

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

_____)	
DENNIS MARCIELLO,)	DOCKET NO. 96-BEM-2467
Complainant)	
)	
v.)	
)	
APPLEBEE'S)	
INTERNATIONAL, INC.)	
Respondent)	
_____)	

DECISION OF THE FULL COMMISSION

This matter comes before us on appeal of Complainant following a decision of Hearing Officer James Lamond in favor of Respondent. The Hearing Officer concluded that Respondent did not violate the disability discrimination provisions of M.G.L c. 151B when it terminated Complainant's employment. Complainant appealed to the Full Commission from that decision.

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, Sec. 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 questions of fact. 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 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).

Complainant's request for review rests on his assertion that the Hearing Officer's findings of fact were not supported by substantial evidence. We have carefully reviewed the Petition for Review and the full record in this matter and conclude that there is substantial evidence in the record to support the Hearing Officer's findings of fact and conclusions. We therefore deny Complainant's appeal and affirm the Hearing Officer's decision in its entirety.

ORDER

The Complainant's appeal to the Full Commission is hereby dismissed and the Order 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 seeking judicial review, together with a copy of the transcript of proceedings before the Hearing Officer (See M.G.L. c. 151B, §6) in the Superior Court within thirty (30) days of receipt of this decision.

SO ORDERED this 6th day of February, 2003.

Cynthia A. Tucker
Commissioner

Walter J. Sullivan, Jr.
Commissioner