

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD, AARON HORTON
& RASHEED ANDRADE,
Complainants

v.

DOCKET NO. 03-BED-03450
DOCKET NO. 03-BED-03451

BLAINE THE BEAUTY
CAREER SCHOOL &
SUPPLIES & JUAN ADORNO,
Respondents

Appearances:

Stephen Born, Esquire for Complainants Horton and Andrade

DECISION OF THE HEARING OFFICER

On or about March 15, 2003, Complainants Aaron Horton and Rasheed Andrade filed complaints with this Commission charging Respondents Blaine the Beauty Career School and Supplies, Inc., and Juan Adorno with discrimination in education on the basis of sexual harassment in violation of M.G.L.c.151C§. The Investigating Commissioner issued a probable cause determination. A public hearing was held before me on September 1, 2006. Respondents did not appear at the hearing, and a default against them was entered into the record. The hearing proceeded as a default hearing, pursuant to 804 CMR 1.21(8). Respondents were duly notified of the default and failed to seek removal of the default or to otherwise respond. After considering the entire record of the proceedings, I make the following findings of fact, conclusions of law, and order.

I. FINDINGS OF FACT

1. Complainant, Aaron Horton, currently resides in Boston, Massachusetts.

2. Complainant, Rasheed Andrade, currently resides in Atlanta, Georgia. He is originally from the Hyde Park section of Boston.

3. Respondent, Blaine the Beauty Career School and Supplies, Inc. (“Blaine”), is a Beauty Career School with a branch located on Commonwealth Avenue, in Boston, Massachusetts.

4. Respondent Juan Adorno was at all times relevant to this matter an instructor of cosmetology at Blaine’s Boston location.

5. Horton testified that he is bi-sexual, but has not been open about his sexual orientation, because it was not accepted by his family and friends.

6. After dropping out of high school in the 12th grade, Horton worked in maintenance jobs and styled people’s hair in his kitchen. Horton stated that he grew up with sisters and consequently knew a lot about hair styling. He had planned to become a “platform artist,” traveling with movie stars and styling their hair and make-up and to eventually have his own business. He learned about the Blaine school through fliers and television advertisements. He was attracted to the school because its brochure guaranteed employment upon completion of its program. (Exh. C-1). He was also attracted to Blaine, because its cosmetology course took only eight months to complete and did not require a high school diploma.

7. Horton testified that he met with a representative of Blaine who assured him he’d be admitted to the school and arranged for a loan for the tuition of approximately \$11,000.00.

8. Andrade testified that after dropping out of school in the 11th grade, he had worked part time jobs at stores such as the Gap and Banana Republic. He testified that he loves fashion, likes to look good and to make others look good. He believed that Blaine was highly successful in getting its graduates positions in well-know cosmetic companies. He envisioned himself as “the hairdresser” that people such as Hollywood stars would come to.

9. Andrade testified that he learned of Blaine through friends and the company’s brochure. He took out loans to cover the \$11,000.00 tuition. He and Horton were enrolled in the same cosmetology program.

10. Andrade testified that he is bi-sexual and that he and Horton were lovers at the time of their enrollment at Blaine, although it was not an open relationship, because they “did not want to be the two gay guys” and just wanted to focus on school.

11. In late February 2003, Complainants took and passed a test for enrollment at Blaine’s cosmetology program, and they began classes the first week of March 2003.

12. The classes were held Monday through Friday from 8:00 a.m. to 4:00 p.m. for a period of eight months. When students successfully completed a class, they were promoted to the next class and another instructor.

13. The introductory class consisted of approximately 15 students, all women, except for Complainants, and was taught by Respondent, Juan Adorno.

14. Complainants testified that initially some of their classmates liked them, flirted with them and socialized with them after class.

15. Horton testified that students were graded on a daily and weekly basis. They received awards for categories such as shampoo techniques, types of hair cuts and perfect

attendance. Complainants both testified that at first they did very well in class and received awards for their skills.

16. Horton testified that from the start, Adorno made life in the classroom unbearable for him. He testified that Adorno began flirting with him, giving him a lot of attention, inviting him to dinner, touching his shoulder and getting close to him. He testified that Adorno called him a “girl.” Adorno also told the class that Complainants were lovers and told the women in the class to “back off.”

17. Horton stated that Adorno would “undress him with his eyes” and made comments about the size of his penis, and his sexual prowess. Horton testified that such comments were made daily in the presence of the class, throughout the first month and a half of classes. In addition Adorno showed Horton pictures of himself and his former boyfriend, in various stages of undress. Horton testified that these comments made him feel uncomfortable and withdrawn. After Adorno’s comments, Complainants’ female classmates stopped inviting them to socialize and began to call Complainants names. In addition, they made remarks to Horton, such as, “I heard you’re gay, I heard you’re with Rasheed. I heard you take it up the butt. I heard you use K-Y Jelly.”

18. Horton testified that he complained about Adorno’s remarks to Blaine’s Assistant Director of Human Resources. The Assistant Director told Horton that he had known Adorno for a long time and doubted he would make such remarks. Nevertheless, the Assistant Director told Horton that he’d set up a meeting with Complainants, Adorno, himself and the Director of Human Resources.

19. This meeting occurred and according to Horton, at the meeting, Adorno admitted making the comments but saw no problem with his conduct.

20. Horton returned to the Human Resources managers a week or two later and told them that Complainants were being treated differently in class and that Adorno told their classmates that he was angry with Complainants and was ignoring them.

21. Horton testified that all the positive feedback and good grades he had received before complaining about Adorno ceased. He testified that he felt ashamed and embarrassed, as though he had done something wrong, and felt he was being perceived as a stereotypical homosexual, despite the fact that he tried to conceal his sexual orientation.

22. Horton testified that he completed Adorno's class and moved on to the next class. However, his next class shared a room with Adorno's and Complainants continued to have some instruction from Adorno after completing his class.

23. Horton testified that after completing approximately 2 ½ months of Respondent's program, the negative comments of fellow classmates persisted. Since Andrade had left the program three weeks earlier, he was now attending classes alone. Horton stated that he could no longer stand to remain in the class and Blaine refused his request for a transfer to another Blaine location and would not refund his tuition, so he left the program in around June 2003.

24. Horton testified that after leaving Blaine, he worked temporarily at a local hair salon as an assistant, but could not continue because he did not have sufficient classroom hours to obtain a cosmetology license. He inquired into other programs but could not afford the tuition and was ineligible for loans until his loan from Blaine was paid off.

25. Horton testified to a troubled childhood in which he became a ward of the state at the age of ten because of his mother's neglect and drug abuse. In addition he was repeatedly abused by an older boy at the age of nine. Horton testified that he "went through

a lot” at Blaine and felt hurt and embarrassed by the harassment targeting his sexual orientation, which he viewed as sexual harassment. He did not seek therapy because he felt therapy was used against his interests as a child in the custody of the Department of Social Services. Horton testified that for the year following the Blaine’s incident, he was involved in substance abuse, but he subsequently met a woman with whom he had a child, and stated that “now he has something to live for.”

26. Andrade also testified that at first his female classmates flirted with him and Horton and they socialized together. He stated that initially he performed well in class and received positive feedback from Adorno, who praised him in front of the class.

27. Andrade testified that from the outset of the class, Adorno made eye contact with him and then began to touch him on the back. At first, Andrade tried to brush off Adorno’s advances. Andrade stated that on one occasion he wore a pair of tight jeans and Adorno commented to him that he was well-endowed, but Adorno’s former lover was bigger than Andrade. Adorno never addressed Andrade by name, but called him “girl” or “girlfriend.” Andrade would respond; “I’m not a girl.” Such comments were made in front of the class.

28. Andrade also stated that Adorno would breathe heavily on his neck as they worked on mannequins used for training purposes. Andrade stated that Adorno would walk around the room and touch his and Horton’s shoulders, give them shoulder rubs and touch their backs.

29. Andrade testified that Adorno’s conduct “creeped him out” and reminded him of abuse he suffered as a child.

30. Adorno commented to the class that Complainants were gay lovers and the girls in the class should stop wasting their time on Complainants because he had already tried.

31. According to Andrade, a female classmate once came after him with a pair of scissors, stating that she hated gay people, and called him “faggot,” “homo” and stated that Complainants should have been put on an island away from everyone else.

32. Andrade stated that he complained about Adorno’s conduct to Blaine’s Human Resource personnel on two occasions, first on his own and again when he accompanied Horton to the meeting with Adorno and Blaine’s Human Resource managers.

33. Andrade testified that when he first complained to Human Resources about Adorno’s conduct, a Human Resources manager stated that he had known Adorno for years and he did not think Adorno would risk his job for “two cuties.” However, he said he would speak to Adorno and attempt to resolve the matter. Andrade stated that Adorno’s conduct continued until the group meeting.

34. Andrade stated that after the group meeting, Andrade’s offensive conduct ceased. However, he stopped communicating with Andrade at all in class, and ceased offering him help. Andrade’s request for a transfer to another location was denied.

35. Andrade testified that his attendance was perfect until he could not bear to go to class any longer and began to become physically sick, could not sleep at night, and couldn’t get to school on time. He stated that he left Blaine because he could no longer put up with Adorno’s harassment and retaliatory behavior.

36. Andrade testified after he left Blaine, he felt like a failure and felt he could not avoid the consequences of his sexual orientation. He worked for a time at a friend’s hair salon in Boston, broke up with Horton and moved to Georgia, where he volunteers at a

stable, teaching horseback riding, and continues to look for jobs in the fashion and hair industry.

37. Andrade testified to a troubled childhood that included being raped by an acquaintance from ages 7 to 10. He stated that he was “not as masculine as the other kids” and was beaten up, jumped and knifed. He was kicked out of his mother’s house when she learned of his sexual orientation and at age 17 he attempted suicide.

38. Andrade’s experience at Blaine caused him to relive these painful childhood experiences of abuse and teasing. He testified that he was so upset for a time that he did not want to work and did not want to live.

39. Andrade testified that his future goals include obtaining his cosmetology license and working in the field of hair styling. Andrade still owes \$11,000 in loans for his classes at Blaine and he is in default on the loan.

40. I credit the un rebutted testimony of the Complainants in its entirety.

III. CONCLUSIONS OF LAW

M.G.L.c.151C, §2(G) makes it unlawful to “sexually harass students in any program or course of study in any educational institution.” Sexual harassment is defined as “sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions or (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. See, College-

town Division of Interco. v. MCAD, 400 Mass. 156, 165 (1987). The elements of a prima facie case of discrimination in employment shall apply to a charge of discrimination in education pursuant to M.G.L.c.151C., MCAD and Jean Claude Pierre v. Salem State College, 25 MDLR 108 (2003) (remanded on other grounds, 26 MDLR 137 (2004); Adedeji v Mass. College of Liberal Arts, 25 MDLR 194, 199 (2003).

Complainants testified credibly that the conduct of their instructor, including making daily comments on their perceived sexual orientation and the size of their genitals, touching their backs and necks and commenting on their sexual practices, created a hostile work environment for them. They alleged that they were humiliated in front of the class and alienated from their classmates. They felt forced to drop out of school and default on their loans when after they reported the abuse to Blaine's human resources managers, Adorno merely ignored them and no longer assisted them in class. I conclude that Respondent Adorno's conduct, constituted unlawful sexual harassment because it was severe, and pervasive, occurred on a daily basis, and in the presence of others. When Complainants complained to the school's Human Resources officials, the conduct ceased; However, Adorno stopped communicating with Complainants, thereby making it impossible for them to successfully continue in their classes. Moreover, Blaine refused to transfer Complainants to another location where they would not have to be in contact with Adorno, and refused to refund their tuition, causing them to default on their loans of approximately \$11,000.00 each. I conclude that Respondents are jointly and severally liable for unlawful sexual harassment in an educational institution. By refusing to transfer Complainants or refund their tuition, Blaine failed to remedy a hostile educational environment that continued once Adorno had been put on notice of their complaints.

IV. REMEDY

The Commission is authorized to award damages for emotional distress resulting from unlawful discrimination. Stonehill College v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549 (2004); Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303 (1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172 (1985). Such emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill, supra, at 576. Some of the factors to be considered are; the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has suffered and reasonably expects to suffer and whether the complainant has attempted to mitigate the harm. Id. The Complainants must show a sufficient causal connection between the Respondents' unlawful act and the Complainants' emotional distress. Id.

Complainants testified convincingly about the emotional distress they suffered as a direct result of having been harassed by Adorno. Horton testified that he felt embarrassed for the entire class to be noting his perceived sexual orientation and was distressed to be reminded of childhood abuse. I find that Horton is entitled to an award of \$10,000.00 to compensate him for his emotional distress.

Andrade testified that he felt embarrassed and humiliated and was reminded of childhood abuse he suffered. I found his testimony to be credible. I find that Andrade is entitled to an award of \$10,000.00 to compensate him for his emotional distress.

Complainants each testified that they are in default on loans of approximately \$11,000.00 for tuition that was not returned to them. I credited their testimony regarding

these debts. I conclude that Complainants are entitled to a refund of \$11,000.00 each to compensate them for the loans that Blaine refused to refund to them.

Finally, Complainants seek “lost wages” for the salaries they claim they would make had they graduated from Blaine. However, I conclude that such claims are far too speculative, and are based solely on the claims contained in Blaine’s glossy brochure. Therefore, I decline to award damages for “lost wages” in this case.

V. ORDER

For the reasons stated above, Respondent is hereby ORDERED to:

1. Cease and desist in the future from discrimination in its programs against students on the basis of sexual harassment.

2. Pay to Complainant Aaron Horton the sum of \$10,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

3. Pay to Complainant Rasheed Andrade the sum of \$10,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

4. Pay to Complainant Aaron Horton the sum of \$11,000.00 in damages to compensate him for the tuition that Blaine refused to refund to him, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or

until this order is reduced to a court judgment and post-judgment interest begins to accrue.

5. Pay to Complainant Rasheed Andrade the sum of \$11,000.00 in damages to compensate him for the tuition that Blaine refused to refund to him, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

Payment shall be made within 60 days of receipt of this decision.

The parties shall notify the Clerk of the Commission as soon as payment has been made. If Respondents fails to comply with the terms of this Order within the time period allotted, please notify the Clerk of the Commission.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, 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 26th day of January, 2007.

JUDITH E. KAPLAN,
Hearing Officer