

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

COMMONWEALTH OF MASSACHUSETTS
and ALBERT AND MARY STEN-CLANTON and
THE MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION,
Complainants

v.

DOCKET NO. 05-BPA-00758

FUNG WAH BUS TRANSPORTATION, INC., and
PEI LIN LIANG,
Respondents.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Complainants, Albert and Mary Sten-Clanton, in an action brought on their behalf by the Attorney General of the Commonwealth. Following an evidentiary hearing, the Hearing Officer concluded that Respondents were liable for discrimination by failing to accommodate Complainants' handicap in a place of public accommodation in violation of M.G.L. c. 272, §§ 98 and 98A. The Hearing Officer found that the Complainants were not allowed to purchase tickets for, and were denied access to, Respondent's bus service for a trip from Boston to New York City, because they were blind and because Albert Sten-Clanton required the services of a guide dog. The Hearing Officer ordered the Respondents to cease and desist from any such discriminatory action, awarded damages for emotional distress to both Complainants and assessed a Civil Penalty against Respondents. Respondents appealed to the Full Commission.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 et. seq.) and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. G.L. c. 151B, § 5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding..." Katz v. MCAD, 365 Mass. 357, 365 (1974); G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.23.

BASIS OF THE APPEAL

Respondents have appealed the decision on the grounds that the Hearing Officer made errors of fact and law and that her findings were not supported by substantial evidence. Respondents challenge the Hearing Officer's credibility determinations and the conclusions she reached in weighing the evidence before her. Respondents also assert that the Hearing Officer erred as a matter of law by imposing a \$10,000 civil penalty against Respondents under M.G.L. c. 151B, §5 and by awarding damages for emotional distress in the amounts of \$35,000 to Mr. Sten-Clanton and \$25,000 to Ms. Sten-Clanton.

We have carefully reviewed Respondents' grounds for appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review stated herein. We find no material errors of fact or law with respect to the Hearing Officer's findings and conclusions of law. We properly defer to the Hearing Officer's findings which are supported by substantial evidence in the record. As to Respondents' challenges to the Hearing Officer's determinations of credibility, we reiterate that such determinations are solely within the province of the fact finder, who observes the witnesses' testimony and demeanor and is in the best position to assess their credibility. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005).

Respondents also challenge the assessment of a Civil Penalty against them. The Hearing Officer found that Respondents' acts of discrimination were in deliberate disregard of Complainants' right to full and equal access to public transport without regard to their disability. Given the deliberate and egregious nature of the actions, we conclude that her assessment of a \$10,000 civil penalty against Respondents was within her discretion and authority under M.G.L. c. 151B, §5 and is merited under the circumstances.

As to Respondents' challenges to the Hearing Officer's award of emotional distress damages, we find that the awards of \$35,000 and \$25,000 to Mr. and Ms. Sten-Clanton, respectively were proper and supported by the evidence. The Supreme Judicial Court has articulated standards for the Commission to consider in rendering damage awards for emotional distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004). These include the nature, character, severity and length of the harm suffered. Id. at 576. In addition, the Court stated that such awards should be "fair and reasonable and proportionate to the distress suffered." Id.

The Hearing Officer credited Mr. Sten-Clanton's testimony that Respondents' refusal to sell bus tickets to either him or his wife took an emotional toll on him. It made him feel angry and frustrated. He also felt helpless because he was dependent on others to resolve the matter. He was particularly disturbed when his wife was denied access, even though she did not have a guide dog. The Hearing Officer credited Ms. Sten-Clanton's testimony that she was shocked and distressed by Respondents' refusal to allow her to purchase a ticket, even when she agreed to travel without her husband and his guide dog. She felt angry and frustrated that Respondents deliberately disregarded their rights and then made them stand outside in extremely cold weather while they awaited the arrival of the police. Complainants were not merely denied access to public transport but were extremely humiliated in the process of seeking to assert their rights under the law. We find that the Hearing Officer's award of damages is consistent with the standards set forth in Stonehill and that the award is fair, reasonable and commensurate with the emotional pain, embarrassment and humiliation suffered by Complainants.

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision.

ORDER

The Respondents' appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer is confirmed in its entirety. This order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of receipt of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Standing Order on Judicial Review of Agency Actions. Failure to file a petition in court within thirty (30) days of receipt of this order will constitute a waiver of the

aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED this 28 day of October, 2008

Malcolm S. Medley
Chair

Sunila Thomas George
Commissioner

Martin S. Ebel
Commissioner