

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

_____)	
CYNTHIA RIGGS,)	
Complainant)	
)	
v.)	94-NEM-0082
)	
TOWN OF OAK BLUFFS and)	
DOUGLAS SIPLE)	
Respondents)	
)	
_____)	

DECISION AND ORDER OF THE FULL COMMISSION

This matter has come before us following a decision of Hearing Officer Eugenia Guastaferrri in which she found that Complainant had not been subjected to unlawful discrimination by Respondent Town of Oak Bluffs, but had been subjected to unlawful discrimination by Respondent Siple. Following a 17-day evidentiary hearing, the Hearing Officer concluded that the Town, through its Board of Selectmen, did not discriminate against Complainant on the basis of her gender, age or her association with a person of color when it failed to hire her as a marina manager. However, the Hearing Officer held that Respondent Siple violated M.G.L. c.151B, s. 4(4A) when he “interfered with Complainant’s right to apply for a job free from intimidation and coercion” based on her gender. Siple was named as a respondent in the complaint as an agent of the Town with respect to Complainant’s failure to hire claim; however, the Hearing Officer found that Siple’s discriminatory acts were not sanctioned by the Town, nor did he at any time act as its agent. She, therefore, amended the complaint to conform to the evidence adduced at the hearing and ruled that Siple’s independent discriminatory acts

violated section 4(4A). Complainant and Respondent Siple each filed timely Petitions 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/or 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 1.16(8)(f).

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 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 deny Respondent Siple's appeal and find that Hearing Officer Guastaferrri did not abuse her discretion in amending the complaint to conform to the evidence adduced at the hearing. Although the complaint may not have formally cited a violation of c.151B, s. 4(4A), it

named Douglas Siple as an individual respondent and described his actions, which the Hearing Officer found intimidated Complainant and interfered with her right to apply for the job free from intimidation and coercion. Respondent Siple appeared at the hearing in his defense and had been on notice of Complainant's allegations regarding him since the beginning of the case and therefore was not prejudiced by the Hearing Officer's amendment of the complaint. We have long upheld a hearing officer's right to make such amendments pursuant to the Commission's statutory power to "reasonably and fairly amend any complaint." M.G.L. c.151B, §5. See e.g., Hope v. San-Ran, Inc., 8 MDLR 1195 (1986); Kane, Connolly & Handren v. Suffolk County Sheriff's Department, 20 MDLR 135 (1998); Jenkins v. Northampton Hilton Inn, 24 MDLR 1 (2002). We, therefore, deny Respondent Siple's appeal.

Complainant argues that the Town should be held liable because Siple's discriminatory comments were considered by the Board in its decision-making process, as evidenced by the Town's position statement filed at the Commission. The Town, through its counsel, filed an original position statement asserting that Complainant was not selected for the job due to the belief that she had falsified her resume. However, Hearing Officer Guastaferrri found that none of the three members of the Board of Selectmen had ever read, signed or authorized the position statement and that the position statement did not accurately reflect the reasons for the failure to hire Complainant. Further, the Town presented evidence at hearing that it based its hiring decision on reasons other than those propounded in its original position statement. The Hearing Officer found this evidence to be credible and determined that these legitimate, non-discriminatory reasons were the real reasons for the Town's refusal to hire Complainant.

We find that the Hearing Officer was within her discretion in determining that the members of the Board of Selectmen, who were solely responsible for the selection of the marina

manager, based their decisions on legitimate, non-discriminatory reasons and that they did not authorize the town's original position statement, which asserted different reasons. We uphold her finding that Complainant failed to show that the reasons asserted by the Board of Selectmen at the hearing, which were supported by substantial credible evidence, were pretextual and we therefore deny Complainant's appeal and affirm the decision below.

Finally, we note that the Hearing Officer erred in not including in her Order provision for the imposition of statutory interest on the award of emotional distress damages. We hereby modify the Hearing Officer's award and Order to do so.

ORDER

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

- (1) Within forty-five (45) days of receipt of this Order, Respondent Douglas Siple shall pay the Complainant \$5,000 in damages for emotional distress suffered as a result of the Respondent's illegal action plus interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until payment is made or the obligation is reduced to a court judgment.
- (2) The parties shall notify the Clerk of the Commission as soon as the ordered payment has 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 noncomplying 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 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, s.6.

SO ORDERED this 8th day of October, 2003.

Dorca I. Gomez, Chairwoman

Cynthia A. Tucker, Commissioner

Walter J. Sullivan, Jr., Commissioner