

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & ALICE NOBLE,  
Complainants

v.

DOCKET NO. 04-SEM-00669

JOSEPH PEREIRA D/B/A  
AUTOS BY JOSEPH &  
COURTNEY MCNUTT,  
Respondents

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Appearances:

Dean E. Goldblatt, Esquire for Alice Noble  
Joseph Pereira and Corey McNutt, pro se for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 9, 2004, Alice Noble filed a complaint with this Commission, charging Respondents with sexual harassment and retaliation, in violation of M.G.L.c.151B§4. Attempts to conciliate the matter failed and the case was certified for public hearing. The Investigating Commissioner issued a probable cause determination. A public hearing was held before me on November 8, 2006 at Springfield, Massachusetts. After careful consideration of the entire record in this matter, I make the following findings of fact, conclusions of law and order.

## II. FINDINGS OF FACT

1. Complainant Alice Noble is a 49 year old woman residing in Hampden, MA. She currently owns a business, Inner Balance Wellness Massage Center, located in Springfield, Ma. She is a licensed Massage Therapist. Complainant has three sons.

2. In March 2003, Respondents operated a used car dealership then doing business as “Autos by Joseph” located on Bay Street in Springfield. For the past two years, the company has been known as Quality Rides. According to Respondent Joseph Pereira, the business was incorporated as JCP, Inc., but the corporation “closed” in 2006. Respondent Courtney “Corey” McNutt had a financial interest in the company, but Pereira held all the titles in the corporation.

3. In March 2003, Complainant was employed by ADT. She met Respondents Pereira and McNutt while attempting to sell Respondents a security system at their newly opened location in Springfield, Massachusetts. Complainant had previous car sales experience working for other automobile dealers, Wilbraham Toyota and Hampden Dodge. When Pereira and McNutt learned of her experience, they offered Complainant a sales position. Complainant began working for Respondents in late In March 2003.

4. Respondents’ employees included Joseph Pereira’s father, also Joseph Pereira (“Joseph Sr.”)<sup>1</sup>, who was “retired” and had no managerial duties. Joseph, Sr. performed occasional tasks such as cleaning cars and setting up the lot, as well as talking with customers. Kerri Francis conditioned cars and her sister Marie Francis performed clerical duties in the office. Terry Tosh was a salesman.

5. Courtney “Corey” McNutt and Joseph Pereira were the company’s managers. Each also operated independently with McNutt purchasing vehicles primarily from

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<sup>1</sup> For purposes of clarity he will be referred to herein as Joseph, Sr.

auctions, and Pereira purchasing primarily retail vehicles. McNutt and Pereira would each use his own money to purchase cars and each was responsible for his own cars. Complainant was paid on a commission basis, depending on the price of the cars she sold. McNutt paid Complainant a commission for cars she sold that were owned by him and similarly, Pereira paid her for cars she sold owned by him. In addition to commissions, Respondents paid Complainant fees for selling gap insurance.

6. McNutt spent much of his time on the road, purchasing cars at auction. Pereira was also frequently out of the office purchasing cars. Pereira stated that for the first month Complainant worked very well, but in July she began having personal and physical problems. McNutt stated that Respondents accommodated Complainant's schedule. They merely told her to make a schedule and "stick to it." I credit their testimony.

7. Autos by Joseph consisted of a main room with large windows overlooking Bay Street in Springfield, with a small office on either side. Marie Francis occupied the right hand office and Complainant used the left hand office to perform paperwork. Pereira and McNutt did not have their own offices and when they needed to do paperwork, they used Marie Francis' office.

8. Complainant testified that about a month after she began her employment, McNutt began commenting on her hair, her legs and her breasts. Complainant testified that she would tell McNutt to "shut up," and "knock it off," but McNutt would respond by laughing, and his conduct did not cease. Complainant testified that she was "really angry" and "upset" and told co-worker Terry Tosh about McNutt's comments. While I believe that there may have been some sexual banter in the office, I believe that

Complainant was a willing participant in this conduct and I do not think that her working conditions were altered by this.

9. Complainant testified that in July, 2003, McNutt's conduct escalated to physical touching. According to her, on one occasion in July 2003, she was exiting Marie Francis' office, when McNutt walked in, stopped her at the office door, put his hand around her waist and placed his hands on her breasts and "all over the place." She testified that she called him a jerk and McNutt responded, "You're in a bad mood." I do not credit her testimony that McNutt engaged in such physical conduct.

10. Complainant testified that on July 17, 2003 when she was sitting at her desk, McNutt came up behind her and put his hands on her breasts. She testified that the following day, July 18, she had just finished with a client and was leaning against a file cabinet in the main office, when McNutt entered the room, lifted her legs up in the air, put her legs on his shoulders sending her backwards against the wall, and tried to put his head between her legs. She stated that she struggled to push him away and yelled at him to get away from her. According to Complainant, Marie Francis came out of her office to see what was happening, but said or did nothing. I do not credit her testimony that McNutt engaged in such outrageous conduct.

11. Complainant testified that she documented McNutt's conduct on scraps of paper as incidents occurred, and later transcribed them into a spiral notebook, which she saved and submitted to the Commission.

12. Terry Tosh testified that Complainant told him about the incident described above during a conversation at a restaurant located in Wilbraham where they went to watch Pereira play in a band. I credit his testimony that Complainant told him about this

incident, but I still do not believe that it occurred and believe she fabricated the account to Tosh.

13. McNutt denied engaging in the conduct described by Complainant above and he further denied any touching of Complainant in a sexually offensive manner. I credit his testimony that this incident did not occur and that he did not engage in physical touching of Complainant. Moreover, I find it implausible that McNutt would have risked such conduct in an open office with large windows overlooking a busy street and with another employee in the next office, as claimed by Complainant. Furthermore, I find it implausible that anyone observing a sexual assault of the type described by Complainant would ignore it, as she claims Marie Francis did.<sup>2</sup> Likewise, I find it implausible that Complainant, whose demeanor was assertive and defiant throughout the hearing, would not have contacted the authorities immediately upon having been assaulted in the manner she alleges.

14. Complainant testified that on July 19, 2002, she told Pereira that she was having trouble with McNutt. According to Complainant, Pereira responded, “Allie, you’re a big girl. You can handle Corey.” She told Pereira that she was going to slap McNutt’s face. I do credit her testimony that she had this conversation with Pereira.

15. Complainant testified that on July 26, 2003, she brought her 5 and ten year old granddaughters to work with her. She claims that while they were in the main office, McNutt came in and asked Complainant if she wanted to “play with his dick.” She testified that the ten-year-old heard McNutt’s remarks and was very upset. Complainant testified that she told McNutt to get away from her. Joseph Sr. was outside in the parking

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<sup>2</sup> Marie Francis did not testify at the public hearing

lot cleaning cars, but she did not inform him about this incident. I do not credit her testimony that this incident occurred.

16. Complainant's son, Christopher Ingalls, testified that later that day, Complainant told him about this incident. Ingalls testified although he was angered by this incident and wanted to "kick [McNutt's] ass." Complainant begged him to stay out of it because she was afraid of losing her job. I do not credit his testimony because I believe the entire scenario was fabricated by Complainant.

17. Complainant testified that during the last week of July 2003, her oldest son Clifford arranged to buy a car from McNutt. After the transaction was completed, McNutt laughingly told her that he gave her son a good deal and in exchange Complainant owed McNutt sex. Complainant responded that people get good deals all the time. I credit Complainant's testimony that McNutt may have joked with her about a quid pro quo for the deal, but do not believe she was offended.

18. Complainant testified that at this point she was emotionally "a wreck," as she needed her job because she was recently separated from her husband and supporting her 13-year-old son. She claimed she had insomnia and could not eat. I credit her testimony that she was emotionally upset, but find that this is attributable to her separation from her husband and her precarious financial situation, rather than to the conduct of McNutt. I also find that it is not credible that her son could be negotiating the purchase of a car from someone who was making her so allegedly distraught and wreaking havoc on her emotions.

19. Complainant testified that on one occasion she was in the company parking lot at around 5:00 or 6:00 p.m., waiting for a ride home from work, while McNutt was

locking up cars for the night. According to Complainant, McNutt approached her and asked her if she had ever been licked all over. He purportedly stated that "I once licked my wife for five hours, and if you were a real blonde, I could lick you even longer." According to Complainant, he also asked her if she had had sex within the past six months, and she told McNutt to shut up. I do not credit her testimony that this incident occurred.

20. Complainant testified that in August 2003, McNutt urinated in one of the company's bathrooms with the door open, within sight of her and Kerri Francis. I do not credit this testimony. McNutt denied engaging in this conduct and I credit his testimony.

21. Complainant testified that in August 2003, she was in the company's main office talking to Pereira, when McNutt walked in, bare-chested, holding his shirt in his hand. He put his hands on his nipples and stated, "Not bad for 50 years old. Maybe 'Playgirl' will want me." Complainant testified that Pereira laughed at McNutt's conduct. Complainant testified that she walked into her office, McNutt followed her in and asked her if she wanted to have a contest to see whose nipples were bigger. She told him to get the f--- away from her. I credit her testimony that this incident occurred, but do not believe it upset Complainant or altered her working conditions.

22. Complainant testified that in mid-August, she met with Pereira, Joseph Sr. and Terry Tosh in the company's main office to discuss the situation with McNutt. She testified that she told Pereira that McNutt was getting out of hand and that both she and Kerri Francis were having problems with him. According to Complainant, Pereira responded that his hands were tied and that it was not a good time to deal with the situation because he was beholden to McNutt with respect to the company's finances. I

do not credit her testimony. Pereira and Tosh did not recall any such meeting. I credit their testimony.

23. Complainant's son Christopher Ingalls testified that Complainant subsequently called him on a few occasions to complain about McNutt speaking to her in an offensive manner. He stated that Complainant never told him about any physical touching by McNutt. I credit his testimony that Complainant told him about alleged offensive comments by McNutt, but I find that Complainant did so in order to provoke Ingalls into a confrontation with McNutt.

24. Ingalls testified that in mid-August he confronted McNutt in the company's parking lot about Complainant's accusations. He stated that McNutt responded that he was only joking around. He told McNutt that he would "beat his ass" if he had to return. I credit Ingalls' testimony about this confrontation with McNutt, as this incident was corroborated by McNutt, who told Ingalls that he was misinformed about McNutt's conduct.

25. On or about September 2, 2003, Complainant's attorney sent a letter to Pereira stating that McNutt was creating a hostile work environment for Complainant. In the letter, Attorney Goldblatt warned Pereira against terminating Complainant's employment as it would be considered unlawful retaliation. (Exh. C-1 )

26. Complainant testified that after receiving Goldblatt's letter, Pereira angrily confronted her and increased her hours, requiring her to come in an hour earlier than usual on Sundays. She testified that shortly after this confrontation, Pereira called her cell phone, stating, "You know and I know that you have been around the block. You have children. This isn't like you're a virgin." Complainant responded that having

children did not mean she'd "been around the block" and she just wanted McNutt's conduct to stop. She claimed that Pereira then called her a pig. I do not credit her testimony, but do believe that Pereira was justifiably upset about receiving a letter from her attorney and may have confronted her about this.

27. Ingalls testified that on September 29, 2003, after learning from Complainant that Pereira had called his mother a "whore," he went to Autos by Joseph and approached Pereira in the parking lot. He then pushed Pereira from behind, knocking him to the ground and kicking him in the leg. Joseph Sr. threatened to call the police and Ingalls then departed. Pereira, who was undergoing chemo-therapy for cancer during this time period, corroborated Ingalls' testimony regarding this incident.

28. Complainant testified that on September 29, 2003, she called the company to inquire about the next week's work schedule. Joseph Sr. answered the phone and told her that there was no schedule. He then said, "I don't want you here. You're fired." I credit this testimony.

29. While employed by Respondent, Complainant was going through a separation from her husband. She also had financial problems, was being threatened with foreclosure and was involved in litigation with her homeowner's insurance company. Complainant has, prior to her employment at Autos By Joseph, filed two MCAD complaints of sexual harassment against former employers that were settled prior to hearing.

30. Terry Tosh testified that at a meeting, he once observed McNutt briefly massage Complainant's neck and shoulder. She shrugged it off and McNutt stopped. I

credit this testimony, which was not denied by McNutt, who testified that he did not remember this incident, but he could not say it did not happen.

31. Much of Tosh's testimony consisted of multi-level hearsay concerning alleged inappropriate behavior by McNutt toward his god-daughter Kerri Francis. As Kerri Francis did not testify at the hearing and was fired by Respondents for poor work performance, I assign little weight to this testimony by Tosh.

32. McNutt testified that Complainant was frequently tardy and that Respondents had grounds to terminate her long before receiving Goldblatt's letter. However, Respondents were aware of Complainant's personal problems and tried to work around them, telling her to make her own schedule and then stick to it. He stated that Complainant was good with customers and they needed sales people.

33. Pereira testified that he first learned of Complainant's charges against McNutt when he received Attorney Goldblatt's letter. Pereira testified that after receiving the letter, Complainant told him that she was not upset with him, but was "getting even with" McNutt. I credit his testimony. McNutt testified that after receiving Goldblatt's letter, on or about September 4, 2003, he and Pereira discussed its content. I credit his testimony,

34. McNutt denied all of the incidents of touching and offensive comments described by Complainant in June, July and August. However, with regard to the incident testified to by Tosh when he put his hands on Complainant's shoulders, he stated that he did not recall it but could not say that it did not occur. I credit his testimony that he did not engaging in physical touching with Complainant, but may have once put his hands on her shoulders.

35. During the course of her employment, Complainant purchased two cars from Respondents, a Buick LeSabre for her son Clifford and a Mercury Sable for herself. According to Pereira, Complainant did not keep up the payments on the vehicles and Complainant told him that if he forgave her debt, she would drop the sexual harassment complaint. Pereira, who during this time was undergoing cancer treatment and had financial difficulties himself, testified that he could not afford to give Complainant a car. I credit his testimony and find that Complainant was using her threat to sue to gain a financial advantage from Respondents.

36. Pereira testified that the day Christopher Ingalls assaulted him, September 29, he told Complainant that he had had enough and she needed to either return the Mercury Sable or the money. Days later Pereira filed a police report listing the Mercury Sable as stolen, and within a few days, Complainant paid Respondents the money owed for the vehicle. I credit Pereira's testimony.

37. Pereira denied ever telling Complainant that she'd "been around the block." Pereira stated that, from the time they received Goldblatt's letter, he and McNutt were fearful of Complainant and her son and were "walking on eggshells." I credit his testimony.

38. Pereira testified that his father, Joseph Sr., had no authority to terminate Complainant's employment. He stated that Complainant never called him back after his father let her go. I credit his testimony.

### III. CONCLUSIONS OF LAW

#### A. Sexual Harassment

M.G.L. Ch. 151B, sec. 4(16A) prohibits sexual harassment in employment.

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; (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. G.L.c.151B§1(18); College-town Division of Interco. v. MCAD, 400 Mass. 156, 165 (1987). Complainant alleges that Respondent Corey McNutt engaged in offensive conduct creating a sexually hostile work environment by sexually assaulting her and repeatedly making sexually offensive comments to her.

I conclude that Complainant’s allegations against Respondent are largely fabricated. While I believe that McNutt may have engaged in some verbal banter of a sexual nature, I believe it was done in a joking manner, and I am not convinced that the complained of conduct was uninvited. With the exception of putting his hands on her shoulders, there is no credible evidence that McNutt directed inappropriate touching of a sexual nature towards Complainant at any time during the course of her employment. No one else witnessed these alleged acts and I found Respondents’ denials credible. The office was small, and such conduct would easily have been witnessed. In addition, both Pereira and McNutt were frequently out of the office. I believe that Complainant exaggerated any claims of sexual comments or joking banter and fabricated her claims of

physical touching, in collusion with her son Christopher, in an attempt to extort money and cars from the Respondents. I did not credit the testimony of Complainant regarding Respondent's physical attacks on her. It strains credulity that after undergoing an outrageous sexual assault by McNutt, in Respondent's main office and in the presence of a co-worker, that Complainant would fail to report the incident to the police or, at the very least, request the assistance of her co-worker who she said came out of her office when she heard Complainant yelling. Complainant would have me believe that despite McNutt's alleged outrageously offensive behavior, she continued to report to work and that her son bought a car from McNutt.

Moreover, there was evidence that Complainant has filed and settled complaints of sexual harassment against previous employers, lending support to my conclusion that Complainant generally lacks credibility and has filed this claim in the hopes of extorting cash or automobiles from Respondents. Complainant was in dire financial straits and could not make the payments on the cars she purchased from Respondents. Based on my observations of the witnesses and their demeanor while testifying, I found McNutt and Pereira to be significantly more credible than Complainant and I largely credit their version of events. On balance, I find that a hostile work environment did not exist, as I do not believe that McNutt's joking conduct offended Complainant or unreasonably interfered with her work performance so as to support a claim for hostile work environment. The testimony of Complainant's son, Christopher Ingalls, was a bizarre recounting of his violent behavior against McNutt and Pereira. While Ingalls testified to contemporaneous complaints from his mother regarding McNutt's behavior, I believe that he and his mother collaborated in a scam to extort money from Respondents. He

first testified that after Complainant told him about the alleged comments in his daughters' presence, she begged him not to confront McNutt because she needed her job. This is inconsistent with his testimony that Complainant continued to complain to him about incidents involving McNutt and Pereira, knowing that such complaints could lead him to violent confrontation with them.

Terry Tosh testified that Complainant made a contemporaneous complaint to him about McNutt's conduct. However, Tosh's testimony otherwise consisted of multi-level hearsay concerning allegations against McNutt by Kerri Francis, to which I assign little weight, as she did not testify at the public hearing and was fired by Respondents for poor work performance.

On the other hand, Respondents Pereira and McNutt testified credibly that Complainant had numerous financial and personal problems and purchased vehicles from them for which she did not keep up payments. McNutt denied that he engaged in inappropriate conduct and I found his testimony largely credible.

Since I discredit most of Complainant's testimony and her witnesses' testimony regarding the alleged inappropriate conduct of McNutt and did not believe she was subjected to a hostile work environment, I conclude that Complainant has failed to prove unlawful sexual harassment in employment and order that the complaint of sexual harassment in this matter be dismissed.

#### B. Retaliation

Complainant has alleged that she was subjected to retaliatory termination after complaining of sexual harassment and directing her attorney to write a letter to Respondents regarding her claim.

In order to establish a prima facie case of retaliation, Complainant must show that she engaged in a protected activity, that Respondents were aware of the protected activity, that Respondents subjected her 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).

Under M. G. L. c. 151B, s. 4 (4), a plaintiff has engaged in protected activity if "he has opposed any practices forbidden under this chapter or . . . has filed a complaint, testified or assisted in any proceeding under [G. L. c. 151B, s. 5]." 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 Co., 423 Mass. 652, 662 n.11 (1996), citing Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996). That Respondent knew of a discrimination claim 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. Complainant has established the first element of a prima facie case. Goldblatt's letter constituted a protected activity. When Complainant called for her hours on September 29, 2003, Joseph Sr., told her she was fired. However, the evidence showed that Joseph Sr. had no actual authority to hire and fire. Therefore, he would have to have had "apparent authority" to terminate Complainant's employment. Under the theory of apparent authority, an employer is liable for a supervisor's actions, if the actions represent the exercise of authority that third parties reasonably believe her to possess by virtue of her employer's conduct. MCAD & Donna Girouard v. Bekiro Corp., d/b/a Burger King of Bunker Hill, et al, MDLR 2004 See Przybycien v. Aid Maintenance Company, 13 MDLR 1266 (1991). When Joseph Sr. told Complainant he did not want her back at Respondent,

he acted with apparent authority and Complainant could easily have assumed she was fired. However, I conclude that his actions were justified, as they occurred after Complainant's son physically assaulted Respondent Pereira. This was not protected activity. I find that Complainant was fired by Joseph Sr. for this reason and that this constituted a legitimate, non-discriminatory reason for terminating Complainant's employment. See, Hochstadt v. Worcester Foundation, 545 F2d. 222(1<sup>st</sup> cir. 1976); Jackson v. St. Joseph State Hospital, 840 F2d. 1387(8<sup>th</sup> cir. 1988), cert.den. 488 U.S. 892(1988).

For the reasons stated above, I conclude that Respondents did not engage in unlawful retaliation, and I further conclude that this matter must be dismissed.

#### IV. ORDER

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

This is the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within 30 days of receipt of this order.

SO ORDERED, this 13th day of March, 2007.

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JUDITH E. KAPLAN  
Hearing Officer