

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

BELINDA WILLIAMS,
Complainant

v.

DOCKET NO. 98-BPR-1732

MELVIN LEE HARDY,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Complainant, Belinda Williams. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for unlawful housing discrimination in violation of M.G.L. Chapter 151B, section 4, paragraph 10. The Respondent filed a timely appeal to the Full Commission.

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. M.G.L. c. 151B, section 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 Hearing Officer's responsibility to evaluate the credibility of witnesses and/or 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 1.16(f).

RESPONDENT'S PETITION FOR REVIEW

Respondent contends on appeal that the Hearing Officer erred as a matter of law when she found subject matter jurisdiction in this matter. Specifically, Respondent contends that since Complainant had not yet signed a lease for an apartment and therefore had not yet received an actual subsidy from the BHA, the rental unit at issue was exempt from the provisions of M.G.L. Chapter 151B, section 4(10). Respondent states that Complainant had only the promise of a subsidy and not the subsidy itself.

Respondent is correct in his assertion that only rental units that are sought by section 8 program participants fall within the jurisdiction of Chapter 151B, section 4(10). In this matter, the Hearing Officer correctly found such jurisdiction. At the time Complainant applied for and was offered Respondent's rental unit, she had already received a certificate, or voucher, for a section 8 housing subsidy. She also had a Request For Lease Approval (RFLA) that both she and Respondent completed when she first visited the rental unit. Housing authorities issue RFLAs only to individuals who are already section 8 participants and have already received vouchers. See 24 CFR 982.204 (Administration of Waiting List); "Boston Housing Authority Administrative Plan for the Section 8 Existing Housing Certificate, Voucher, Project-Based Certificate, Family Self-Sufficiency and Moving to Opportunity for Fair Housing Demonstration Programs," at 23-26.

To adopt Respondent's position that there was no subject matter jurisdiction in

this matter because Complainant had not yet received actual subsidy funds, due to the fact that she had not yet signed a lease, would subvert the clear intention of the statute to prohibit discrimination against all section 8 program participants. The legislative intent of the law clearly extends to prospective tenants in possession of section 8 vouchers; otherwise, prospective landlords, while prohibited from discriminating against individuals with whom they have signed leases, could nonetheless freely discriminate against individuals seeking to sign a lease. Such a result was neither intended nor contemplated by the statutory provisions of Chapter 151B.

Respondent also contends that the Hearing Officer erred as a matter of law when she found that Respondent sought to avoid renting to Complainant on the basis of her section 8 status, which error Respondent claims is shown by his willingness to sign the RFLA in March. Respondent states on appeal that the Hearing Officer, in making this finding, was arbitrary and capricious.

While the evidence demonstrates that Respondent was initially willing to rent to Complainant in March, the Hearing Officer found that after he initially signed the RFLA, Respondent became frustrated with the requirements of the section 8 process and eventually abandoned his intent to rent to Complainant on that basis. The Hearing Officer found credible direct evidence produced by Complainant and other witnesses that: Respondent failed to call Elliot Clark to arrange an inspection of his property as required by the section 8 process; Respondent failed to return Complainant's telephone calls regarding the apartment; Respondent told Complainant he decided to rent to someone who did not possess a section 8 certificate because the section 8 process was too frustrating; and Respondent told Commission Investigator Kimberly Boyd that the successful tenant was a better choice because she had a job and did not receive public assistance. The Hearing Officer found that Respondent failed to rebut the evidence supporting a finding of discrimination, opining specifically that his testimony was inconsistent and not credible. We, therefore, find that there was substantial evidence to

support the Hearing Officer's decision with respect to housing discrimination despite Respondent's initial signing of the RFLA with Complainant.

Respondent's additional contentions are that the Hearing Officer's finding that Respondent's rejection of her tenancy was discriminatory and her award of damages were not supported by substantial evidence. We have carefully reviewed Respondent's contentions and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law. We find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them. On the above grounds, we deny the appeal and affirm the Hearing Officer's Decision.

COMPLAINANT'S PETITION FOR ATTORNEYS' FEES

Complainant has filed a Petition seeking attorneys' fees in the amount of \$30,000.00. Respondent has not filed an Opposition thereto. M.G.L. c. 151B allows a prevailing complainant to recover attorneys' fees. The determination of whether a fee sought is reasonable is subject to the Commission's discretion. In rendering a determination of a reasonable fee, the Commission has adopted the "lodestar" methodology for fee computation. By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by a reasonable hourly rate. See Samuelson v. Sunguard Financial Systems and Fraser Chambers, 23 MDLR, 121 (2001); Baker v. Winchester School Committee, 14 MDLR 1097 (1992).

Only those hours that were reasonably expended to litigate Complainant's claim are subject to compensation under M.G.L. c. 151B. In addition, the calculation of hours reasonably expended includes eliminating time beyond that consistent with a standard of reasonable efficiency and productivity; subtracting hours that appear to be duplicative,

unproductive, excessive, or otherwise unnecessary to prosecution of the claim; and eliminating hours insufficiently documented. See Harley v. Costco Wholesale Corp., 23 MDLR 140 (2001); Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir. 1984). In determining whether the requested hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved.

Complainant's counsel seeks reimbursement of \$30,000.00, an amount representing the work of two attorneys who worked a total of 116 hours and charged hourly fees of \$250.00 and \$300.00. To support her claim for attorneys' fees, Complainant's counsel submitted a detailed listing of dates, time allocations, and a description of activities performed relating to this matter. This listing includes, but is not limited to, legal research, discovery activities, witness preparation, preliminary Commission matters, attendance and presentation of Complainant's claims at the public hearing, and submission of post-hearing briefs.

We have examined the facts of this case and the Commission concludes that the amount of time spent by Complainant's 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 Complainant's claim. Accordingly, we conclude that hours for which Complainant's counsel seeks reimbursement are reasonable.

Attorney Barbara Rabin charges an hourly rate of \$250.00, a rate that is supported by documentation of her legal experience and expertise in the area of housing discrimination law. We conclude that the rate charged by Attorney Rabin is consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases and is well within the rates charged by attorneys in Boston of similar experience.

Attorney Andrew Lane charges an hourly rate of \$300.00. We conclude that the

rate charged by Lane is also consistent with that charged by attorneys with comparable experience and expertise in such cases and is well within the range of rates charged by such attorneys in Boston .

We therefore award fees based on the following rates submitted by counsel:

Barbara Rabin 96 hours x \$250.00/hour = \$24,000.00

Andrew Lane 20 hours x \$300.00/hour = \$ 6,000.00

TOTAL FEES = \$30,000.00

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 the Complainant \$50,000.00 in damages for emotional distress plus interest thereon at the statutory rate of 12% per annum from the date of the filing of the complaint until payment is made or this obligation is reduced to a court judgment and post-judgment begins to accrue;

(3) Within sixty (60) days of receipt of this Order, Respondent shall pay Complainant's attorneys' fees in the amount of \$30,000.00;

(4) 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. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint seeking judicial review, together with a copy of the transcript of proceedings before the Hearing Officer or Commissioner (See M.G.L. c.

151B, s.6) in the Superior Court within thirty (30) days of receipt of this decision.

Failure to file a petition in court within 30 days of the receipt of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, section 6. The filing of a petition pursuant to M.G.L. c. 30A does not automatically stay enforcement of this Order. 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 noncomplying party to both civil and criminal penalties as provided in M.G.L. c. 151B, section 8.

SO ORDERED this 14th day of January, 2003.

Walter J. Sullivan, Jr.
Commissioner

Cynthia A. Tucker
Commissioner