

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

BARON RODRIGUES &
WILLIAM CHIRIGOTIS
Complainants

v.

DOCKET NO. 98 BEM 2296
98-BEM-2299

MASSACHUSETTS DEPARTMENT
OF CORRECTION,
Respondent

DECISION OF THE FULL COMMISSION

This matter came before us following a decision of Hearing Officer Judith Kaplan in favor of both Complainants. Following an evidentiary hearing, the Hearing Officer concluded that Respondent subjected Complainants to discrimination on the basis of religion. Specifically, the Hearing Officer found that Respondent failed to accommodate both complaints due to their religion and that both were subjected to harassment due to their religion in violation of M.G.L. c. 151B, § 4(1). The Hearing Officer dismissed the Complainants' complaints of retaliation. Respondent filed a timely Petition for 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 Commissioner or Officer. M.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); M.G.L. c. 30A. It is the responsibility of the Hearing Officer to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed questions of fact, and the Full Commission defers to these determinations. See e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The role of the Full Commission 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(1)(h).

We have carefully reviewed the petition 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 articulated herein. As a result of that review, we find no material errors of fact or law and conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Officer. We therefore deny Respondent’s appeal and affirm the decision below in its entirety.

Having affirmed the decision of the Hearing Officer, we conclude that Complainants have prevailed in this matter and are therefore entitled to an award of reasonable attorneys’ fees and costs. See, e.g., Texas State Teachers Assn. v. Garland Independent School Dist., 489 U.S. 782 (1989). In rendering a determination of what is a reasonable fee, the Commission has adopted the lodestar methodology for fee computation. See Fontaine v. EBTEC Corp., 613 N.E.2d 881, 891 (1993); Baker v. Winchester School Committee, 14 MDLR 1079 (1992); Brown v. City of Salem, 14 MDLR 1365 (1992). This method requires

the Commission to undertake a two-step analysis. First, the Commission will calculate the number of hours reasonably expended to litigate the successful claim and then multiply that number by an hourly rate considered to be reasonable. Second, the Commission will then examine the resulting figure, known as the “lodestar”, and will adjust it either upward or downward or not at all depending on several factors.

Complainants did not prevail on all claims. Specifically, Complainants have not prevailed on the claim of retaliation. However, they did succeed with their claims of religious discrimination and harassment in the terms and conditions of employment, and are therefore prevailing parties entitled to an award of attorneys’ fees. See e.g., Texas State Teachers Assn. v. Garland Independent School Dist., 489 U.S. 782 (1989). Thus, one question we will address in reviewing Complainant's application for fees is whether the request ought to be reduced to reflect the partial success of Complainants’ claim. See M.G.L. c.151B, s.5. Ordinarily, the Commission will examine the hourly and rate information and then arrive at some determination whether to reduce the fee award by a certain percentage. This approach is necessitated because billing records ordinarily are kept by case rather than by claim within the case. See e.g., Sanderson v. Town of Wellfleet (1995).

In support of their petition for attorney fees and costs, Complainants submitted an affidavit of counsel and an itemized record of billing hours and costs. Complainants submitted a petition seeking \$21,937.50 in fees and \$1637.40 in costs.

To support their claim for attorneys' fees, Complainants' counsel submitted contemporaneous time records outlining the work performed. We believe that the degree of interconnectedness of Complainants' claim of harassment and religious discrimination and claim of retaliation is not significant. That is, work done on Complainants' successful claims is not significantly interconnected with work done on the unsuccessful claim so as to credit all time performed in pursuit of the retaliation claim. This is so because among other things, the prima facie cases of the retaliation claim and the harassment claim are wholly different. Each claim requires separate evidentiary proofs and we see little overlap between the two claims. See e.g., Phetosomphone v. Allison Reed Group, 984 F.2d 4 (1st Cir 1993). We will therefore reduce the hours component of the lodestar equation by some appropriate amount. For all of the above reasons, we reduce the listed hours by a factor of 30%. While this is not an insignificant reduction, it is necessary to account for the unsuccessful claim. We believe that it is a fair reduction, and we base this belief on our review of numerous other matters, which have come before us.¹ Counsel for Complainants has submitted what appears to be contemporaneous billing information reflecting an overall total of 87.75 hours expended by legal and support staff in the litigation of this matter. Therefore, we find that 61.425 hours were hours reasonably necessary to litigate the successful portion of Complainants' case.

¹The Commission concludes that the overall amount of time spent by Complainants' counsel on preparation and litigation of this matter is reasonable. There is no evidence that the hours spent were duplicative, unproductive, excessive, or otherwise unnecessary to successful prosecution of Complainants' claim.

In addition, since the hourly rate has not been documented either by or specified according to the person performing the work² adjustment must be made here as well. We think a 20% reduction is appropriate since this information has largely not been supplied by the Complainants as required. Therefore, the hourly rate is \$200.00 per hour.

In this case, the lodestar figure is: \$12,285.00. We conclude that the lodestar figure is a reasonable one and does not require enhancement. Further, we have examined the costs in this matter and find that \$1,637.40 represents a reasonable figure of costs incurred incident to litigation of this matter.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact and conclusions of law of the Hearing Officer and issue the following order of the Full Commission:

- (1) Within sixty (60) days of receipt of this Order, Respondent shall pay Complainant Rodrigues the sum of \$50,000 in damages for emotional distress;

² A calculation of the hours reasonably expended involves separating out work done in relation to the individual doing the work (e.g., senior partner, junior associates, and paralegal). Time beyond that consistent with a standard of reasonable efficiency and productivity is eliminated. Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours insufficiently documented. *Grendel's Den v. Larkin*, 749 F.2d 945 (1st Cir. 1984). *Miles v. Samson*, 675 F.2d 5 (1st Cir.1982). *Furtado v. Bisho* 635 F.2d 915 (1st Cir. 1980); *Baird v. Bellot*, 616 F.Supp. 6 (D.Mass 1984); *Brown v. City of Salem*, 14 MDLR 1365 (1992).

- (2) Within sixty (60) days of receipt of this Order, Respondent shall pay Complainant Chirigotis the sum of \$35,000 in damages for emotional distress;
- (3) Within sixty (60) days of receipt of this Order, Respondent shall pay Complainants' attorneys' fees in the amount of \$12,285.00 and reasonable costs in the amount of \$1,637.40.
- (4) Respondent shall immediately cease and desist from further acts of religious discrimination;
- (5) The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made.

This ORDER represents the final action of the Commission for purposes of M.G.L. c.30A. Failure to comply with this Order will result in the Commission's initiation of enforcement proceedings, pursuant to 804 CMR 1.25, which may subject the non-complying party to both civil and criminal penalties as provided in M.G.L. c.151B, s.8.

Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review. Such action must be filed within 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 Superior Court Standing Order on Judicial Review of Agency Actions. The filing of a petition pursuant to M.G.L. c.30A does not automatically stay enforcement of this Order. Failure to file a petition in court within 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, s.6.

SO ORDERED this 29th day of January, 2004.

Cynthia A. Tucker, Commissioner

Walter J. Sullivan, Jr., Commissioner