

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
CLAUDE SYLVESTRE,
Complainants

v.

DOCKET NO. 97-BEM-4600

FLATLEY COMPANY &
INTERNATIONAL INN, INC.¹
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Kenneth B. Grooms in favor of Respondent Flatley Company. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discrimination on the bases of race and color and national origin, or retaliation in violation of M.G.L. Chapter 151B, section 4, paragraphs (2), (4) and (4A). Complainant 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. 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); G.L. c. 30A.

¹ At the public hearing, the Hearing Officer granted Complainant's motion to dismiss International Inn, Inc. as a party to the complaint.

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.

Complainant has appealed the Decision of the Hearing Officer on the grounds that he established a prima facie case of national origin discrimination and retaliation, that the findings of the Hearing Officer are inconsistent, arbitrary and inconclusive with the evidence presented at the hearing, that the Hearing Officer in one instance finds Complainant credible but in another instance does not, and that the Hearing Officer erroneously cites the law of retaliation and disregards the evidence presented supporting retaliation. Complainant fails to support his assertions with facts, law or examples.

We have carefully reviewed the petition for review 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. We, therefore, deny the appeal and affirm the decision below in its entirety.

ORDER

For the reasons set forth above, Complainant’s appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer is affirmed in its entirety.

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 in superior court seeking judicial review within 30 days of receipt of this decision 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 12th day of , June 2006

Walter J. Sullivan, Jr.
Commissioner

Cynthia A. Tucker
Commissioner

