

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Vannessa Eggleston,)
Complainant)
)
)
v.) HRC Complaint No. HV22-0004
)
)
Gamal & Georgia Eltabbakh,)
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 Gamal & Georgia Eltabbakh, the Respondents, illegally discriminated against Vannessa Eggleston, the Complainant, 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 __ Against <u>X</u> 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 27th day of January, 2022.

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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INVESTIGATIVE REPORT

HRC Case No. HV22-0004

HUD Case No. 01-21-9319-8

COMPLAINANT: Vanessa Eggleston
RESPONDENT: Gamal and Georgia Eltabbakh
PROPERTY ADDRESS: 75 Hills Point Road, Charlotte, Vermont 05445
CHARGE: Discrimination based on sex, marital status and being a victim of domestic violence

SUMMARY OF COMPLAINT

Vanessa Eggleston and her husband rented a house with a two-year lease from Gamal and Georgia Eltabbakh. Mr. Eggleston texted Ms. Eltabbakh to request to renew the lease, and Mrs. Eltabbakh replied that she would renew the lease. Ms. Eggleston texted Ms. Eltabbakh to inform her that Ms. Eggleston and her husband were divorcing and that the divorce had been difficult because her husband was abusive. Ms. Eggleston texted Mrs. Eltabbakh that she would sign the lease, and Mrs. Eltabbakh refused to renew the lease with the same term she had initially offered to Mr. Eggleston.

SUMMARY OF RESPONSE

Mr. and Mrs. Eltabbakh offered to continue to rent the house to Ms. Eggleston on a month-to-month basis. Mr. and Mrs. Eltabbakh were concerned about Ms. Eggleston's ability to pay the rent and utilities, and they were concerned that Ms. Eggleston was expecting Mr. Eggleston to continue to pay for the house even though he would not be living at the house and the divorce between the Egglestons was not amicable.

PRELIMINARY RECOMMENDATIONS

This investigation makes a preliminary recommendation to the Vermont Human Rights Commission (HRC) to find there are **reasonable grounds** to believe that Mr. and Mrs. Eltabbakh discriminated against Ms. Eggleston based on her sex, marital status, and being a victim of domestic violence, in violation of the Vermont Fair Housing and Public Accommodations Act (VFHPAA) 9 V.S.A. §4503.

INTERVIEWS

- Vanessa Eggleston, Complainant – 9/24/2021
- Gamal Eltabbakh, Respondent – 10/12/2021
- Georgia Eltabbakh, Respondent – 10/12/2021

DOCUMENTS

INVESTIGATION

- Complaint – 9/3/2021
- Response – 9/14/2021
- Email from Gamal Eltabbakh, Respondent, to HRC – 11/2/2021

DOCUMENTS

- Lease between William Eggleston, former spouse of Complainant, and Gamal and Georgia Eltabbakh, Respondents – 8/2019
- Lease draft between William Eggleston, former spouse of Complainant, and Gamal and Georgia Eltabbakh, Respondents – 7/2021
- Letter from Gamal and Georgia Eltabbakh, Respondents, to Vanessa Eggleston, Complainant, and William Eggleston, former spouse of Complainant

TEXTS

- Text from William Eggleston, former spouse of Complainant, to Georgia Eltabbakh, Respondent – 5/3/2021
- Text from Georgia Eltabbakh, Respondent, to William Eggleston, former spouse of Complainant – 5/3/2021
- Text from Vanessa Eggleston, Complainant, to Georgia Eltabbakh, Respondent – 7/13/2021
- Text from Georgia Eltabbakh, Respondent, to Vanessa Eggleston, Complainant – 7/13/2021
- Text from Vanessa Eggleston, Complainant, to Georgia Eltabbakh, Respondent – 7/26/2021
- Text from Vanessa Eggleston, Complainant, to Georgia Eltabbakh, Respondent – 7/27/2021
- Text from Gamal Eltabbakh, Respondent, to Vanessa Eggleston, Complainant – 7/27/2021
- Text from Georgia Eltabbakh, Respondent, to Vanessa Eggleston, Complainant, and William Eggleston, former spouse of Complainant – 8/5/2021
- Text from Georgia Eltabbakh, Respondent, to William Eggleston, former spouse of Complainant – 8/7/2021
- Text from Georgia Eltabbakh, Respondent, to Vanessa Eggleston, Complainant – 8/16/2021
- Text from Vanessa Eggleston, Complainant, to Georgia Eltabbakh, Respondent – 8/16/2021
- Text from Gamal Eltabbakh, Respondent, to Vanessa Eggleston, Complainant, 9/5/2021

FACTS

2019

Vanessa Eggleston lived in Charlotte, Vermont with her husband, William Eggleston, and their three children.¹ Mr. Eggleston called Gamal Eltabbakh in response to an ad Mr. Eltabbakh placed for a rental house in Charlotte.² Mr. and Mrs. Eggleston met with Mr. Eltabbakh and his wife, Georgia Eltabbakh.³ The Egglestons told the Eltabbakhs that Mr. Eggleston worked for a bank and Mrs. Eggleston did graphic design and other work online while she was at home with their children.⁴ The Eltabbakhs did not request income information from the Egglestons.⁵ Mr. Eggleston signed a lease to rent the house from Mr. Eltabbakh for two years, and the Egglestons began living there in August.⁶

In Mrs. Eltabbakh's interview, she stated that she had a good relationship with the Egglestons.⁷ When the Egglestons moved in, Mrs. Eltabbakh was finishing painting the house and getting some plumbing work done.⁸ Mrs. Eltabbakh said that the Egglestons were friendly and that their children were well-behaved.⁹

2020

In Mr. Eltabbakh's interview, he stated that he had no significant issues with the Egglestons.¹⁰ The Egglestons' neighbor complained to Mr. Eltabbakh about the Eggleston children making noise when they played on the trampoline in their yard.¹¹ The neighbor asked Mr. Eltabbakh to "get rid of" the Egglestons, but Mr. Eltabbakh told the neighbor that he saw no reason to ask the Egglestons to leave.¹² Mr. Eggleston's rental payments were often a little bit late.¹³ Mr. Eltabbakh would send a reminder text to Mr. Eggleston, and he would pay the rent within a few days of the text.¹⁴

2021

The relationship between Mr. and Mrs. Eggleston became very tense.¹⁵ In January, they had a physical altercation.¹⁶ They discussed separating, and Mr. Eggleston agreed to move out and for Mrs. Eggleston to renew the lease in her name.¹⁷

In May, Mr. Eggleston texted Mrs. Eltabbakh, writing:

¹ Interview with Ms. Eggleston, 9/24/2021.

² Interview with Ms. Eggleston, 9/24/2021; interview with Mr. Eltabbakh, 10/12/2021.

³ *Id.*

⁴ Interview with Ms. Eggleston, 9/24/2021; interview with Mr. Eltabbakh, 10/12/2021; interview with Mrs. Eltabbakh, 10/12/2021.

⁵ *Id.*

⁶ Lease between Mr. Eggleston and Mr. Eltabbakh, 7/1/2019.

⁷ Interview with Mrs. Eltabbakh, 10/12/2021.

⁸ *Id.*

⁹ *Id.*

¹⁰ Interview with Mr. Eltabbakh, 10/12/2021.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Interview with Ms. Eggleston, 9/24/2021.

¹⁶ *Id.*

¹⁷ *Id.*

...I wanted to follow up with you regarding renewal of the lease. We'd like to get it signed sooner rather than later...¹⁸

Mrs. Eltabbakh responded to Mr. Eggleston, writing:

We are absolutely fine with that. The rent will increase by \$60 per month to \$2060 per month, based on the CPI¹⁹ for the last two years. This will start on August 1, at the time of the renewal.²⁰

Mr. Eggleston asked if the lease would be for another two years, and Mrs. Eltabbakh responded that it would be.²¹

In June, Mrs. Eltabbakh delivered a draft of the new lease to Mr. Eggleston.²² The term of the draft lease was one year.²³

On July 13, Ms. Eggleston texted Mrs. Eltabbakh asking for a few moments of Ms. Eltabbakh's time because Ms. Eggleston was going to be out of town in Texas for a couple weeks and she "wanted to be sure the property is in good hands."²⁴ Mrs. Eltabbakh responded, "[s]ure."²⁵ Ms. Eggleston texted that she could meet at Mrs. Eltabbakh's house.²⁶ Mrs. Eltabbakh texted that she would like to see Ms. Eggleston's house, "if possible."²⁷

The original lease states, "Landlord and Landlord's agents will have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Property for the purpose of inspecting the Property and all buildings and improvements thereon."²⁸ Mr. Eltabbakh stated that he and Mrs. Eltabbakh have done walk-throughs when renewing previous leases because they wanted to know the condition of the house before finalizing the renewals.²⁹

Ms. Eggleston responded to Mrs. Eltabbakh, writing:

...I filed for divorce today. As per counsel, leaving for our vacation so when he is served, the children and I are not here. He and I have agreed the children and I will remain in the house. The new lease will be in my name and he will not be an occupant. He is supposed to move out July 31st while we are away. Regardless, my attorney is planning on having this all laid out in temporary orders. Wanted to fill you in. The timing is horrible to break this news but it's important to me that you be informed."³⁰

¹⁸ Text from Mr. Eggleston to Mrs. Eltabbakh, 5/3/2021.

¹⁹ The U.S. Bureau of Labor Statistics calculates the Consumer Price Index (CPI), which is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services; available at: <https://www.bls.gov/cpi/> (last visited 11/2/2021).

²⁰ Text from Mrs. Eltabbakh to Mr. Eggleston, 5/3/2021.

²¹ Text from Mr. Eggleston to Mrs. Eltabbakh, 5/3/2021; text from Mrs. Eltabbakh to Mr. Eggleston, 5/3/2021.

²² Interview with Mr. Eltabbakh, 10/12/2021.

²³ Lease draft between William Eggleston, former spouse of Complainant, and Gamal and Georgia Eltabbakh, Respondents, 7/2021.

²⁴ Text from Ms. Eggleston to Mrs. Eltabbakh, 7/13/2021.

²⁵ Text from Mrs. Eltabbakh to Ms. Eggleston, 7/13/2021.

²⁶ Text from Ms. Eggleston to Mrs. Eltabbakh, 7/13/2021.

²⁷ Text from Mrs. Eltabbakh to Ms. Eggleston, 7/13/2021.

²⁸ Lease between Mr. Eggleston and Mr. Eltabbakh, 7/1/2019.

²⁹ Email from Mr. Eltabbakh to HRC, 11/2/2021.

³⁰ Text from Ms. Eggleston to Mrs. Eltabbakh, 7/13/2021.

Mrs. Eltabbakh responded to Ms. Eggleston, writing:

Oh [Ms. Eggleston] I'm so sorry to hear this. Do you need me to do anything? I have the rental agreement. Do you want to take it with you?³¹

Ms. Eggleston wrote:

I want to sign it but I understand if you want to do a walkthrough... I asked a friend if she'd be willing to stand in my place or do a walk through with you and help facilitate it. I'll accommodate you even from Texas to make sure my kids have the same stable home during a very unstable time in their lives and that you also feel safe.³²

Ms. Eltabbakh wrote:

We are wondering if you want to consider a month by month rental in case things change. It would give you greater flexibility.³³

Ms. Eggleston wrote:

I prefer the lease term to be honest. I plan to fight for primary custody and while my chances are looking very good, I realize nothing is guaranteed. Regardless of the custody arrangement, I plan to stay. But if [sic] need time to think about it I understand.³⁴

Ms. Eggleston was concerned about the lease renewal and the house not being clean.³⁵ She flew back to Vermont to clean the house and make sure the lease was arranged.³⁶

On July 26, Ms. Eggleston texted Mrs. Eltabbakh, writing:

Hi Georgia! I'm in town today and tomorrow if you are available to do the walkthrough and so I can sign the new lease renewal.³⁷

On July 27, Ms. Eggleston texted Mr. and Mrs. Eltabbakh again, writing:

I'm getting nervous about the lease as I haven't heard back from you or gotten replies... My children and I have and are currently being financially and emotionally abused by my husband. When I reached out to you I was hesitant to mention my separation because I was afraid you would worry. However, he'd failed to secure our housing and I was between a brick and a hard place hoping to ease some of my worries and anxiety as my children and I would be traveling and my husband would be getting served. I've been working with domestic abuse centers for a few months now and it was critical I didn't mention much because he couldn't know until my children and I were safe. And now I can't secure housing for longer than a month at a time during a very critical moment in the lives of my children whose entire worlds

³¹ Text from Mrs. Eltabbakh to Ms. Eggleston, 7/13/2021.

³² Text from Ms. Eggleston to Mrs. Eltabbakh, 7/13/2021.

³³ Text from Mrs. Eltabbakh to Ms. Eggleston, 7/13/2021.

³⁴ Text from Ms. Eggleston to Mrs. Eltabbakh, 7/13/2021.

³⁵ Interview with Ms. Eggleston, 9/24/2021.

³⁶ *Id.*

³⁷ Text from Ms. Eggleston to Mrs. Eltabbakh, 7/26/2021.

have been upended because I chose to protect them and leave our abuser aka change marital status.³⁸

Mrs. Eltabbakh responded to Ms. Eggleston, writing:

...[Mr. Eltabbakh] and I were talking about the lease last night. You are very welcome to stay in the house, but we both feel that it should be on a month by month basis. We can write up an agreement, but it will be month to month.³⁹

Mr. Eltabbakh wrote:

...we wish you and your kids the best and do not plan on asking you to leave as long as you pay the rent and the house is safe. It makes sense to make the lease month to month until things get settled for you.⁴⁰

Ms. Eggleston asked if the decision to make the lease month to month was because her “familial status” changed, and Mrs. Eltabbakh replied, “no.”⁴¹ In Mrs. Eltabbakh’s interview, she stated that the previous renter was a divorced woman with three children, and neither she nor Mr. Eltabbakh had any problem with that.⁴²

Ms. Eggleston wanted Mr. Eggleston to be off the lease so that, if necessary, she could get a court order to keep him from accessing the house.⁴³ When Ms. Eggleston was unable to renew the lease, she decided not to return to Vermont to live because she could not ensure that Mr. Eggleston was going to leave the house.⁴⁴ Although Ms. Eggleston never returned to live in the house after she left in July, it’s not clear when Mr. Eggleston moved out of the home. Ms. Eggleston saw through video that Mr. Eggleston visited the house in August.⁴⁵

On August 5, Ms. Eltabbakh texted the Egglestons to ask what their plans were for the house.⁴⁶ Ms. Eltabbakh wrote that she and Mr. Eltabbakh were considering the lease to be month to month.⁴⁷ The lease stated, “[s]hould the Tenant hold over the term hereby created with the consent of the Landlord, the term of this lease will become a month-to-month tenancy...”⁴⁸

On August 15, Mr. and Mrs. Eltabbakh sent a letter Ms. Eggleston and to Mr. Eggleston to provide them with written notice that rent was due and, if they did not pay the rent, they would be evicted.⁴⁹ On August 16, Ms. Eltabbakh texted Ms. Eggleston, writing that the August rent was due.⁵⁰ Ms. Eggleston responded that the Eltabbaks should contact Mr. Eggleston because the original lease, which had not been renewed, was in his name.⁵¹

³⁸ Text from Ms. Eggleston to Mr. and Mrs. Eltabbakh, 7/27/2021.

³⁹ Text from Mrs. Eltabbakh to Ms. Eggleston, 7/27/2021.

⁴⁰ Text from Mr. Eltabbakh to Ms. Eggleston, 7/27/2021.

⁴¹ Text from Ms. Eggleston to Mrs. Eltabbakh, 7/27/2021; text from Mrs. Eltabbakh to Ms. Eggleston, 7/27/2021.

⁴² Interview with Mrs. Eltabbakh, 10/12/2021.

⁴³ Interview with Ms. Eggleston, 9/24/2021.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Text from Mrs. Eltabbakh to Ms. Eggleston and Mr. Eggleston, 8/5/2021.

⁴⁷ *Id.*

⁴⁸ Lease between Mr. Eggleston and Mr. Eltabbakh, 7/1/2019.

⁴⁹ Letter from Mr. and Mrs. Eltabbakh to Ms. Eggleston and Mr. Eggleston, 8/15/2021.

⁵⁰ Text from Ms. Eltabbakh to Ms. Eggleston, 8/16/2021.

⁵¹ Text from Ms. Eggleston to Ms. Eltabbakh, 8/16/2021.

In September, Mr. Eltabbakh texted Ms. Eggleston that they could see the house was abandoned and that she should remove her possessions and pay the overdue rent.⁵² Neither of the Egglestons paid rent for August, September, or October.⁵³

In October, Ms. Eggleston requested access to the house to remove her belongings.⁵⁴ Ms. Eggleston removed her belongings, and Mr. Eltabbakh met her at the house.⁵⁵ Mr. Eltabbakh asked if Mr. Eggleston was there, and Ms. Eggleston told him that he was not there.⁵⁶ Mr. Eltabbakh filed a lawsuit to evict Mr. Eggleston and recover the unpaid rent.⁵⁷

Ms. Eggleston expected that the Eltabbakh's would provide the same lease for her as they were going to provide for Mr. Eggleston.⁵⁸ In Ms. Eggleston's interview, she stated, "[t]hey don't know that I have family money or that I don't. Or that I have I do have a business. I have three businesses. I have sold businesses. They have no idea. Because I was a stay-at-home mom. I'm not paying the rent because I don't live there right now... [Mrs. Eltabbakh] assumed I would be financially dependent on [Mr. Eggleston]. I'm a certified teacher. I am bilingual and certified to do special education. I have worked with the Vermont schools before. I was not going to need support from him. He is their father, so he will be providing some support. I'm very offended by that assumption."⁵⁹

In Mr. and Mrs. Eltabbakh's Response to the HRC, they wrote, "in summary, we deny that we discriminated against [Ms.] Eggleston based on sex, marital status and being a victim of abuse and wonder if she filed this complaint to distract from her likely inability to pay the rent."⁶⁰ During Mr. Eltabbakh's interview, he stated that, after Ms. Eggleston contacted Mrs. Eltabbakh, it "changed the rules of the game. I knew [Mr. Eggleston] has a job. [Ms. Eggleston] said he would be responsible for payment, but they were not separating on good terms. I felt there was something unstable. My understanding was that she was a housewife. I asked what she did the first time we met. She did some work on the internet, which I did not feel was a stable job. I did not know how much money either of them made."⁶¹ During Mrs. Eltabbakh's interview, she stated, "I didn't see any inclination on [Mr. Eggleston's] part to participate in the payment. I was worried about [Ms. Eggleston}'s ability to pay for the rent. I did not ask her for any financial information... It seemed like she was going to be depending on him because of the text she sent."⁶²

⁵² Text from Mr. Eltabbakh to Ms. Eggleston, 9/5/2021.

⁵³ Interview with Mr. Eltabbakh, 10/12/2021.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Interview with Ms. Eggleston, 9/24/2021.

⁵⁹ *Id.*

⁶⁰ Response, 9/14/2021.

⁶¹ Interview with Mr. Eltabbakh, 10/12/2021.

⁶² Interview with Mrs. Eltabbakh, 10/12/2021.

LEGAL ANALYSIS

The Vermont Fair Housing and Public Accommodations Act (VFHPAA) states:

(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or 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, or because a person is a victim of abuse, sexual assault, or stalking.⁶³

Ms. Eggleston's complaint alleges disparate treatment, i.e. that she was treated differently from Mr. Eggleston based on her sex, her marital status, and being a victim of abuse, and that there is sufficient circumstantial evidence of an intent to discriminate with respect to sex, marital status and being a victim of abuse.

In cases where there is only circumstantial evidence of discrimination (as opposed to direct evidence), the evidence available is evaluated using the three-part burden-shifting framework used by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*.⁶⁴ Pursuant to the *McDonnell Douglas* framework: (1) the complaining party must first establish a *prima facie* case of discrimination; (2) if the complainant succeeds in establishing a *prima facie* case, the burden shifts to the respondent to articulate some legitimate, non-discriminatory reason(s) for its action(s); (3) if the respondent successfully articulates a legitimate, non-discriminatory reason for its action(s), the burden shifts back to the complainant who must prove by a preponderance of the evidence⁶⁵ that the reason(s) offered by the respondent was/were not the true reasons for its actions, but were instead pretext(s) for discrimination – i.e. that its actions were not legitimate, but rather acts of discrimination against the person because of (in this case) Ms. Eggleston's sex, marital status, and being a victim of abuse.

In order to establish a *prima facie* case of discrimination without direct evidence, Ms. Eggleston must prove that 1) Ms. Eggleston is a member of a protected class; 2) Mr. and Mrs. Eltabbakh took adverse action against her; and 3) the adverse action took place under circumstances giving rise to an inference of discrimination.⁶⁶

A. The Three Elements of the Prima Facie Case

1) Ms. Eggleston is a member of a protected class.

⁶³ 9 V.S.A. § 4503(a)(1).

⁶⁴ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-803 (1973).

⁶⁵ According to Black's Law Dictionary (10th ed. 2014), "preponderance of the evidence" is defined as the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

⁶⁶ *Mazzocchi v. Windsor Owners Corp.*, 204 F. Supp. 3d 583, 615 (S.D.N.Y. 2016).

Ms. Eggleston is a female whose marital status changed from being married in 2021.⁶⁷ She is also a victim of abuse.⁶⁸

Finding: Ms. Eggleston is a member of a protected class, based on her sex, marital status and being a victim of abuse.

2) Mr. and Mrs. Eltabbakh took adverse action against Ms. Eggleston.

Ms. Eggleston sought a two-year lease from Mr. and Mrs. Eltabbakh, which was the same length as the lease under which she and her family had lived in the house for the previous two years.⁶⁹ Mr. and Mrs. Eltabbakh told Ms. Eggleston that they would only rent the house to her on a month-to-month basis.⁷⁰ In *Petrillo v. Schulz Properties, Inc.*, the court stated that failing to renew a lease and offering only a month-to-month lease could be considered adverse actions.⁷¹

Finding: Mr. and Mrs. Eltabbakh took adverse action against Ms. Eggleston.

3) The adverse action took place under circumstances giving rise to an inference of discrimination.

Sex and Marital Status

A Complainant can prove that she was discriminated against by showing that someone outside of her protected class was similarly situated and was not treated in the same adverse manner.⁷² In this case, Mr. Eggleston appears to qualify as a comparator for Ms. Eggleston based on sex, because he was similarly situated to Ms. Eggleston but he is a different sex than Ms. Eggleston. In May, Mrs. Eltabbakh stated that she would approve Mr. Eggleston's request for a two-year lease, and, in June, she dropped off a draft lease with a one-year term.⁷³ In July, Mr. and Mrs. Eltabbakh offered Ms. Eggleston only a month-to-month lease for the same house, despite her request for a longer lease.⁷⁴ Mr. Eggleston also appears to qualify as a comparator for Ms. Eggleston based on marital status because he was married when he requested to sign a new lease and Ms. Eggleston told Mrs. Eltabbakh that she was getting divorced when she requested to sign a new lease.

This investigation considers whether Mr. Eggleston was sufficiently similarly situated to Ms. Eggleston to qualify as a comparator. Factors that could suggest that he does not qualify as a comparator include that Mr. Eggleston's work was different than Ms. Eggleston's work, and, when the Eltabbaks agreed to renew the lease with Mr. Eggleston, there were two tenants with some sort of income instead of only one. The importance of these differences appears to be limited because the Eltabbaks never verified the employment for the Egglestons, and the

⁶⁷ Interview with Ms. Eggleston, 9/24/2021.

⁶⁸ Interview with Ms. Eggleston, 9/24/2021; text from Ms. Eggleston to Mrs. Eltabbakh, 7/27/2021.

⁶⁹ Interview with Ms. Eggleston, 9/24/2021; text from Ms. Eggleston to Mrs. Eltabbakh, 7/13/2021.

⁷⁰ Interview with Mrs. Eltabbakh, 10/12/2021; Interview with Mr. Eltabbakh, 10/12/2021; text from Mrs. Eltabbakh to Ms. Eggleston, 7/27/2021; text from Mr. Eltabbakh to Ms. Eggleston, 7/27/2021.

⁷¹ *Petrillo v. Schultz Props., Inc.*, No. 11 Civ. 6483, 2011 WL 4899963, at *3 (W.D.N.Y. Oct. 13, 2011).

⁷² *Labarbera v. NYU Winthrop Hosp.*, 527 F. Supp. 3d 275, 294 (E.D.N.Y. Mar. 16, 2021); *Hettiarachchi v. County of Suffolk*, 2020 WL 5848617 (E.D.N.Y. Sept. 30, 2020).

⁷³ Text from Mrs. Eltabbakh to Mr. Eggleston, 5/3/2021; interview with Mrs. Eltabbakh, 10/12/2021.

⁷⁴ Interview with Mrs. Eltabbakh, 10/12/2021; Interview with Mr. Eltabbakh, 10/12/2021; text from Mrs. Eltabbakh to Ms. Eggleston, 7/27/2021; text from Mr. Eltabbakh to Ms. Eggleston, 7/27/2021.

Eltabbaks never asked for both Egglestons to be parties to the original lease.⁷⁵ Second Circuit cases have stated that comparators must bear a reasonably close resemblance but need not be identical to the complainant.⁷⁶ Additionally, the Supreme Court has stated that the burden of establishing a prima facie case does not require the complainant to show that a comparator was similar in all but the protected ways.⁷⁷

Because the burden on Ms. Eggleston to prove her prima facie case is relatively light, and because she provided a comparator who was similarly situated but not treated in the same adverse manner, Ms. Eggleston meets her initial burden to show that the adverse action took place under circumstances giving rise to an inference of discrimination based on sex and marital status.

Being a Victim of Abuse

Mr. and Mrs. Eltabbakh did not have knowledge of Ms. Eggleston's status as a victim of abuse when they initially decided to suggest that Ms. Eggleston rent the house on a month-to-month basis. On July 13, Ms. Eltabbakh sent a text asking if Ms. Eggleston would consider a month-to-month rental.⁷⁸ Ms. Eltabbakh did not learn that Ms. Eggleston was a victim of abuse until July 27, when Ms. Eggleston sent a text stating that she was being abused.⁷⁹ Although the initial reason for suggesting a month-to-month rental appears to have been because of their concern about Ms. Eggleston's ability to pay, subsequent texts from Mr. and Mrs. Eltabbakh suggest that Ms. Eggleston's status as a victim of abuse contributed to the ultimate decision to only offer Ms. Eggleston a month-to-month rental. Mrs. Eltabbakh texted Ms. Eggleston that she and Mr. Eltabbakh "were talking about the lease"⁸⁰ and Mr. Eltabbakh texted that they did not plan to ask Ms. Eggleston to leave as long as she "pay[s] the rent and the house is safe."⁸¹ These texts suggest that Mr. and Mrs. Eltabbakh's concern extended beyond the payment of rent and included safety concerns related to Ms. Eggleston's status as a victim of abuse.

Finding: The adverse action took place under circumstances giving rise to an inference of discrimination based on sex, marital status and being a victim of abuse.

B. Whether Mr. and Mrs. Eltabbakh Produced a Legitimate Non-Discriminatory Reason for the Adverse Action

Because Ms. Eggleston established a prima facie case, the burden shifts to Mr. and Mrs. Eltabbakh to produce a legitimate, nondiscriminatory reason for their actions. According to Mr. and Mrs. Eltabbakh, they offered Ms. Eggleston only a month-to-month lease because they were concerned that she would not be able to pay the rent.

Finding: Mr. and Mrs. Eltabbakh produced a legitimate non-discriminatory reason for the adverse action they took against Ms. Eggleston.

⁷⁵ Interview with Mrs. Eltabbakh, 10/12/2021; Interview with Mr. Eltabbakh, 10/12/2021.

⁷⁶ *Labarbera v. NYU Winthrop Hosp.*, 527 F. Supp. 3d 275, 298 (E.D.N.Y. Mar. 16, 2021); *Brown v. Daikin America Inc.*, 756 F.3d 219, 230 (2d Cir. 2014).

⁷⁷ *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1354 (2015).

⁷⁸ Text from Mrs. Eltabbakh to Ms. Eggleston, 7/13/2021.

⁷⁹ Interview with Mrs. Eltabbakh, 10/12/2021; text from Ms. Eggleston to Mrs. Eltabbakh, 7/27/2021.

⁸⁰ Text from Mrs. Eltabbakh to Ms. Eggleston, 7/27/2021.

⁸¹ Text from Mr. Eltabbakh to Ms. Eggleston, 7/27/2021.

C. Whether the Reason for the Adverse Action was Pretext for Discrimination

Because Mr. and Mrs. Eltabbakh produced a legitimate, nondiscriminatory reason for their adverse action against Ms. Eggleston, the burden shifts back to Ms. Eggleston to show that the reason they provided was pretext for discrimination. Courts examine the entire record to determine if a complainant meets her ultimate burden.⁸² A complainant can meet this burden by demonstrating “weaknesses, implausibilities, inconsistencies, or contradictions” in the reason offered by the respondent.⁸³ In this case, Ms. Eggleston argues that the weakness of the reason provided by Mr. and Mrs. Eltabbakh is that neither of them had objective information about Ms. Eggleston’s ability to pay the rent to support their concern that she would not be able to pay the rent without Mr. Eggleston’s help.

In *Mancuso v. Douglas Elliman, LLC*, the complainant’s claim of unlawful discrimination failed because the complainant’s bad credit history was a legitimate, nondiscriminatory reason for the landlord’s refusal to rent to the complainant that could not be overcome by the complainant.⁸⁴ In *Mohamed v. McLaurin*, the complainant also failed to meet her ultimate burden of proof, even though she established a prima facie case, because the landlord had legitimate business reasons for not renewing the lease.⁸⁵ In *Mohamed*, the legitimate business reasons included damage to the apartment's doors, kitchen cabinets, carpeting, bathroom, and refrigerator; and the misuse of common areas.⁸⁶ In this case, the only reasons Mr. and Mrs. Eltabbakh provided were concerning Ms. Eggleston’s ability to pay the rent; there were no other accusations such as misuse of the property. The ability of a tenant to pay rent is a legitimate business concern. However, unlike in *Mancuso*, where the landlords had information about the complainant’s bad credit history, Mr. and Mrs. only knew that Ms. Eggleston worked from home. Their belief that Ms. Eggleston could not pay the rent without help from Mr. Eggleston appeared to be based on assumptions about Ms. Eggleston being a “housewife,” implicating that the concern stemmed from both Ms. Eggleston’s sex and her marital status.

In *Mancuso*, the court states that, in order to avoid being discriminatory, owner-established criteria for determining whether a tenant is financially qualified should be objective, clearly communicated to potential renters and related to that person's ability to rent the property in question.⁸⁷ Here, Mr. and Mrs. Eltabbakh did not request income information from Ms. Eggleston, nor did they indicate to Ms. Eggleston that such a concern was their reason for treating her differently than they had treated Mr. Eggleston. Additionally, whether Ms. Eggleston works from home is not necessarily an accurate indicator of her ability to pay the rent.

Looking at the entirety of the record, the absence of objective information to support that Ms. Eggleston could not pay the rent is sufficient to show that Mr. and Mrs. Eltabbakh’s reason for their adverse action against Ms. Eggleston was discriminatory.

Finding: Mr. and Mrs. Eltabbakh’s reason for the adverse action was a pretext for discrimination.

⁸² *Feacher v. Int'l Hotels Group*, 563 F.Supp.2d 389, 403 (N.D.N.Y.2008).

⁸³ *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 22, 200 Vt. 125, 138, 129 A.3d 108, 118 (2015).

⁸⁴ *Mancuso v. Douglas Elliman LLC*, 808 F.Supp.2d 606, 620 (S.D.N.Y.2011).

⁸⁵ *Mohamed v. McLaurin*, 390 F. Supp.3d 520, 555 (D. VT 2019).

⁸⁶ *Id.*

⁸⁷ *Mancuso v. Douglas Elliman LLC*, 808 F.Supp.2d at 619.

Conclusion

Ms. Eggleston established a prima facie case under 9 V.S.A. §4503 to show that Mr. and Mrs. Eltabbakh discriminated against her on the basis of sex, marital status and being a victim of abuse. This investigation makes a preliminary recommendation to find there are **reasonable grounds** to believe that Mr. and Mrs. Eltabbakh discriminated against Ms. Eggleston based on her sex, marital status and being a victim of abuse, in violation of the 9 V.S.A. §4503.

Cassie Burdyskaw

Cassandra Burdyskaw, Investigator

11/2/2021
Date

Approved By:


Bor Yang, Executive Director

11/3/2021
Date