

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

CAROL SUTHERLAND and
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 04-SEM-02916

NEW MONTALEGRE RESTAURANT,

Respondent

Appearances: James E. Winston, Esq. for Complainant
Mary J. Kennedy, Esq. for Respondent

ORDER OF THE FULL COMMISSION ON COMPLAINANT'S APPLICATION
FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE

A public hearing was conducted in this matter on March 13 and 14, 2006, arising out of charges by Complainant that she was sexually harassed by Luis Rosa, the owner and operator of Respondent New Montalegre Restaurant, where she was formerly employed. On September 8, 2006, the Hearing Officer dismissed the case based on her findings of fact and conclusions of law. In her decision, the Hearing Officer credited the testimony of Luis Rosa and Desiree Porra and declined to credit the testimony of Hilda Rosario, Cynthia Wilson, and the Complainant.

On November 10, 2006, following issuance of the Hearing Officer's decision, Complainant filed an Application For Leave to Present Additional Evidence based on the allegation that Luis Rosa, approximately one week after the Public Hearing, sexually assaulted another female employee, Anna Alberto, and that Alberto quit as a result of the alleged assault. Complainant also alleges that Luis Rosa gave money and other gifts to Desiree Porra in exchange for favorable testimony at the Public Hearing.

The Commission may reopen a hearing to allow the presentation of additional evidence where the applicant shows "to the satisfaction of the Commission that the additional evidence is material to the issues in the case and that there was good reason for failure to present it in the proceeding before the . . . Hearing Officer." 804 C.M.R. 1.23(1) (g). The application must be made "within a reasonable time after the hearing." Bowen v. Colonnade Hotel, 3 MDLR 1435, 1440 (1981), *quoting Mitchell v. Reminder Publications, Inc.*, 77-SEM-0037.

Exhibit A to Complainant's Application establishes that Complainant was aware of the information which she seeks to introduce about Anna Alberto within two months of the public hearing. Complainant does not specify when she first came into possession of information relating to Ms. Porra which forms the second basis for Complainant's Application, but it, too, was after the public hearing. Complainant, thus, may have delayed a period of months before moving to present additional evidence or may have reasonably waited until the cumulative, unresolved nature of the evidence motivated her to file the Application. Concerns about undue delay in making this motion must be balanced against the relevance of the proffered

testimony. Having weighed all factors, we conclude that the case should be remanded to the Hearing Officer to be reopened for the limited purpose of accepting evidence relative to the two grounds set forth in Complainant's Application For Leave To Present Additional Evidence.

So ordered this 9th day of March, 2007.

Walter J. Sullivan, Jr., Chairman

Martin Ebel, Commissioner