

STATE OF VERMONT  
HUMAN RIGHTS COMMISSION

Jessica Cabral-Hume o/b/o A.H.,	)
Complainant	)
	)
	)
v.	) HRC Complaint No. HV20-0025
	)
	)
Michaud Properties, LLC,	)
Respondent	)

FINAL DETERMINATION

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

The following vote was taken on a motion to find that there are **reasonable grounds** to believe that Michaud Property, LLC, the Respondent, illegally discriminated against Jessica Cabral-Hume o/b/o A.H., the Complainant, on the basis of a disability, in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair	For <u>X</u> Against __ Absent__ Recused __
Nathan Besio	For <u>X</u> Against __ Absent __ Recused __
Donald Vickers	For <u>X</u> Against __ Absent __ Recused __
Dawn Ellis	For <u>X</u> Against __ Absent __ Recused __
Joan Nagy	For <u>X</u> Against __ Absent __ Recused __

Entry: X Reasonable Grounds \_\_ Motion failed

Dated at Montpelier, Vermont, this 25th day of March 2021.

BY: VERMONT HUMAN RIGHTS COMMISSION

/s/ Kevin Christie  
Kevin Christie, Chair

/s/ Nathan Besio  
Nathan Besio

/s/ Donald Vickers  
Donald Vickers

/s/ Dawn Ellis  
Dawn Ellis

/s/ Joan Nagy  
Joan Nagy

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Joan Nagy

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Jessica Cabral-Hume o/b/o A.H.,	)
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Burke Vacation Rentals,	)
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Kevin Christie, Chair	For <u>X</u> Against __ Absent__ Recused __
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Kevin Christie, Chair

/s/ Nathan Besio  
Nathan Besio

/s/ Donald Vickers  
Donald Vickers

/s/ Dawn Ellis  
Dawn Ellis

/s/ Joan Nagy  
Joan Nagy



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## **INVESTIGATIVE REPORT**

VHRC Case No.: HV20-0025

HUD Case No.: 01-20-5801-8

Complainant: Jessica Cabral-Hume o/b/o A.H.  
Respondents: Michaud Properties LLC & Burke Vacation Rentals  
Rental Property: 529 Kingdom Road, East Burke, Vermont 05851  
Charges: Disability Discrimination in Housing: Failure to make a Reasonable Accommodation and Retaliation

### **SUMMARY OF COMPLAINT**

Jessica Cabral-Hume filed this complaint on behalf of her minor son, "A.H." Ms. Cabral-Hume, her husband and son began renting a property in East Burke, owned by Michaud Properties LLC on July 15, 2019.

Kristin Michaud is the sole owner of Michaud Properties LLC. The rental property is managed by Burke Vacation Rentals. Ms. Michaud decided to list the house for sale during the time that the Cabral-Hume family were tenants.

A.H. suffers from asthma. After the coronavirus outbreak, Ms. Cabral-Hume asked the respondents not to show the home out of concern that A.H. would be more susceptible to the virus because of his condition. Ms. Cabral-Hume attempted to work out a compromise with Ms. Michaud, but they were not able to work out a solution.

On April 29, 2020, Ms. Cabral-Hume presented Ms. Michaud with a reasonable accommodation request that asked for "No home showings during a stay-at-home order. It is a health risk." She supplemented this request with a note from A.H.'s doctor confirming his health status.

Ms. Michaud then taped a 30-day Notice to Vacate to the door. On May 4, 2020, Ms. Cabral-Hume received a letter from Burke Vacation Rentals dated April 30, 2020 notifying them that the lease was being terminated for no cause.

**SUMMARY OF RESPONSE BY MICHAUD PROPERTIES, LLC**

Ms. Michaud placed the house that Ms. Cabral-Hume was renting on the market in January 2020. Then the COVID-19 pandemic caused Governor Scott to prohibit in-person real estate showings in Vermont. Ms. Michaud did not show the house during that period. When Governor Scott lifted the restrictions, Ms. Cabral-Hume still refused to allow showings. Because Ms. Cabral-Hume told Ms. Michaud that she would not leave the home for showings, there would be more than two people in the house during a showing which would be a violation of the State’s restrictions. Ms. Michaud did not believe it was reasonable to not be allowed to show her home and therefore posted a 30-day vacate notice on the door of the rental property.

**SUMMARY OF RESPONSE BY BURKE VACATION RENTALS**

Burke Vacation Rentals was the property manager of the rental home, but its only managerial duty was to collect rent. Other than that, the property owner took care of all other aspects of property management. Burke Vacation Rentals was not involved in attempts to sell the home.

On April 30, 2020, a rental agent with Burke Vacation Rentals mailed a letter to Ms. Cabral-Hume providing them notice to terminate the month-to-month lease based on their understanding that Ms. Michaud wanted to take possession of the house.

**PRELIMINARY RECOMMENDATIONS**

**Burke Vacation Rentals:**

[REDACTED]

This investigation makes a preliminary recommendation to the Human Rights Commission to find that there are **reasonable grounds** to believe that Burke Vacation Rentals retaliated against A.H. based on his request for a reasonable accommodation as set forth in Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(10).

**Michaud Properties:**

This investigation makes a preliminary recommendation to the Human Rights Commission to find that there are **reasonable grounds** to believe that Michaud Properties LLC discriminated against A.H. based on his reasonable accommodation request, as set forth in Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(10).

This investigation makes a preliminary recommendation to the Human Rights Commission to find that there are **reasonable grounds** to believe that Michaud Properties LLC retaliated against A.H. based on his request for a reasonable accommodation as set forth in Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(10).

## Documents

- Complaint
- Response to Complaint
- Letters from Respondent Michaud offering testimony
- Thirty Day letter from Burke Vacation Rentals
- Email about internet service
- Text message exchanges
- Letter from Parkway Realty Associates
- Vermont Association of Realtors COVID -19 Exposure, Prevention, Preparedness, and Response Plan
- Emails of Lawrie Easterbrooks, of Burke Vacation Rentals
- Notes of Jessica Cabral-Hume taken during rental period
- Residential Lease Agreement
- Certification of Status as an Individual with a Disability (A.H.)
- Request for an Accommodation of a Housing Policy
- 30 Day Notice to Vacate from Kristin Michaud
- Property History Detail

## Interviews

- Jessica Cabral-Hume, Complainant via telephone, July 10, 2020
- Kristin Michaud, Respondent and owner of Michaud Properties, via telephone, July 31, 2020
- Laurie Peever, [REDACTED] Manager of Rental Property, via telephone, July 31, 2020
- Kevin Sabens, neighbor, via telephone, August 25, 2020
- Megan Maclure, owner of Burke Vacation Rentals, via telephone, August 4, 2020

## FACTS

Michaud Properties is owned by Kristin Michaud.<sup>1</sup> Michaud Properties owned a single rental home in East Burke, Vermont (since this complaint was filed the home has been sold).<sup>2</sup> Laurie Peever, [REDACTED] did not own the property, but helped manage the property and dealt with many of the day-to-day interactions about the property.<sup>3</sup>

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<sup>1</sup> Interview of Kristin Michaud

<sup>2</sup> Interview of Kristin Michaud

<sup>3</sup> Interview of Kristin Michaud

Michaud Properties previously rented this home as a short-term ‘Airbnb’ that catered to the mountain biking community.<sup>4</sup> Michaud Properties used Burke Vacation Rentals as their property manager.<sup>5</sup> Ms. Michaud decided that she wanted to rent the home out for a few months as opposed to continuing the very short-term Airbnb rentals.<sup>6</sup> Burke Vacation Rentals found Jessica Cabral-Hume (and her family) as tenants for the property and Ms. Michaud agreed to rent to them.<sup>7</sup>

All the parties signed a month-to-month lease agreement, commencing on July 15, 2019. The parties agreed that this would be a temporary residency until Ms. Cabral-Hume and family could find a home to purchase.<sup>8</sup> Ms. Cabral-Hume told the respondents that she hoped to only be there for three or four months, but could not be certain because they were new to the area and both she and her husband were looking for jobs as well as a home to purchase.<sup>9</sup> After the first few months they had a conversation with Ms. Michaud who agreed to let them stay longer.<sup>10</sup> There was never a specific end date for the lease.<sup>11</sup>

Ms. Michaud decided in October 2019 that she would like to place the house back on the market (she had it on the market before but had taken it off to rent to the Cabral-Hume family).<sup>12</sup> Parkway Realty Associates was the real estate company that was handling the sale of the house.<sup>13</sup> Ms. Michaud told Ms. Cabral-Hume that she would provide her with 60 days’ notice if the house sold so they would have time to relocate.<sup>14</sup> Ms. Michaud also agreed to give them 48 hours’ notice before showing the house.<sup>15</sup>

Ms. Cabral-Hume took notes on the showings. In her notes she included the following:

- November 16, 2019 – Landlord called at 7:24 p.m. on November 15, 2019 to say that she would like to show the house at 3:00 p.m. the next day. Ms. Michaud was sick and told them that she could not leave the house. They did the showing with Ms. Cabral-Hume and her son in the home. (Landlord did not provide 48 hours)
- December 16, 2019 – Landlord wanted to show the house at 3:30 p.m. and Ms. Cabral-Hume needed to pick her son up at school at 3:30. She asked Ms. Michaud if the showing could be a little earlier or later to allow for that. Ms. Michaud responded that “she did not know what to tell me that’s what time the showing

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<sup>4</sup> Interview of Kristin Michaud

<sup>5</sup> Interview of Kristin Michaud

<sup>6</sup> Interview of Kristin Michaud

<sup>7</sup> Interview of Megan Maclure

<sup>8</sup> Interview of Kristin Michaud and Interview of Jessica Cabral-Hume

<sup>9</sup> Interview of Jessica Cabral-Hume

<sup>10</sup> Id.

<sup>11</sup> Residential Lease

<sup>12</sup> Interview of Kristin Michaud

<sup>13</sup> Letter from Parkway Realty Associates

<sup>14</sup> Id.

<sup>15</sup> Interview of Jessica Cabral-Hume

was, and she didn't want me giving her a hard time every time she had a showing."<sup>16</sup>

The house was shown to prospective buyers a few times in February 2020.<sup>17</sup> According to Ms. Cabral-Hume's notes there were showings on the following dates:

- February 7, 2020 – House was shown to realtor –the person requesting the showing rescheduled.
- February 13, 2020 – Ms. Cabral-Hume received a request without 48 hours' notice. She told them that they could come after 4:00 p.m. because she had a doctor's appointment. They rescheduled.
- February 14, 2020 – Two showings requested for the day, one at 10:30 a.m. and one at 5:30 p.m. The 5:30 showing was cancelled an hour before.
- February 15, 2020 – House showing requested without 48 hours' notice. The showing happened a half hour late with no call.
- March 1, 2020 – Ms. Cabral-Hume received a showing request without 48 hours' notice.<sup>18</sup>

Ms. Michaud testified that each time she asked for a showing that Ms. Cabral-Hume had an excuse for why she did not want the house shown.<sup>19</sup> Ms. Michaud claims that she was only able to show the house twice while Ms. Cabral-Hume was living there.<sup>20</sup>

Due to COVID-19, Governor Scott issued a State of Emergency in Vermont on March 13, 2020 which lasted until the end of April.<sup>21</sup> On March 23, 2020, Governor Scott issued an Executive Order for business and non-profits to work from home.<sup>22</sup> On April 10, 2020, the Governor issued an addendum to his State of Emergency and expanded upon the rules in the real estate industry. This clarified that all in-person real estate transactions were suspended and could only be conducted online.<sup>23</sup> At the end of April, realtors were able to start showing houses again.<sup>24</sup> However, the State specified that all professional services should be provided in a manner calculated to minimize in-person contact.<sup>25</sup>

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<sup>16</sup> Notes from Jessica Cabral-Hume

<sup>17</sup> Interview of Kristin Michaud

<sup>18</sup> Notes from Jessica Cabral-Hume

<sup>19</sup> Interview of Jessica Cabral-Hume

<sup>20</sup> Response to Complaint and Letter from Maurice Chaloux of Parkway Realty Associates (who had the listing for the house)

<sup>21</sup> Executive Order 01-20

<sup>22</sup> Executive Order 01-20, Addendum 5

<sup>23</sup> Executive Order 01-20-Addendum 9

<sup>24</sup> Letter from Parkway Realty Associates

<sup>25</sup> <https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#real-estate>

The Vermont Association of Realtors worked with the State to create the Real Estate Restart Plan.<sup>26</sup> The Restart Plan was very detailed and included many ways to protect the health and safety of employees as well as information on showing properties.<sup>27</sup> A key point in the plan was that the State of Vermont permitted real estate services as long as they were “limited in-person services.”<sup>28</sup> The following language was included in the plan:

**Showing Properties**

**First Showings = Digital/Virtual Showings**

It is strongly advised that all first showings with either a prospective buyer or a buyers-agent be electronic by way of a virtual tour using (Zoom, Skype, FaceTime or a video) or MLS presentation.<sup>29</sup>

After the Governor lifted his order prohibiting real estate showings, Ms. Cabral-Hume orally made a reasonable accommodation request that Ms. Michaud not show the home because of her son’s asthma and increased susceptibility to Covid-19.<sup>30</sup> She offered to Ms. Michaud that she could take photos or videos of the home so they could do virtual showings.<sup>31</sup> She also shared with Ms. Michaud that it was difficult for the family to vacate the home before 3:00 p.m. due to her son’s online schooling.<sup>32</sup> According to Ms. Michaud, Ms. Cabral-Hume agreed to showings but only with the restrictions of no Sundays (because that was her husband’s day off from work), not during school hours and only with 48 hours’ notice.<sup>33</sup>

On April 28, 2020, Ms. Michaud called Ms. Easterbrooks, an employee of Burke Vacation Rentals and asked whether they could send a 30-day notice to vacate during COVID-19.

On April 28, 2020, in response, Laurie Easterbrooks wrote the following email to the owner of Burke Vacation Rentals, Megan Maclure:

Good morning!

I just spoke to Kristin Muchaud about the renters. They have the house listed and would prefer to have the renters out and not rent further. Timing being new contracts leads to my question: If they do not sign again who is responsible to get the renter out of the house?

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<sup>26</sup> Vermont Association of Realtors, COVID-19 Exposure, Prevention, Preparedness, and Response Plan

<sup>27</sup> <https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#real-estate>

<sup>28</sup> Vermont Association of Realtors, COVID-19 Exposure, Prevention, Preparedness, and Response Plan

<sup>29</sup> State of Vermont Restart Plan, pg. 9.

<sup>30</sup> Interview of Jessica Cabral-Hume

<sup>31</sup> Interview of Jessica Cabral-Hume

<sup>32</sup> Interview of Jessica Cabral-Hume

<sup>33</sup> Interview of Kristin Michaud

*She says the lady will not let them show the house for various reasons, mostly Covid-19 now as her son has asthma. (emphasis added)*

They have a cat and a big dog that makes it impossible to find another place for them from my office.

They are there so their son may attend LI.

They were planning at that time to by but financing in a new area is difficult, so the lease has continued “month to month” since.

I never have any communication from them, only a passed check on the 15<sup>th</sup>. I must assume from that check that they are staying another month as there was no notice from them. When I have asked, she gets very nervous that I am asking them to go. Apparently, they are not interested in buying the house they are in or cannot.

Kristin said she insulated the entire house for them, and she is still horrified with a \$275 fuel bill. They are not wanting to continue to rent to them and are asking me what they can do about that. I am asking you?!

They are also not planning to sign a rental contract again as they do not like renting like they thought they were going to!<sup>34</sup>

On April 28, 2020, Ms. Maclure wrote back to Ms. Easterbrooks with the following advice to provide to Ms. Michaud in terms of the showings during COVID-19:

As for the showing of the property, the tenant is NOT required to let anyone in to see the property at this time due to COVID-19, especially with an at-risk son. It is fine that the house is on the market. The listing agent can do their best to “show” the house virtually, pictures, tours, etc. That is up to the agent and the owner though.<sup>35</sup>

After making multiple oral requests for a reasonable accommodation, on April 29, 2020, Ms. Cabral-Hume submitted a written reasonable accommodation request to Ms. Michaud asking for “No home showings during a stay-at home order. It is a health risk.”<sup>36</sup> She supplemented this requires with a certification of her son’s status as an individual with a disability that was signed by her son’s pediatrician.<sup>37</sup>

Ms. Michaud sent Mr. Hume the following text on April 29, 2020, in response to the requested accommodation:

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<sup>34</sup> April 28, 2020, 9:39 a.m. email from Lawrie Easterbrooks to Megan Maclure

<sup>35</sup> April 28, 2020, 10:39 a.m. email from Megan Maclure to employees at Burke Vacation Rentals

<sup>36</sup> Interview of Jessica Cabral-Hume

<sup>37</sup> Interview of Jessica Cabral-Hume

Jessica, we are trying to accommodate you and have been very good landlords to you and your family. You have tried at every turn to deny showings. The law is clear. We have every right to show our house. It is convenient for you to use your sons [sic] health as the issue. Yet your husband goes to work every day and is in contact with numerous strangers<sup>38</sup> and goes home every night. That is a risk. Having two people walk through the house with gloves and a mask is trivial in comparison. We would like to work with you on this but you are making it difficult. Let me be crystal clear so there is no guessing. You can stay in the house if you allow showings otherwise you will be give [sic] a 30 day notice to vacate. We are not bullying, we are trying to sell our property. You are looking after your best interest and we are looking after ours. We are willing to have [sic] civil conversation about this but refuse to argue over it.<sup>39</sup>

Mr. Hume responded with the following text on April 29, 2020:

 <sup>40</sup>

Ms. Michaud wrote the following text back to Mr. Hume:

Your wife suggested we speak face to face tonight. After receiving this we are done. Expect a 30 day vacate notice.<sup>41</sup>

That same day Ms. Michaud taped a 30-Day Notice to Vacate on the front door of Ms. Cabral-Hume's rental house.<sup>42</sup> On May 4, 2020, Ms. Cabral-Hume received a letter from Burke Vacation Rentals dated April 30, 2020, stating that their month-to-month lease was being terminated for no cause.<sup>43</sup>

Burke Vacation Rentals did not receive the actual reasonable accommodation request and therefore did not respond to Ms. Cabral-Hume.<sup>44</sup> Neither Ms. Michaud nor Ms. Peever responded to the request for a reasonable accommodation.<sup>45</sup>

Although Burke Vacation Rentals did not receive the reasonable accommodation requests directly, they were put on notice that Ms. Cabral-Hume was unwilling to show the house due to her son's disability and that Ms. Michaud wanted the no-cause notice of termination served so

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<sup>38</sup> Ms. Cabral-Hume testified that her husband was deemed an essential worker and was required to go to work and could not collect unemployment.

<sup>39</sup> Text from Laurie Peever to Matt Hume on April 29, 2020

<sup>40</sup> Text from Matt Hume to Laurie Peever on April 29, 2020

<sup>41</sup> Text from Laurie Peever to Matt Hume on April 29, 2020

<sup>42</sup> Interviews of Kristin Michaud and Jessica Cabral-Hume

<sup>43</sup> Interview of Megan Maclure

<sup>44</sup> Interview of Megan Maclure

<sup>45</sup> Interviews of Kristin Michaud, Jessica Cabral-Hume and Laurie Peever

that she could show the house and sell it. Resultingly, Burke Vacation Rentals mailed the no-cause termination notice.

Ms. Cabral-Hume’s attorney Rachel Batterson contacted Ms. Michaud and let her know that they were not going to be out by May 31, 2020.<sup>46</sup> Ms. Cabral-Hume and her family moved on July 2, 2020.<sup>47</sup> This was over a month after the 30-day notice had run. Ms. Michaud took no further action to remove them from the premises.<sup>48</sup>

### **LEGAL ANALYSIS**

Both the Vermont Fair Housing and Public Accommodations Act (VFHPAA) and the Federal Fair Housing Act (FHA) make it unlawful to discriminate “in the sale or rental, or to otherwise make unavailable or deny, a dwelling” because of a renter or associated person’s disability.<sup>49</sup> Vermont law follows federal law closely when it comes to discrimination in the rental of a dwelling.

Vermont statute 9 V.S.A. §4503 prohibits discrimination based on disability:

(a) It shall be unlawful for any person:

(10) To refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common areas.

Under the FHA, housing providers may not “discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling ... because of a handicap of any person associated with that person.”<sup>50</sup> Prohibited discrimination includes “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”<sup>51</sup> A reasonable accommodation inquiry is highly fact-specific and always requires a case-by-case determination.<sup>52</sup>

The Fair Housing Act defines a disability, in part, as an individual with a physical or mental impairment that substantially limits one or more major life activity.<sup>53</sup> The term “major life

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<sup>46</sup> Interview of Jessica Cabral-Hume

<sup>47</sup> Interview of Jessica Cabral-Hume

<sup>48</sup> Interview of Jessica Cabral-Hume

<sup>49</sup> 42 U.S.C. §3604(f)(1)

<sup>50</sup> 42 U.S.C. § 3604(f)(2)(C)

<sup>51</sup> *Id.* § 3604(f)(3)(B).

<sup>52</sup> *Janush v. Charities Hous. Dev. Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) as cited in *Gill Terrace Ret. Apartments, Inc. v. Johnson*, 177 A.3d 1087, 1090–91 (2017).

<sup>53</sup> JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING

<https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>, at 3



## Prima Facie Case – Retaliation

1. The complainant engaged in an activity protected by the Act.
2. The respondent subjected the complainant to an adverse action.
3. Circumstantial evidence exists of a causal link between the protected activity and the adverse action. Examples of such circumstantial evidence include (a) temporal link between the protected activity and adverse action; (b) similarly situated persons who did not engage in a protected activity and who were not subject to the adverse action; or (c) selective enforcement against the complainant of a generally applicable policy.<sup>56</sup>

### **ELEMENT 1:**

The Complainant must show that he was engaged in an activity protected by the Fair Housing Act. This element is satisfied by:

Conduct such as actions to protest or oppose statutorily prohibited discrimination;<sup>57</sup> opposition to any act or practice made unlawful by the Act;<sup>58</sup> the exercise or enjoyment of rights under the statute<sup>59</sup> pertaining to equal services and conditions of housing;<sup>60</sup> requesting reasonable accommodation for handicapped persons;<sup>61</sup> charging, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing relating to fair housing;<sup>62</sup> reporting a discriminatory housing practice to a housing provider or other appropriate authority;<sup>63</sup> and filing a housing discrimination complaint,<sup>64</sup> including a formal Department of Housing and Urban Development complaint.<sup>65</sup> Moreover, the regulations, at 24 C.F.R. § 100.400, do not specify that the complaint be formal, directed toward a government agency, or in writing.<sup>66</sup> Protests or complaints need not specify "discrimination" or other "magic words" to qualify as protected activity.<sup>67</sup>

Making a request for a reasonable accommodation is a statutory right under both the federal Fair Housing Act and Vermont's Fair Housing Act; thus, Ms. Cabral-Hume engaged in a

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<sup>56</sup> *Walker v. City of Lakewood*, 272 F.3d 1114,1128 (9<sup>th</sup> Cir. 2001).

<sup>57</sup> *Favourite v. 55 Halley Street, Inc.*, 381 F. Supp. 3d 266 (S.D. N.Y. 2019).

<sup>58</sup> *Oxford House, Inc. v. City of Baton Rouge, La.*, 932 F. Supp. 2d 683 (M.D. La. 2013).

<sup>59</sup> 42 U.S.C.A. § 3604.

<sup>60</sup> *Matarese v. Archstone Pentagon City*, 795 F. Supp. 2d 402 (E.D. Va. 2011),

<sup>61</sup> *Brown v. Harris County Housing Authority*, 2018 WL 3080880 (S.D. Tex. 2018),

<sup>62</sup> *Oxford House, Inc. v. City of Baton Rouge, La.*, 932 F. Supp. 2d 683 (M.D. La. 2013).

<sup>63</sup> *Riley v. City of Kokomo*, 909 F.3d 182, 34 A.D. Cas. (BNA) 98, 2018 Wage & Hour Cas. 2d (BNA) 428438 (7th Cir. 2018)

<sup>64</sup> *Brown v. Harris County Housing Authority*, 2018 WL 3080880 (S.D. Tex. 2018)

<sup>65</sup> *Smith-Jeter v. Artspace Everett Lofts Condominium Association*, 2016 WL 898543 (W.D. Wash. 2016)

<sup>66</sup> *Khodeir v. Sayyed*, 2016 WL 5817003 (S.D. N.Y. 2016).

<sup>67</sup> 47 A.L.R. Fed. 3d Art. 4 (2019)

protected activity when making a reasonable accommodation to Ms. Michaud. Although Burke Vacation Rentals did not receive this request directly, they received notice about it, as evidenced by the email from Ms. Easterbrooks to Ms. MacLure discussing the basis for Ms. Michaud's request that Burke Vacation Rentals serve a no-cause termination notice. Burke Vacation Rentals was acting as an agent for Ms. Michaud.

The general rule in federal fair housing cases is that a principal is legally responsible for the acts, conduct and statements of its agent done within the scope of the agent's authority.<sup>68</sup> An agent "includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of a dwelling."<sup>69</sup> If a principal orders its agent to discriminate, then there is clear liability on the part of the principal.<sup>70</sup> However, the agent who violates the Fair Housing Act on orders from her principal is still liable for her own conduct.<sup>71</sup> A Respondent cannot use the excuse that they are "following orders" as a defense in a housing discrimination case.<sup>72</sup> So in this instance, Ms. Michaud asked Ms. Easterbrooks to violate fair housing law by sending a Notice to Vacate the Premises soon after Ms. Cabral-Hume made a reasonable accommodation request based on her son's disability. Ms. Easterbrooks sent the notice.

It is further worth noting that even if the act of sending the notice was done by an employee of Burke Vacation Rentals, the company can still be liable. The general rule in fair housing cases is that a principal is legally responsible for the acts of its agent done within the scope of the agent's authority.<sup>73</sup> The notice to vacate was sent out by Ms. Easterbrooks who was an employee of Burke Vacation Rentals. Under the Fair Housing Act, real estate companies are liable for the acts of their employees, and thus Burke Vacation Rentals is liable for the actions of its employees.<sup>74</sup> If Ms. Michaud had *not* sent out her own notice independently, she too could be held liable for the actions of her agent, Burke Vacation Rentals.<sup>75</sup> But since both parties sent out notices, they are both independently liable.

*Finding: A.H. meets element 1 of the prima facie case.*

**ELEMENT 2:**

Burke Vacation Rentals sent A.H.'s family a 30-day Notice to Vacate. This is an adverse action.

*Finding: A.H. meets element 2 of the prima facie case.*

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<sup>68</sup> *Meyer v. Holley*, 537 U.S. 280, 285-286 (2003)

<sup>69</sup> 24 C.F.R. §100.20

<sup>70</sup> *U.S. v. Big D Enterprises, Inc.*, 184 F.3d 924, 930-31 (8<sup>th</sup> Cir. 1999).

<sup>71</sup> *Id.*

<sup>72</sup> 24 C.F.R. §(a)(1)(i)

<sup>73</sup> *Meyer v. Holley*, 537 U.S. 280, 285-286 (2003)

<sup>74</sup> *Meyer v. Holley*, 537 U.S. 280, 282-86 (2003)

<sup>75</sup> *Cleveland v. Caplaw Enterprises*, 448 F.3d 518, 522-23 (2d Cir. 2006).

### **ELEMENT 3:**

A.H. can show a causal connection between these actions because the adverse action was based on a protected activity. Burke Vacation Rentals was aware that Ms. Cabral-Hume was refusing to cooperate with showings because of her son's disability and that Ms. Michaud wanted the notice of termination served as a result. With this information they issued a notice to vacate.

*Finding: A.H. meets element 3 of the prima facie case.*

Therefore, A.H. can meet the prima facie case against Burke Vacation Rentals for retaliation.

### **Legitimate, Non-Discriminatory Reason**

After the Complainant meets his prima facie case, the burden shifts to the Respondent to show a legitimate, non-discriminatory reason for their actions. In this case, the reason given by Respondent, Burke Vacation Rentals, was that their client asked them to provide a no-cause notice to vacate. They were not directly involved in the reasonable accommodation discussions nor the discussions about the showings. They believed they could simply issue a no-cause notice to vacate because the owner of the home, their client, wanted the tenants to vacate the property.

However, because Burke Vacation Rentals knew about A.H.'s disability, and because they knew that this information was one of the reasons that Ms. Michaud wanted the Cabral-Hume family removed as tenants, they cannot rely on the defense that they were ignorant of the reasonable accommodation request or ignorant of the potentially unlawful basis that Ms. Michaud provided for terminating the lease. They were acting as the agents for Ms. Michaud and therefore violated the law even if they were only following Ms. Michaud's order. Therefore, they cannot show a legitimate non-discriminatory reason for the decision and cannot rebut the prima facie case.

### **Michaud Properties**

#### **Prima Facie Case – Denial of a Reasonable Accommodation**

1. The complainant is a person with a disability.
2. The respondent knew or reasonably should have known that the complainant is a person with a disability.
3. The complainant requested a reasonable accommodation in the rules, policies, practices, or services of the respondent.
4. The requested accommodation may be necessary to afford the complainant an equal opportunity to use and enjoy the dwelling.

5. The respondent refused the complainant's request to make such accommodation or failed to respond or delayed responding to the request such that it amounted to a denial.<sup>76</sup>

**Element 1:**

A.H. is an individual that has asthma and therefore qualifies as a person with a disability and therefore is a member of a protected class.

*Finding: A.H. meets element 1 of the prima facie case.*

**Element 2:**

Ms. Michaud testified that she knew that A.H. had asthma.

*Finding: A.H. meets element 2 of the prima facie case.*

**Element 3:**

A.H.'s mother provided Ms. Michaud with a written reasonable accommodation request along with a certification signed by his doctor that he had asthma and therefore was a person with a disability. Ms. Michaud acknowledges that she received the letter and was aware of A.H.'s asthma.

*Finding: A.H. meets element 3 of the prima facie case.*

**Element 4:**

A.H. has an underlying health condition which makes it more dangerous for him to contract COVID-19 than it would be for a healthy teenager. He was not able to fully use and enjoy his dwelling when persons coming into the house could potentially contaminate the environment.

*Finding: A.H. meets element 4 of the prima facie case.*

**Element 5:**

Michaud Properties failed to respond to the reasonable accommodation that Ms. Cabral-Hume requested on behalf of her son. Instead, Ms. Michaud issued a no-cause termination of the lease.

*Finding: A.H. meets element 5 of the prima facie case.*

Therefore, A.H. can meet the prima facie case against Michaud Properties for denial of a reasonable accommodation. The burden then shifts to Michaud Properties to show whether the request was unreasonable, or caused an undue financial or administrative burden.<sup>77</sup>

**Undue Financial or Administrative Burden**

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<sup>76</sup> *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9<sup>th</sup> Cir. 1997)

<sup>77</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973).

A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – i.e., if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations.<sup>78</sup> According to the Department of Housing and Urban Development and the Department of Justice, when determining whether there is an undue financial burden one should consider the following: the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.<sup>79</sup>

A housing provider also does not have to grant a reasonable accommodation request if the request includes services or policies that would “fundamentally alter the nature of the service, program, or activity.”<sup>80</sup> For example, if a tenant requests a reasonable accommodation that the landlord provide cleaning services for the tenant and this is not a service that the landlord currently offers, this would be considered a fundamental alteration and suffice as a basis to deny a reasonable accommodation request. Courts have recognized that reasonable accommodations will often cause some amount of financial or other burden.<sup>81</sup> Therefore, not all costs will relieve housing providers of their legal obligation to grant accommodations. Some costs are small, such as when a tenant requests a waiver of a parking fee as a reasonable accommodation, which is unlikely to be considered a financial burden. When the costs are higher, such as when a tenant requests the installation of an elevator that was not previously there, the costs of the request may cause a significant financial burden to the housing provider.<sup>82</sup>

Here, the question is whether the inability to physically show the home to buyers was an undue burden or fundamental alteration. One could surmise that the sale of a home could be compromised by not permitting in-person showings, causing fewer buyers to be interested in making offers and/or less confidence in the offers from buyers. Either of which could result in a delayed sale, a sale at a much lower price, or no sale at all. This could amount to an undue financial burden. But this must be balanced against the fact that the house did not sell when in-

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<sup>78</sup> JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING

<https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>, pg. 3

<sup>79</sup> *Id.* at 7.

<sup>80</sup> 28 C.F.R. §35.130

<sup>81</sup> *U.S. v. California Mobile Home Park Mgmt Co.*, 29 F.3d 1413 (9th Cir. 1994)(holding that mobile home park owner, under duty under the Fair Housing Act to provide reasonable accommodations, may have to incur reasonable financial costs)

<sup>82</sup> *Congdon v. Strine*, 854 F.Supp. 355, 363 (D.Pa.1994) (finding the installation of a new elevator at a cost of \$65,000 was an undue financial burden) In contrast, see *Davis v. Lane Management* 2007 WL 3306959 (S.D. Fla., Nov. 6, 2007)(Court awarded damages to quadriplegic plaintiff whose landlord refused to fix elevators in an apartment complex for a seven-month period during which the tenant was forced to crawl up stairs to his unit)

person showings were unlimited. Although Ms. Michaud was able to sell the house shortly after the Cabral-Hume family moved out, this may also be due to other factors as well.<sup>83</sup> COVID-19 brought many new buyers looking to escape the pandemic to Vermont's market. In general, all sales went up in Vermont.<sup>84</sup> The possibility exists that the same buyers would have been equally interested in purchasing the home through a virtual showing. Unfortunately, this investigation is left to speculate as Ms. Michaud did not provide any compelling data or other evidence to support a defense of undue burden.

Similarly, it is difficult for Ms. Michaud to prove that virtual showings would have fundamentally altered her rights or services in light of the State of Vermont's guidance that realtors attempt to complete virtual showings first. Ms. Michaud refused to accept this guidance and did not attempt to show the house through the virtual showings, at least initially.

Also, Ms. Cabral-Hume asked for no showings during the lockdown and Ms. Michaud did not respond to the written reasonable accommodation request. It is possible that they could have engaged in the interactive process and negotiated a solution. Perhaps they could have agreed that all buyers see the property virtually first before scheduling appointments. This would have reduced the number of in-home showings and could have potentially filtered out buyers that were not interested after the virtual showing. Both parties however had some role in the communication breakdown.

Therefore, Michaud Properties cannot show either an undue burden or a fundamental alteration to rebut the prima facie case.

### **Prima Facie Case – Retaliation**

1. The complainant engaged in an activity protected by the Act.
2. The respondent subjected the complainant to an adverse action.
3. Circumstantial evidence exists of a causal link between the protected activity and the adverse action. Examples of such circumstantial evidence include (a) temporal link between the protected activity and adverse action; (b) similarly situated persons who did not engage in a protected activity and who were not subject to the adverse action; or (c) selective enforcement against the complainant of a generally applicable policy.<sup>85</sup>

#### **Element 1:**

As mentioned earlier, a protected activity is engaging in a right authorized by federal and state laws. The right to make a reasonable accommodation request is both permitted and protected under the Federal Fair Housing Act and Vermont's Fair Housing and Public Accommodations Act. As such, Ms. Cabral-Hume engaged in protected activity when she

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<sup>83</sup> Interview of Kristin Michaud

<sup>84</sup> "Vermont home sales surge in the wake of the coronavirus" WCAX, July 3, 2020

<sup>85</sup> *Walker v. City of Lakewood*, 272 F.3d 1114,1128 (9<sup>th</sup> Cir. 2001).

provided Ms. Michaud a reasonable accommodation request that included a doctor's note. Ms. Michaud acknowledges that she received this request.

*Finding: A.H. meets element 1 of the prima facie case.*

**Element 2:**

After receiving the request for reasonable accommodation, Ms. Michaud texted Mr. Hume that she would be providing them with a 30-day notice to vacate. Ms. Michaud did indeed post this notice.

*Finding: A.H. meets element 2 of the prima facie case.*

**Element 3:**

Circumstantial evidence exists to link the protected activity with the adverse action. In this case the temporal link is our best indicator. Immediately after formally requesting the reasonable accommodation, Ms. Michaud wrote "You can stay in the house if you allow showings otherwise you will be give [sic] a 30 day notice to vacate." That same evening she provided the 30-day notice, which constitutes direct evidence that the reasonable accommodation request was the reason that the Cabral-Hume family was asked to move. Furthermore, Ms. Michaud asked her agent, Burke Vacation Rentals, to post another notice of termination.

*Finding: A.H. meets element 3 of the prima facie case.*

A.H. meets his prima facie case for retaliation against Michaud Properties. The burden then shifts to the Respondent to show that there was a legitimate, non-discriminatory reason for the action.

In this case, Ms. Michaud admits that she gave Ms. Cabral-Hume the option to allow her to show the house or to be forced to leave. As Ms. Cabral-Hume had requested a reasonable accommodation based on the State guidance during COVID-19, Ms. Michaud's position was unreasonable. There were options to show the house and not put A.H. in danger because of his health. Therefore, Ms. Michaud failed to provide any legitimate non-discriminatory reasons for her actions.

**CONCLUSION**

The impact of COVID-19 made 2020 a trying time for much of the world. There are no easy answers as this is an experience that none of us have lived through before. This investigator is sympathetic that Ms. Michaud wanted to sell her home and felt frustrated because she could not show it in the manner she would have liked. However, the State did provide guidance on how to minimize risk with real estate showings and she failed to take the advice. A.H. is a high-risk individual who had the right to be accommodated to protect his health and well-being. In the end, the house was sold shortly after the Cabral-Hume family moved out; while Ms. Michaud may have preferred to sell it a few months earlier, there was little harm caused by the slight delay.

**RECOMMENDATIONS**

**Burke Vacation Rentals:**



This investigation makes a preliminary recommendation to the Human Rights Commission to find that there are **reasonable grounds** to believe that Burke Vacation Rentals retaliated against A.H. based on his request for a reasonable accommodation as set forth in Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(10).

**Michaud Properties**

This investigation makes a preliminary recommendation to the Human Rights Commission to find that there are **reasonable grounds** to believe that Michaud Properties LLC discriminated against A.H. based on his reasonable accommodation request, as set forth in Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(10).

This investigation makes a preliminary recommendation to the Human Rights Commission to find that there are **reasonable grounds** to believe that Michaud Properties LLC retaliated against A.H. based on his request for a reasonable accommodation as set forth in Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(10).

Melissa Horwitz

Melissa Horwitz  
Investigative Attorney

02/18/2021

Date

Bor Yang

APPROVED:  
Bor Yang  
Executive Director & Legal Counsel

2/19/2021

Date