupled with the placement of signs strategically placed and directed at the Barrows threatening to “put my foot up your ass” and “I have so much more for you to be mad about,” were sufficiently intimidating that the Barrows contacted the police on multiple occasions and reported the behavior to the landlord, (including raising issues about the allowance of fire pits). Ultimately, they decided to sell their home and leave the mobile home park within four months of the April incidents. This is sufficient to show that the intimidation affected their housing rights and therefore the speech is not protected.

### **PRELIMINARY RECOMMENDATIONS**

This investigative report makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that the Respondent Dawn Briggs violated 9 V.S.A §4503(a)(2) of the Vermont Fair Housing & Public Accommodations Act by harassing Complainants Bonnie and Pam Barrows based on their sexual orientation.

This investigative report makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that the Respondent Dawn Briggs violated 9 V.S.A §4506(e)(4) of the Vermont Fair Housing & Public Accommodations Act by threatening and intimidating the Barrows in the exercise of their housing rights based on their sexual orientation.

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Court has repeatedly held or cited Title VII as permissible content neutral regulation of conduct. *Wisconsin v. Mitchell*, 508 U.S. 476, 487-489 [additional citations omitted].

Ayn Lee Sing  
**Ayn Lee Sing, Investigator**

6/4/18  
**Date**

**Approved by:**

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

6/4/18  
**Date**

**ADDENDUM TO  
INVESTIGATIVE REPORT**

**Pam and Bonnie Barrows v. Dawn Briggs**

**VHRC Case #HV17-0026**

NOTE: This incident is added to the report of June 5, 2018. The incident was originally described in the Investigative Report submitted by investigator Ayn Lee Sing but the date was incorrectly stated as being on a date after the Complainants had moved from the park so it was deleted. Having obtained the correct date for the allegations, it is added back into the report due to its relevance.

July 2017

Complainants alleged that on the evening of July 26th, 2017, individuals, who Complainants believe were part of Dawn Briggs family, with children in tow all gathered at Dawn Briggs mobile home.<sup>1</sup> From 5 p.m. until 5:30 p.m., there was nonstop screaming and noise and then they all lined up and began to march up and down Bluebird Lane, chanting, "We love Fagside, We live at Fagside." Dawn Briggs left at 5:50 p.m. and the "parade" regrouped in front of Complainants' mobile home and continued the behavior until 6:50 p.m. Pam Barrows called Officer June with the Vermont State Police and also reported the incident to an investigator at the Attorney General's Office and to the HRC.

This investigation has been unable to find corroborating evidence that this event occurred. On February 23, 2018, this investigation sought from Addison County Community Trust (ACCT) any contact information for the occupants of mobile homes on Bluebird Lane, towards doing a full

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<sup>1</sup> This incident occurred after the complaint was filed with the HRC but because of its high relevance to their claims, it is included here.

investigation, without success.<sup>2</sup> Alternatively, when Bonnie Barrows and Ms. Briggs were asked if they knew anyone who could shed light on the incidents, the names of Bluebird Lane residents Bruce and Tina Carter, and Missy Preston were provided to this investigation. Ms. Preston provided no information that would support either of the claims made by Bonnie and Pam Barrows. Additionally, on April 30, 2018, this investigation contacted Tina Carter who expressly stated that her partner, Bruce Carter, did not want to get involved with this investigation, nor did she assist.<sup>3</sup>

On June 7, 2018, the Attorney General's Office, Civil Rights division was contacted. The investigator had no record of any calls from the Complainants after May of 2017 when they were referred to the HRC.<sup>4</sup> In the absence of corroborating evidence, the Complainant's have not met their burden of proof on this issue.<sup>5</sup>

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<sup>2</sup> This investigation also sought the contact information of occupants of Avian Lane, which is at the back of Bonnie and Pam's former residence. By email response dated Elise Shanbacker, the Executive Director of ACCT stated that "It is not ACCT policy to give out resident contact info without a release; if you issue us a subpoena pursuant to 9 VSA Section 4553(5) then we can get you the requested information."

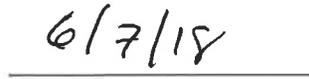
<sup>3</sup> Still, Tina Carter stated that she would have to speak with him first before speaking with this investigation. Later when Ms. Carter was contacted, there was no answer nor did she return this investigation's voice message asking her to contact the HRC. Bonnie Barrows confirmed that Bruce Carter is likely fearful of Ms. Briggs. Ms. Barrows also stated that Ms. Briggs knows everyone on Blue Bird Lane and in the mobile home park, with a number of persons being her relatives.

<sup>4</sup> It is unknown whether a police report exists for this incident.

<sup>5</sup> To find reasonable grounds this investigation would require evidence which, objectively, tends to prove that it is "more likely than not" that the alleged actions took place. See EEOC v. Shell Oil Co., 466 U.S. 54, 76 (1984)

A handwritten signature in cursive script, appearing to read "Karen Richards", written over a horizontal line.

Karen Richards, Executive Director

A handwritten date "6/7/18" written in a simple, slightly slanted font, positioned above a horizontal line.

Date

STATE OF VERMONT  
HUMAN RIGHTS COMMISSION

Pam and Bonnie Barrows,  
Complainants )  
)  
)  
)  
v. ) VHRC Complaint No. HV17-0026  
)  
)  
Dawn Briggs,  
Respondent )

FINAL DETERMINATION

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

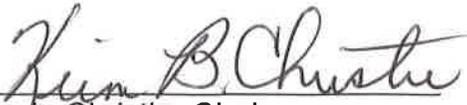
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Dawn Briggs, the Respondent, illegally discriminated against Pam and Bonnie Barrows, the Complainants, by threatening and intimidating them based on their sexual orientation in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair            For  Against \_\_\_ Absent \_\_\_ Recused \_\_\_  
Chuck Kletecka                For  Against \_\_\_ Absent \_\_\_ Recused \_\_\_  
Mary Brodsky                  For  Against \_\_\_ Absent \_\_\_ Recused \_\_\_  
Donald Vickers                For  Against \_\_\_ Absent \_\_\_ Recused \_\_\_  
Dawn Ellis                      For  Against \_\_\_ Absent \_\_\_ Recused \_\_\_

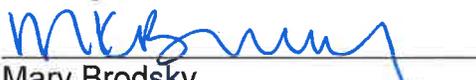
Entry:  Reasonable Grounds \_\_\_ Motion failed

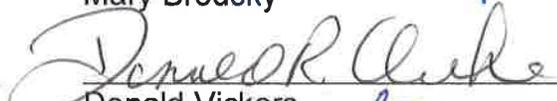
Dated at Barre, Vermont, this 28<sup>th</sup>, day of June 2018.

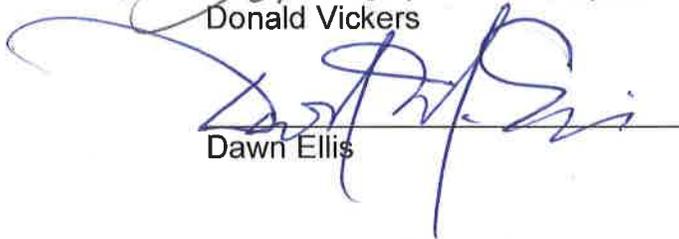
BY: VERMONT HUMAN RIGHTS COMMISSION

  
Kevin Christie, Chair

  
Chuck Kletecka

  
Mary Brodsky

  
Donald Vickers

  
Dawn Ellis

STATE OF VERMONT  
HUMAN RIGHTS COMMISSION

Pam and Bonnie Barrows,  
Complainants )  
 )  
 )  
v. ) VHRC Complaint No. HV17-0026  
 )  
 )  
Dawn Briggs,  
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 Dawn Briggs, the Respondent, illegally discriminated against Pam and Bonnie Barrows, the Complainants, by harassing them based on their sexual orientation in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Chuck Kletecka	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"/>

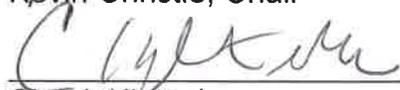
Entry:  Reasonable Grounds  Motion failed

Dated at Barre, Vermont, this 28<sup>th</sup>, day of June 2018.

BY: VERMONT HUMAN RIGHTS COMMISSION,



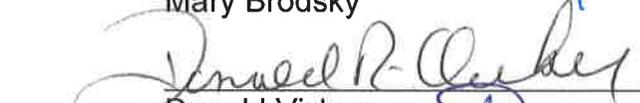
Kevin Christie, Chair



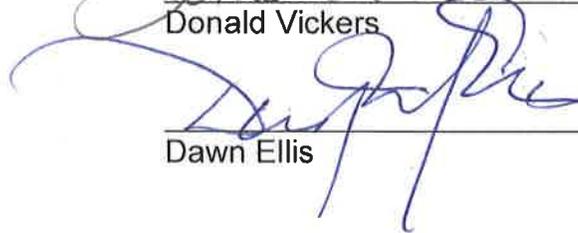
Chuck Kletecka



Mary Brodsky



Donald Vickers



Dawn Ellis