

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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M.C.A.D. & DANIEL MIHALAK,  
Complainant

v.

DOCKET NO.14-SPH-01229

SOUTH HADLEY HOUSING AUTHORITY  
& HEIDI HEISLER,  
Respondents

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Appearances:

Torran M. Bagamary, Esq. for Daniel Mihalak  
John T. Liebel, Esq. for the Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about May 21, 2014, Daniel Mihalak filed a complaint with this Commission charging Respondents with discrimination in housing on the basis of his sexual orientation (gay); gender (non-conforming gender stereotypes) and subjecting him to retaliation and harassment in violation of M.G.L.c. 151B, sec. 4(4) and (6). Complainant also charged Respondent Heisler with interfering with his exercise of enjoyment of his rights protected by the statute in violation of MGL sec. 4 (4A). The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on May 3 and 4, 2016 at the Commission's Springfield office. After careful consideration of the entire record before me and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

## II. FINDINGS OF FACT

1. Respondent South Hadley Housing Authority (“SHHA”) operates 150 public housing units at four developments throughout the town, including Lathrop Village, a 96 Unit development that houses elderly and disabled tenants. (Testimony of Complainant; Testimony of Heisler)
2. Respondent Heidi Heisler has been Executive Director of SHHA<sup>1</sup> since January 2011 and oversees its day to day operations. Heisler is certified in housing management and has taken housing discrimination courses through the MCAD. The administrative offices where Heisler works are located at Lathrop Village. Tenants can conduct business with the office staff through a window without having to enter the office.
3. Complainant Daniel Mihalak is a gay man who resided at Lathrop Village from 2009 to December 2015.
4. Heisler reports to the SHHA, which is composed of four elected and one appointed Commissioner. Donna Robideau served as an elected commissioner of SHHA for a five year term from 2010-2015. (Testimony of Robideau)
5. Mary Billion was, at the time of the events in question, SHHA’s Executive Assistant. Heisler was her immediate supervisor. Billion collected rents, handled rent recertification, tenant complaints and billing. SHHA also employed two Senior Aides, including Carolyn Gammons, who worked 20 hours per week, a maintenance supervisor, Dennis Stebbins, and a mechanic. (Testimony of Billion)

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<sup>1</sup> Heisler was the acting Executive Director from November 2010 to January 2011. Prior to January 2011, she was SHHA’s administrative assistant. Prior to working for SHHA, Heisler worked for 13 years in Holyoke as public policy manager.

6. After moving into Lathrop Village, Complainant frequently visited the office and became friendly with the staff, especially Heisler. He sometimes made breakfast for the staff and they would take him to lunch or to medical appointments. Heisler once lent Complainant money. Complainant gave necklaces to Heisler and other staff. Heisler's necklace was inscribed with the Lord 's Prayer. (Testimony of Heisler) Heisler treated Complainant well and paid him to do work around the complex. (Testimony of Complainant; Testimony of Heisler; Testimony of Billion)

7. Complainant at first testified that he did not disclose his sexual orientation to Heisler until 2012 when they went out to a club together. He stated their relationship soured after that. Complainant subsequently testified that this incident occurred in 2014. He also testified that the dates were “all mixed up in his head because he is confused” and that incidents occurring from 2013 to 2015 all ran together in his mind.<sup>2</sup> Complainant also testified that the dates are “all mixed up in his head,” because he had a “nervous breakdown.”

8. Heisler testified credibly that she knew Complainant was gay from the first time they met in 2009, when he showed her a ring his boyfriend gave him.

9. Gammons and Billion also knew Complainant was gay from the time they met. (Testimony of Gammons; Testimony of Billion) Billion testified that that Complainant was open about his sexual orientation and spoke generally in an “unfiltered” manner. As an example, she testified that on her first day of work, Complainant made a comment to her about her bra.

10. Complainant was very friendly with other tenants. (Testimony of Complainant; Testimony of Heisler; Testimony of Patruno) Complainant was openly gay and according to one witness, was the self-styled “queen of the complex.” (Testimony of Laferriere)

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<sup>2</sup> Complainant's testimony was generally disjointed, contradictory and difficult to follow.

11. Complainant enjoyed tending flowers and plants at Lathrop Village and Heisler sometimes paid him out of pocket for such work. He also performed other chores such as cleaning common areas and putting up decorations. Heisler suggested that Complainant become a senior aide in order to get paid for his time, however, Complainant declined the offer because he was unable to stand for long periods. (Testimony of Heisler; Testimony of Complainant)

12. Robideau would frequently tour the Lathrop Village complex and first met Complainant outside the administration building. Robideau was aware of Complainant's volunteer activities at the complex and in approximately 2010, she suggested Complainant run for president of the tenants' association, a social group that also raised tenant concerns with Heisler or the board. According to Robideau, Complainant declined because he believed tenants would not vote for him because of his sexual orientation. I credit her testimony.

13. In July 2010, Complainant moved within Lathrop Village from a first floor, street-facing apartment to a third-floor rear apartment that was larger and afforded more privacy. (Testimony of Heisler; Testimony of Complainant)

14. In June 2012, Complainant briefly moved out of Lathrop Village.<sup>3</sup> He testified that his reason for moving was Heisler's mistreatment of him. I do not credit his testimony as it contradicts the credible testimony that Complainant was friendly with Heisler at the time he moved.

15. Heisler testified credibly that in June 2012, Complainant told her that he was moving because he could not stand being around elderly tenants. Billion testified credibly that he told her he could not stand the smell of "dried up old p---y." Against their advice, on June 2, 2012, Complainant moved to an apartment in S. Hadley. Maintenance supervisor Stebbins, who helped

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<sup>3</sup> Complainant testified that the move occurred in 2013. I find that he was mistaken about the year.

Complainant move, also testified credibly that Complainant told him he was moving because he did not want to live with smelly old people.

16. On June 18, 2012, Complainant asked Heisler if he could move back to Lathrop Village. (Testimony of Billion; Testimony of Heisler; Testimony of Stebbins; Testimony of Complainant) Heisler testified that she welcomed Complainant back because he was a good tenant who helped around the complex. She sought and received the Commissioners' permission for Complainant to resume his tenancy. Absent her intervention on his behalf Complainant would have been subject to a five to eight year waiting list. I credit her testimony.

17. In Spring 2013, Heisler received several tenant complaints about Complainant. One tenant was angry because Complainant cut some of her roses. The daughter of a recently deceased tenant was irate because Complainant dug up one of her mother's plants. Several other tenants complained after Complainant left a garden hose running all night resulting in some flooding. (Testimony of Heisler; Testimony of Billion) As a result, Complainant was told he could no longer do any gardening.

18. Heisler testified credibly that the maintenance staff informed her that Complainant was taking supplies from the maintenance shop without permission, so she put a lock on the shop's door.

19. Billion testified credibly that Complainant was loud, used inappropriate language and disrupted the office staff by demanding to use office supplies and a copier for his personal use. When Heisler began to deny Complainant such privileges, he became very angry and was ultimately banned from the office because of his unruly behavior. Billion stated that after Complainant was prohibited from entering the office, "everything changed."

20. In August 2013, at Complainant's request, a summer office intern gave Complainant several large manila envelopes for his personal use. When Heisler saw Complainant with the envelopes she took them away from him. According to Complainant, she grabbed them out of his hands. Heisler testified credibly that this was the first time she had refused Complainant something and he became very angry and called her a "f-----g c---t" and a "bitch."

21. Gammons testified that Complainant got angry when he did not get his way. She was present when Complainant castigated Heisler about taking back the envelopes and stated that his loud, angry outburst discomfited the staff. I credit her testimony.

22. Heisler testified credibly that after the incident with the envelopes, her relationship with Complainant changed for the worse and he continued to subject her to vituperative comments.

23. From the time he moved to Lathrop Village, Complainant had hung a rainbow-colored U.S. flag from his porch railing. He considered it a symbol of gay pride. (Testimony of Complainant; Ex. R-4) Another gay tenant, Andrea Klopfer, displayed a similar flag on her porch railing. Respondents never raised an objection to their flags. (Testimony of Complainant; Testimony of Klopfer; Testimony of Heisler) Klopfer stated that Heisler has never referenced her sexual orientation.

24. In late August 2013 Complainant placed a very large rainbow-colored boogie sail on his third-floor porch. He testified that when Heisler saw it she told him to "take that faggoty thing down." I do not credit his testimony.

25. Heisler testified that in late August 2013, as she drove into the complex on her way to work, she observed the large sail on Complainant's porch and thought it should be removed for safety reasons. Heisler denied making the "faggoty" remark and stated that she did not

contact Complainant directly about the sail because she wanted to avoid another confrontation with him following the envelope incident. (Ex. R-4)

26. The following day, August 28, 2013, Heisler wrote Complainant a letter directing him to immediately remove the sail. Billion hand-delivered the letter to Complainant's unit. (Testimony of Heisler; Ex. C-2) Upon receipt of the letter, Complainant immediately called Commissioner Robideau at her home to complain about Heisler's letter. (Testimony of Complainant; Testimony of Robideau) He testified that he told Robideau what Heisler had purportedly said about the sail and noted that other tenants were allowed to keep various objects on their porches. Robideau testified credibly that Complainant never mentioned that Heisler referred to the sail as "faggoty" and never told her that he thought Heisler's actions were discriminatory.

27. After talking to Complainant, Robideau drove to Lathrop Village to view the sail for herself. Although she thought the sail was too big, she told Heisler that because SHHA did not explicitly ban sail boats and other tenants were allowed to have umbrellas on their porches, Respondents could likely not require Complainant to remove the sail.

28. Heisler agreed with Robideau's assessment and on August 30, 2013, she wrote a letter to Complainant as follows: "The Housing Authority has decided to allow the sail on your porch, due to other residents having umbrellas." (Ex. C-3) In neither letter did Heisler mention that the sail posed a safety issue and the sail remained on Complainant's porch until he moved out in 2015.

29. Complainant testified that after the sail incident Heisler called him a troublemaker and said he sucked up information like a "tick." He testified that on a daily basis, Heisler called him a "fag," "f---ing queer," "girly" and "fairy;" she snarled at him, gave him the finger, told

him to leave her alone and suggested he move out. He testified that Heisler “could not control him as she had controlled others.” I credit Complainant’s testimony to the extent that Heisler may have, on rare occasion, called him a homophobic slur. However, I find that Complainant greatly exaggerated the frequency of any such comments. Gammons testified credibly that she never heard Heisler call Complainant names or use anti-gay language.

30. Robideau testified that in discussions with Complainant at Latham Village subsequent to the sail incident, he referred to Heisler as “f—king bitch,” “big tits,” and being “off her meds” and stated “it must be her time of the month.” Robideau testified that after the sail incident, Complainant never discussed or alleged discrimination. I credit her testimony.

31. Mark Patruno, a tenant at Lathrop Village whom became friendly with Complainant, described Complainant as a “social butterfly” and well-liked by tenants. Patruno stated that Complainant was nervous and upset about the sail incident, became a “loose cannon” and was prone to angry outbursts. He once heard Complainant tell Heisler: “I’m going to kill you, bitch.”

32. Stebbins testified credibly that after the sail incident Complainant had a “vendetta” against Heisler and called her a “bitch” and “c—t” and threatened to kill her.

33. Complainant testified that he did not recall using offensive language toward Heisler. He claimed that before the sail incident no one knew he was gay, but that afterwards, tenants’ attitude toward him and Klopfer changed. He testified that he called Robideau about Heisler numerous times and told her he was discriminated against because he was gay. I do not credit his testimony. Robideau testified that while Complainant called him several times, he never complained about sexual orientation discrimination. I credit her testimony.

34. In April 2014, Complainant's television was damaged in a lightning storm and he placed it in the shared basement of his building. When Heisler asked him to pay a \$25 fee to have it removed,<sup>4</sup> Complainant refused and an argument ensued. Complainant testified that, Heisler called him a "frigging fag" and told him to leave the office. She denied ever calling Complainant any anti-gay slur and stated that the matter was resolved without Complainant paying the fee. Complainant testified that Klopfer had driven to the office to pick him up and overheard the argument.

35. Klopfer testified that in April 2014 she was about 34 feet from the office waiting in her truck to pick up Complainant for lunch when she heard Complainant and Heisler arguing and Heisler call Complainant a "fucking faggot" "queer" "fag" and "gay." I do not credit her testimony. She and Complainant then left the complex. Complainant was very upset and talked to her about his situation on a daily basis. Heisler testified that there was no one on the street when she was arguing with Complainant about the television and denied making homophobic remarks to Complainant.

36. Patruno testified that in April 2014, he observed Heisler and Billion exiting a building together. They stopped about 45 feet away from where he was seated outside his apartment. Patruno stated that he overheard Heisler tell Billion, "Here comes that fucking fag queer queen." Seconds later he saw Complainant walking up the road. I do not credit his testimony. Heisler denied ever making such remarks and testified that she first heard about Patruno's allegation at the public hearing. Heisler testified that after hearing Patruno's testimony, she returned to Latham Village and measured the distance from where Patruno sat to where he purportedly saw and overheard Heisler and Billion, a distance of 153 feet. (Testimony

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<sup>4</sup> Respondent's policy was to take tenants' bulk items to the dump and invoice tenants for the \$25 dump fee. (Testimony of Billion)

of Heisler; Ex. R-5) Billion denied that Heisler make such remarks to her. (Testimony of Billion)

37. Complainant testified that after his complaint to Robideau, his relationship with Heisler ended and he sent her a letter telling her to leave him alone. Heisler testified that she last spoke to Complainant in April 2014, after receiving a letter from him in May 2014 asking her not to speak to him.

38. Betty Gatewood has lived at Lathrop Village since 2009, has known Complainant for 20 years and spoke with him nearly every day when he lived at Lathrop Village. Gatewood testified that Complainant told her that Heisler told him to remove the sail because it was “gay.” Gatewood stated that the “flags”<sup>5</sup> came down for a period of time and Complainant went “crazy” and “off the wall” and his health suffered because he couldn’t “express who he was.” Gatewood, who also has a pending MCAD claim against Respondents, testified that on one occasion when she was at the MCAD’s Springfield office in connection with her own claim, she heard Heisler call her the a “n----r” and Complainant a “fag.” I do not credit her testimony that Heisler made these comments at the MCAD’s office.

39. Hazel Laferriere has lived at Lathrop Village since 2000. Complainant frequently dropped by her apartment to visit. She testified that Complainant was openly gay and was the self-described “queen of the complex.” She testified that Complainant frequently used vulgar language and referred to Heisler as a “f—ing bitch.” He told her that he wanted Heisler removed from her job at the complex. Complainant told Laferriere that Heisler called him names but she never heard Heisler make homophobic remarks about Complainant or gay people in general. Laferriere became weary of listening to Complainant and no longer wanted him to visit her apartment.

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<sup>5</sup> She believed there were two flags on Complainant’s porch.

40. Complainant testified that in 2013 or 2014, he wrote a letter to the SHHA board accusing Heisler of singling him out because of his sexual orientation. (Ex. C-5) The copy of the letter submitted into evidence contains some smudges, which Complainant testified were from his tears. In the undated letter, Complainant states that Heisler made “multiple comments” about his sexuality, including “I see you looking at his ass, girl.”<sup>6</sup> Notably the letter does not reference the homophobic slurs that Complainant testified Heisler made to him. Robideau, who served on the board until 2015, testified that credibly that she never saw the letter.

41. Complainant testified that his friends at Lathrop Village had all turned against him because of Heisler. He was eventually evicted<sup>7</sup> and now lives in N. Hampton.

42. Patricia Fornier, Complainant’s sister, testified that Complainant had been happy living at Lathrop. She picked him up every weekend and purchased the sail for him. She stated matters became difficult for Complainant after he had to take the sail down and was told he could no longer do any gardening. According to Fornier, Complainant told her that Heisler had called him homophobic slurs. She testified that Complainant is still a nervous wreck and blows up at her and constantly talks about Heisler. Fornier testified that Heisler has ruined Complainant’s life as well as her own life.

### III. CONCLUSIONS OF LAW

Complainant has alleged that he was subjected to disparate treatment and harassed on the basis of his sex (gender stereotype)<sup>8</sup> and sexual orientation (gay) and that he was retaliated against for engaging in the protected activity of complaining about sexual orientation discrimination.

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<sup>6</sup> The letter’s closing is signed by Complainant and styled “Sincerely, Dan Mahalak (sic) Tenant of Lathrop Village”

<sup>7</sup> Incidents surrounding Complainant’s eviction are beyond the scope of the complaint in this matter and are not before this Commission.

<sup>8</sup> Complainant presented no evidence whatsoever in support of his gender claim, which is hereby dismissed.

The gravamen of Complainant's claim is that Respondent Heisler unlawfully ordered him to remove from his porch a large sail that he viewed as a symbol of gay pride. He alleges that after his complaint to the SHHA, although Heisler rescinded her order, she unlawfully retaliated against him by subjecting him to unlawful harassment for exercising his rights under M.G.Lc. 151B, sec. 4(4) and 4(4A)

A. Disparate Treatment G.L. c. 151B ¶4(6) prohibits the owner or managing agent of publicly assisted housing from discriminating on the basis of a person's sexual orientation in the terms, conditions and privileges of housing or in furnishing of facilities and services in connection therewith. In order to establish a prima facie case of disparate treatment in the furnishing of rental housing a Complainant must show that he is a member of a protected class and he was subjected to adverse or disparate treatment concerning the rental property based on sexual orientation. Rose v. Windjammer Properties, et al, 22 MDLR 13, 16 (2000)(imposition of probationary period on African-American tenant was racially discriminatory); McDonnell Douglas Corp. v. Green, 411 U.S. 972 (1973); Wheelock College v. MCAD, 371 Mass. 130 (1976); Abramian v. President & Fellows of Harvard College, 432 Mass 107,116 (2000); Wynn & Wynn v. MCAD, 431 Mass 655, 665-666 (2000). Curry and Hayes v. Allessio, 21 MDLR 247 (1999); Pacheco v. Cannella, 21 MDLR 152 (1999).

With respect to Heisler's directive to Complainant to remove his gay pride sail from his deck, I conclude that Complainant has established a prima facie case of discrimination on the basis of sexual orientation. As a gay man, Complainant is a member of a protected class by virtue of his sexual orientation. While Respondent quickly rescinded the directive to remove his sail, Complainant was arguably subject to an adverse action. Complainant has established that

he was treated differently from other tenants who had large objects, such as umbrellas, on their porches and were not asked to remove them.

Once Complainant has established a prima facie case of disparate treatment on the basis of sexual orientation, the burden of production shifts to Respondents to articulate legitimate, non-discriminatory reasons for their conduct. Abramian, 432 Mass at 116-117; Wynn & Wynn, 431 Mass. at 665. Heisler's legitimate, non-discriminatory reason for the initial directive to Complainant to remove the sail was its large size and concerns about safety and potential for injury to tenants. I conclude that Respondents have articulated legitimate, non-discriminatory reasons for their conduct.

Once Respondent meets this burden, then Complainant must show by a preponderance of the evidence that Respondent acted with discriminatory intent, motive or state of mind. Lipchitz v. Raytheon Company, 434 Mass 493, 504 (2001); see, Abramian, 432 Mass at 117. Complainant may meet this burden through circumstantial evidence including proof that "one or more of the reasons advanced by the employer for making the adverse decision is false." Lipchitz, 434 Mass at 504. However, Complainant retains the ultimate burden of proving that Respondent's adverse action was the result of discriminatory animus. Id.; Abramian, 432 Mass at 117.

I am not convinced that Heisler was motivated solely by safety concerns in seeking to have the sail removed. I conclude that if Heisler had perceived the sail to be a serious threat to safety, she would have pursued the matter with Board or other local and state authorities instead of immediately backing down.

Notwithstanding, Complainant has failed to persuade me that Heisler's directive to Complainant to remove the sail from his porch was a pretext for discrimination based on his

sexual orientation. The evidence shows that the sail was a convenient excuse for Heisler to assert authority over Complainant, who was engaged in a rancorous power struggle with her over her legitimate denial of continued unwarranted privileges to him. That struggle was completely unrelated to his sexual orientation. Complainant, an openly gay man, (and not closeted as he suggests) had established friendly relationships with Respondent Heisler, her staff and many tenants of Latham Village, where he enjoyed gardening and socializing with staff and tenants. The evidence suggests that prior their ensuing conflict, which appears to have first arisen when he was forbidden to continue his gardening activities, Complainant received favored treatment such as assistance with transportation to medical appointments and use of Respondents' equipment and supplies. He was not mistreated or demeaned because of his sexual orientation, but instead appears to have received more favorable treatment than other tenants. The enmity between Complainant and Heisler, once friends, developed long before the sail incident and was exacerbated by Heisler's challenging Complainant's misuse of Respondent's property such as the envelopes. Complainant reacted personally by lashing out at Heisler in an abusive and vulgar manner. I conclude that her attempt to remove the sail from Complainant's porch was not motivated in any way by Complainant's sexual orientation, but by anger over his abusive and demeaning behavior and thus did not constitute unlawful discrimination on the basis of his sexual orientation.

#### **B. Harassment**

Complainant also contends that following his complaint to the SHHA board about Heisler's directive to remove the sail, Heisler engaged in unlawful harassment and retaliation against him. Harassment in the terms and conditions of housing on the basis of sexual orientation constitutes a violation of G.L.c. 151B. Curry v. Allessio, 21 MDLR 247(1999). In

order to prevail in a claim of sexual orientation harassment in housing, Complainant must show that he is a member of a protected class, that the atmosphere in which he lived was permeated with hostility based on sexual orientation and that the Respondent, having been put on notice, failed to take adequate steps to remedy the situation. Love v. Boston Housing Authority, 18 MDLR 249, 251(1996); MCAD and Paul Maher v. Boston Housing Authority, 24 MDLR 3 (2002). He must also demonstrate that the conduct was of such nature that it made the tenancy significantly less desirable to a reasonable person in Complainant's position. Gnerre v. MCAD, 402 Mass. 502 (1988)

I conclude that Complainant has failed to establish a prima facie case of harassment based on sexual orientation. As stated above, the evidence establishes that Complainant and Heisler were once friendly and mutually benefited from Complainant's assistance around the complex. Heisler extended favors to Complainant, they exchanged gifts and she supported his return to Lathrop Village after an unsuccessful move. Their relationship deteriorated only after Heisler's attempts to place some limits on his behavior, following tenants' complaints about his gardening and his continuing to expropriate Respondent's property for his personal use. Complainant, who by all accounts could be intemperate and crude when challenged, went on a tirade against Heisler referring to her in grossly sexist and abusive terms. Thus began a battle of wills between Heisler and Complainant that was characterized by a series of rancorous arguments.

While I found Complainant's testimony generally unreliable and tending toward hyperbole and I do not believe that Heisler persistently referred to him with homophobic slurs, I conclude that, on occasion, Heisler reverted to offensive remarks about his sexual orientation when engaged in disputes with him and in response to his vulgar, misogynistic and threatening

remarks to her. Complainant's abusive attitude and personal vendetta toward Heisler led Complainant to transform trivial matters such as Heisler's legitimate dump fee request into major incidents. His inability to control his anger resulted in their relationship deteriorating into a series of shouting matches wherein they hurled invective at one another. While it is arguable that Heisler's conduct should be held to a higher professional standard, given her position of authority, and while her remarks about Complainant's sexual orientation were not appropriate, and should not be condoned, I remain unpersuaded that Heisler was motivated by discriminatory animus, or that her words were an expression of discriminatory animus based on Complainant's sexual orientation. She was totally aware of and accepting of Complainant's sexual orientation and treated him very favorably. Complainant has also failed to persuade me that Heisler's comments, even if made, were sufficiently severe and pervasive as to interfere with his tenancy and to constitute sufficient evidence of a claim of unlawful harassment based on his sexual orientation. The evidence suggests that any such comments were if anything, sporadic or occasional and largely in response to Complainant's animosity.

### C. Retaliation

Pursuant to G.L.c.151B§4¶4, it is unlawful for any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five. Complainant has alleged that Respondents engaged in retaliation for his having made an internal complaint of sexual orientation discrimination in connection with the sail incident.

Complainant relies on the same purported set of circumstances to support his claim of retaliation for having engaged in the protected activity of complaining about the sail. In order to

establish a prima facie case of retaliation, Complainant must show that he engaged in protected activity, that Respondents were aware of the protected activity, that Respondents subjected him to an adverse action, and that a causal connection existed between the protected activity and the adverse action. Mole v. University of Massachusetts, 58 Mass.App.Ct. 29, 41 (2003).

Complainant has engaged in protected activity if he... “has opposed any practices forbidden under this chapter [G.L.c. 151B s. 4] or . . . has filed a complaint, testified or assisted in any proceeding under [G. L. c. 151B, s. 5].” In this case, Complainant informed SHHA commissioner about Heisler’s directive for him to remove the sail from his porch. While Robideau denied that Complainant mentioned his sexual orientation as a purported reason for Heisler’s directive, assuming arguendo that Complainant claimed discrimination, this was protected activity within the meaning of the statute.

Complainant asserted that after his complaint to Robideau, Heisler continued to refer to him in homophobic terms and cites as an incident of retaliation, Heisler’s attempt to charge him a dump fee for his broken television. While proximity in time is a factor, “the mere fact that one event followed another is not sufficient to make out a causal link.” MacCormack v. Boston Edison, 423 Mass. 652, 662, n. 11(1996), citing Prader v. Leading Edge Products, Inc., 39 Mass. App. Ct. 616, 617(1996). That Respondents knew of a discrimination complaint and thereafter took some adverse action against the complainant does not, by itself, establish causation, however, timing may be a significant factor in establishing causation. Where, as here, problems between Complainant and Heisler predate the protected activity, there cannot be a presumption of causality. Mole v. Univ. of Massachusetts, 442 Mass. 582, 594-95 (2004). I conclude that there is no credible evidence of a causal connection between the Complainant’s complaint of discrimination and subsequent conduct of Heisler. Instead there was ample evidence of

Complainant's prior hostility toward Heisler and that they had been in conflict regarding Complainant's presumed favors as a tenant. There was no credible evidence that Heisler's conduct changed to any significant degree after the sail incident. Thus I conclude that Complainant has failed to establish a prima facie case of retaliation and conclude that this matter be dismissed.

D. Individual Liability

Complainant has also charged Respondent Heidi Heisler individually with violating M.G.L. s.4(4A), which makes it unlawful for any person "to coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected" by chapter 151B. Given the above rulings that Respondents did not engage in unlawful discrimination against Complainant, the claim of interference by Heisler under M.G.L. sec. 4(4A) is also hereby dismissed.

IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this 30th day of November 2016.



JUDITH E. KAPLAN,  
Hearing Officer