

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
BETH ANN FAUNCE,  
Complainants

v.

DOCKET NO. 01-BEM-10717

CITY OF FALL RIVER,  
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty E. Waxman in favor of Complainant, Beth Ann Faunce. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for sexual harassment and retaliation in violation of chapter 151B, sections 4(1) and 4(16) of the Massachusetts General Laws. Respondent appealed 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, § 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 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. Colonade 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.

Respondent has appealed the decision on the grounds that the Hearing Officer's findings concerning when Respondent became aware of the sexual harassment and whether the Fire Chief retaliated against Complainant were erroneous. It also argues that the Hearing Officer's award of damages for emotional distress was not justified.

We have carefully reviewed the Respondent's Petition and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our 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 with regard to Respondent's knowledge of the sexual harassment, retaliation, and the emotional damages award. We therefore, deny the appeal and affirm the decision below in its entirety.

## COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS

Having affirmed the Hearing Officer's decision in favor of the Complainant, we conclude that the Complainant has prevailed in this matter and is entitled to an award of reasonable attorney fees and costs. See M.G.L. c. 151B, § 5.

The determination of what is a reasonable fee is one that the Commission approaches utilizing its discretion and its understanding of the litigation of a claim of discrimination in the administrative forum of the Commission Against Discrimination. In reaching a determination of what is a reasonable fee, the Commission has adopted the lodestar method for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (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 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 adjust it either upward or downward or not at all depending on various factors.

The Commission's efforts to determine the number of hours reasonably expended will involve more than simply adding all hours expended by all personnel. The Commission carefully reviews the Complainant's submission and will not simply accept the proffered number of hours as "reasonable." See, e.g., Baird v. Belloti, 616 F. Supp. 6 (D. Mass, 1984). Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours that are insufficiently documented. Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir.); Miles v. Samson, 675 F. 2d5 (1st Cir. 1982); Brown v. City of Salem, 14 MDLR 1365 (1992).

Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Baker v. Winchester School Committee, *supra.*, at 1099.

Complainant's counsel has filed a petition seeking attorneys' fees and costs in the amount of \$23,379.31, and supporting the request with an affidavit and contemporaneous time records.

Having reviewed the contemporaneous time records that support the attorneys' fees request, and based on this and similar matters before the Commission, we conclude that the amount of time spent on preparation and litigation of this claim by is reasonable. Costs should be granted as requested, for a total award of \$23,379.31.

We further conclude that Complainant's attorney hourly rate is consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases, is within the range of rates charged by attorneys in the area with similar experience and is reasonable.

## **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. Respondent shall pay Complainant damages as set forth in the Hearing Officer's decision, within 60 days of receipt of this Order;

2. Respondent shall pay Complainant damages for emotional distress as set forth in the Hearing Officer's decision, within 60 days of receipt of this Order;
3. Respondent shall pay Complainant the fines for attorneys' fees and lost employment opportunities as set forth in the Hearing Officer's decision, within 60 days of receipt of this Order;
4. Respondent shall pay the Commission sanctions for failure to supply documentary discovery as set forth in the Hearing Officer's decision, within 60 days of receipt of this Order; and
5. Respondent shall pay to Complainant's counsel the amount of \$ 23,379.31 in attorney' fees and costs, within 60 days of receipt of this Order.

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, § 8.

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. 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, § 6.

SO ORDERED this 2nd day of May, 2008.

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Malcolm Medley  
Chairman

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Martin S. Ebel  
Commissioner

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Sunila Thomas-George  
Commissioner