

May 1, 2013

VIA U.S. Mail and Facsimile

Roxanne Juliano
Assistant Director
New Hampshire Commission for Human Rights
2 Chenell Drive #2
Concord, New Hampshire 03301-8501
Fax: (603) 271-6339

RE: Anne Peffer v. Open Stories Foundation; ES(H)(R) 0098-13
RESPONSE TO CHARGE OF DISCRIMINATION

Dear Assistant Director Juliano:

Open Stories Foundation (the “*Foundation*”) is in receipt of the letter dated March 6, 2013 from the New Hampshire Commission for Human Rights (the “*Commission*”) wherein the Commission informed the Foundation that Ms. Anne Peffer (“*Peffer*”) has filed a Charge of Discrimination (the “*Complaint*”) against the Foundation (the “*March 6th Letter*”). The Foundation appreciates the opportunity to respond to the allegations contained in the Complaint and provides the below explanation and response.

First Response:

The Foundation continues to investigate this matter and reserves the right to supplement this response as additional information/evidence is discovered.

Second Response:

The Complaint fails to state a claim against the Foundation as an “Employer” because the Foundation has fewer than six employees. Accordingly, the Foundation is not an “Employer” pursuant to N.H. Rev. Stat. Ann. § 354-A:2(VII), which explicitly states that “‘Employer’ does not include any employer with fewer than 6 persons in its employ.” The Foundation has never had more than two (2) employees.

Third Response:

The Foundation did not unlawfully discriminated against Peffer in any way. On the contrary, the Foundation made every effort to ensure its actions were both necessary and uniform. In fact, upon discovering that Peffer and Mr. John Dehlin (“*Dehlin*”) had engaged in a consensual relationship and that that relationship had resulted in (i) the deterioration of Peffer and Dehlin’s working relationship, and (ii) that it had begun to negatively impact the Foundation’s business as well, the Foundation responded decisively requiring both to resign or

be terminated and offering both the option of continued involvement with the Foundation via a 1099 relationship. The only difference in outcome or effect is that Peffer elected not to continue to work with the Foundation and Dehlin elected to accept the 1099 relationship and to continue working with the Foundation.

Based on this reality, the Foundation is extremely troubled by the Complaint and believes it was brought in bad faith with ulterior motives. The Foundation's suspicion is based on the fact that the Foundation went above and beyond to attempt to address Peffer's concerns and investigate the same. The Foundation only closed its investigation after Peffer instructed the Foundation to consider the matter closed. Peffer's decision to file the Complaint after she instructed the Foundation to close its investigation into this very matter is confusing to say the least. The Foundation is left to guess regarding Peffer's motivations. That said, the Foundation believes the Complaint is nothing more than Peffer's attempt to make good on her threats to harm the Foundation and Dehlin. *See* Blackmail Email defined as part of the Foundation's Response to Request (d) and enclosed with Tab B.

Fourth Response:

As for the Foundation's direct response to the March 6th Letter and the Complaint, the Foundation will endeavor to respond to the questions/requests in the same format and order as presented in the March 6th Letter.

Response to Request (a): Yes, the Complaint identifies the Foundation by its correct legal name. The Foundation is a non-profit corporation organized under the laws of the State of Arizona.

Response to Request (b): The Foundation has not retained local counsel to represent it in this matter. If and when the Foundation does retain local New Hampshire counsel, the Foundation will promptly advise the Commission of the same. That said, the Foundation has retained Mr. Jason M. Yancey of the law offices of Helgesen Waterfall & Jones, PC as general counsel to advise and assist the Foundation in preparing this response letter. It is anticipated that as this matter progresses and the Foundation retains local New Hampshire counsel, Mr. Yancey will also appear on a *pro hac vice* basis pursuant to Human Rights Rules 204 and 303. Should the Commission or Peffer's counsel have questions regarding this matter, please do not hesitate to contact the Mr. Yancey. Mr. Yancey's contact information is as follows:

Jason M. Yancey
Helgesen Waterfall & Jones, PC
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Clearfield, Utah 84015
Phone: 801-544-5306
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Response to Request (c): Specific responses to the allegations contained in the Complaint. Documents relevant to the below responses are enclosed herewith as part of **Tab A**.

Allegation No. 1: The Foundation admits only that Peffer was a member of the Foundation's Board of Directors from 2010 until Peffer left the Foundation in 2012, and that Peffer was also employed by the Foundation on a part-time basis. The Foundation otherwise denies all other allegations express or implied contained in Allegation No. 1.

Allegation No. 2: Admitted.

Allegation No. 3: The Foundation admits only that Peffer was a member of the Foundation's Board of Directors. The Foundation affirmatively asserts that it never formalized Peffer's titles/positions, though various ones were used informally. The Foundation otherwise denies all other allegations express or implied contained in Allegation No. 3.

Allegation No. 4: Denied. The Foundation affirmatively asserts that while parts of Peffer's performance were excellent, other parts were extremely lacking and concerning. Some of the Foundation's concerns with Peffer's performance include, but are not limited to, the following: concerns regarding the conferences and communities Peffer supervised/planned and the ongoing viability of the same, concerns regarding Peffer's difficulties working with others, concerns with major conflicts Peffer had with others, and the Foundation's desire to reduce/limit/halt the communities/conferences.

Allegation No. 5: The Foundation admits only that any relationship (whether it be physical or emotional) between Peffer and Dehlin was consensual in nature. The Foundation otherwise denies all other allegations express or implied contained in Allegation No. 5.

Allegation No. 6: Denied. As is documented by the text messages Peffer sent to Dehlin, which are enclosed herewith as Tab A(6), Peffer repeatedly made sexual advances towards Dehlin through August 2012, and that Dehlin rebuffed many of these advances.

Allegation No. 7: Denied. See responses to Allegation Nos. 6 and 9 herein.

Allegation No. 8: Denied. See responses to Allegation Nos. 6 and 9 herein.

Allegation No. 9: The Foundation affirmatively asserts that the August 10, 2012 email reference by Peffer speaks for itself and must be read in context with the other documentation provided in this response. A copy of the August 10, 2012 email is enclosed herewith as part of Tab A(9). The Foundation otherwise denies all other allegations express or implied contained in Allegation No. 9.

Allegation No. 10: The Foundation admits only that Dehlin (as well as other podcast hosts and Facebook group leaders) own, operate, and control their own Facebook and other online groups. The Foundation does not claim that it owns, controls, or has the right to control any online groups. Instead, the Foundation leaves such control and

ownership to the organizers/podcast hosts. Accordingly, the Foundation admits only that Dehlin limited Peffer's access on or about August 11, 2012. The Foundation otherwise denies all other allegations express or implied contained in Allegation No. 10.

Allegation No. 11: The Foundation admits that Dehlin reported to Ms. Brooks that Peffer and Dehlin's relationship had resulted in (i) the deterioration of Peffer and Dehlin's working relationship, and (ii) that it had begun to negatively impact the Foundation's business. The Foundation further admits that it responded by requiring both Peffer and Dehlin to resign or be terminated. *See* Tab A(11) (email detailing the Foundation's response).

Allegation No. 12: The Foundation admits only that Peffer was relieved from her responsibilities while the Foundation conducted its own investigation.

Allegation No. 13: The Foundation affirmatively asserts that Ms. Joanna Brooks is no longer involved with the Foundation and that the Foundation lacks knowledge regarding the specific conversations Ms. Brooks may have had with Peffer. That said, the documentary evidence presently available to the Foundation reveals that, at a bare minimum, the intimate communications were a two-way street. *See* Tab A(6).

Allegation No. 14: Denied. *See* response to Allegation No. 10 above.

Allegation No. 15: Denied. *See* response to Allegation No. 10 above.

Allegation No. 16: The Foundation admits only that it requested both Dehlin and Peffer to resign. *See* Tab A(16). The Foundation affirmatively asserts that the August 25, 2012 email from Joanna Brooks speaks for itself and must be read in context with the other documentation provided in this response. A copy of the August 25, 2012 email as well as other relevant documentation is enclosed herewith as part of Tab A(16).

Allegation No. 17: The Foundation affirmatively asserts that (i) Ms. Joanna Brooks is no longer involved with the Foundation and that the Foundation lacks knowledge regarding the specific conversations Ms. Brooks may have had with Peffer, and (ii) that Peffer's correspondence speaks for itself and contradicts this allegation. *See* Tab A(16). That said, Ms. Brooks provided the Foundation a letter/timeline of events in mid-September 2012 concerning her involvement and interactions. *See* Tab A(17). Further responding, the Foundation admits that it terminated Peffer and that Peffer did not sign the severance agreement.

Allegation No. 18: The Foundation admits only that it terminated Peffer. The Foundation affirmatively asserts that the letter of termination speaks for itself, a copy of which is attached hereto as Tab A(18).

Allegation No. 19: The Foundation admits that Peffer eventually alleged sexual harassment, but that she was not consistent in this regard. The Foundation affirmatively states that Peffer also informed the foundation that she would not be pressing for sexual

harassment, and instructed the Foundation to consider the matter closed. The relevant correspondence regarding this response is attached hereto as Tab A(19).

Allegation No. 20: The Foundation admits that upon being informed of Peffer's allegations it promptly reinstated Peffer as a "temporary employee" to ensure that she did not suffer unnecessary income loss pending the outcome of the Foundation's investigation—the Foundation also reinstated Dehlin as well. At the conclusion of its investigation, the Foundation upheld the prior decision to require the resignation/termination of both Peffer and Dehlin.

Allegation No. 21: The Foundation admits only that upon closing its investigation, Peffer's "temporary employee" status was terminated.

Allegation No. 22: The Foundation admits only that Peffer informed multiple individuals that she would voluntarily resigned her position with the Foundation. The Foundation otherwise denies all other allegations express or implied contained in Allegation No. 22.

Allegation No. 23: Denied.

Allegation No. 24: Denied.

Response to Request (d): The Foundation asserts as an affirmative defense to the Complaint that the Complaint is nothing more than an attempt by Peffer to make good on her threats and to lash out at the Foundation and Dehlin. While the Foundation's investigation into this matter remains ongoing, the following highly relevant evidence has surfaced:

1. The Foundation can find no evidence of Peffer rebuffing sexual advances from Dehlin. In fact, the Foundation has obtained evidence wherein Dehlin rebuffed sexual advances from Peffer. *See* Tab A(6). At a bare minimum, it appears to have been a two-way street.
2. Peffer was/is primarily concerned with access to online groups and communities, not sexual harassment. *See* Tab B.
3. Upon information and belief, the Complaint has been brought in bad faith and with ulterior motivations. *See* October 17, 2012 email (the "***Blackmail Email***"), Peffer clearly threatens to (i) defames and humiliate the Foundation and Dehlin, (ii) "play the victim," (iii) to allege sexual harassment (i.e., the Complaint), and (iv) "tell[] everyone about the [Foundation's] response to her allegation of sexual harassment."¹ A copy of the Blackmail Email is enclosed herewith as Tab C.

¹ Presumably leaving out the part where Peffer instructs the Foundation to "consider th[e] matter closed."

4. Peffer was a member of the Foundation's Board of Directors at all relevant times. Peffer was not subordinate to Dehlin, nor was she in a position to be exploited in any way. Peffer, herself, acknowledged this fact in a text exchange with Dehlin dated August 26, 2012 wherein she acknowledges that she was a member of the Board of Directors and states that Dehlin is "in the clear" because roles and responsibilities were never clarified. A copy of this correspondence is enclosed herewith as Tab D.
5. Any failure by the Foundation to appropriately respond/react must fall upon Peffer's shoulders as she (i) declined to support her allegations with the Foundation when asked, and (ii) instructed the Foundation to halt its investigation. *See* Tab A(19).
6. The Complaint makes clear on its face that the Foundation initially terminated Peffer on August 31, 2012, and that Peffer did not inform the Foundation of or otherwise allege sexual harassment until September 6, 2012. Accordingly, it is axiomatic that the Foundation's initial decision to terminate Peffer was not/could not have been in retaliation for her claims of sexual harassment. Furthermore, three days after Peffer brings her allegations to the Foundation, she instructed the Foundation to "consider the matter closed." *See* Tab A(19). Therefore, any subsequent decision by the Foundation to uphold Peffer's prior termination or to accept Peffer's subsequent resignation cannot be considered to be an act of retaliation. This is particularly true given that it was Peffer, and no one else, that barred/hindered the Foundation's ability to conduct a full and fair investigation into the matter.

Response to Request (e): The Foundation does not maintain "Personnel Files" in the ordinary course of business. While the Foundation's investigation into this matter is ongoing, the materials enclosed herewith, especially Tabs A(16), A(18) and A(19) represent documents that would/should be considered part of any Personnel File for Peffer.

Response to Request (f): A copy the Foundation's relevant policies and procedures are enclosed herewith as Tab E.

Response to Request (g): The Foundation has not adopted/approved any organizational charts or the like. That said, during all times relevant to the Complaint, the Foundation was structured as follows: Peffer and Dehlin were both members of the Foundation's Board of Directors with equal voices and votes. The Foundation had ten (10) Directors. A copy of the Foundation's tax filings for 2010 and 2011 are attached hereto as Tab F. The tax filings show Dehlin as the Executive Director, Ms. Joanna Brooks as the President, and Peffer as a Director. Peffer and Dehlin represent the only employees the Foundation has ever had. As the only employees of the Foundation, Peffer and Dehlin both reported directly to the Board.

Response to Request (h): The Foundation has never had more than two employees.

Response to Request (i): The Foundation believes the following individuals will have relevant information regarding the truthfulness/merit (or lack thereof) of the Complaint:

1. John Dehlin, (johndehlin@gmail.com) – (435) – Mr. Dehlin is expected to have information regarding the personal relationship he had with Peffer, his and Peffer’s resignation from the Foundation, the Foundation’s response to Peffer’s allegations of sexual harassment, Peffer’s multiple threats and allegations, and the decision to restrict Peffer’s access to online communities/groups.
2. Joanna Brooks (jmbrooks@mail.sdsu.edu) – (512) – Ms. Brooks is expected to have information regarding the Foundation’s handling of Peffer’s allegations of sexual harassment, the resignations/terminations of Peffer and Dehlin.
3. Natasha Parker, (natasha.parker@sbcglobal.net) - (316) – Ms. Parker is expected to have information regarding the Foundation’s activities and investigations after Ms. Brooks resigned, Peffer’s work performance, including, Peffer’s difficulties working with others.
4. Sara Begley (srlbegley@gmail.com) - (858) – Ms. Begley is expected to have information regarding the Foundation’s activities and investigations regarding this matter. Ms. Begley is believed to have had extensive direct contact with Peffer.
5. Kevin Oleson (kevin@preventivepest.com) - (505) – Mr. Oleson is expected to have information regarding the claims and defenses asserted in this matter, including, but not limited to, information regarding Peffer’s work performance and related difficulties.
6. Teri Whittenberg (tsw85tsw@gmail.com) - (801) – Ms. Whittenberg is expected to have information regarding Peffer’s resignation/termination, financial decisions/severance, Peffer’s work performance and related difficulties.

Again, the Foundation appreciates the opportunity to respond to the Complaint and provide the enclosed information to assist the Commission in investigating this matter. If the Commission has any additional questions or requests, please do not hesitate to ask. The Foundation will cooperate fully with any and all additional requests/investigations. Thank you.

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