

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

DENNIS QUINN and  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION  
Complainant

v.

DOCKET NO. 98-BEM-1758

RESPONSE ELECTRIC SERVICES, INC.,  
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty Waxman in favor of Respondent. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for unlawful discrimination violation of M.G.L. Chapter 151B, section 4(16). Complainant filed an appeal 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, 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); M.G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and/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. 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 1.23.

Complainant makes several arguments on appeal, only two of which merit discussion. On the whole, Complainant's petition seeks to have the Commission overturn credibility decisions made by the Hearing Officer, which we decline to do. It is beyond cavil that credibility determinations are solely the province of the fact-finder. Furthermore, Complainant's appeal founders on two fundamental determinations by the Hearing Officer: 1) Complainant failed to prove that Respondent knew of Complainant's disability; and 2) Complainant was cited for four consumer complainants within the first seven weeks of his employment in direct contravention of Respondent's policy that three complaints within the first 90 days was grounds for termination. These determinations by the Hearing Officer were supported by substantial evidence and contained no errors of law.

In addition to his general grievances, Complainant argues that the Hearing Officer admitted evidence of his prior convictions in violation of M.G.L. c.233, s.21. The Hearing Officer found that Complainant was convicted of felony charges and served time in federal prison from 1981 to 1983 for transporting stolen property across state lines; was convicted and incarcerated in 1992 for larceny; and pled guilty in 1998 to a charge of leaving the scene of a motor vehicle accident. Complainant strenuously argues that the two earlier charges should have been excluded from evidence because c. 233, s.21 bars introduction of such evidence for credibility purposes if certain time periods have elapsed. However, Complainant neglects to acknowledge that the time frames do not apply when the otherwise stale convictions are "revived" by a subsequent conviction and may be admitted, as was the

case here. *See Comm. v. Gladney*, 34 Mass. App. Ct. 151, 154-55 (1993). Complainant's 1998 conviction occurred within five years of his testimony at the public hearing in this matter. As a result, that conviction revived the admissibility of the two prior crimes. *See* M.G.L. c.233, s.21. As such, Complainant's argument fails.<sup>1</sup>

Finally, Complainant seeks to admit additional evidence as part of his appeal. Under 804 C.M.R. 1.23(1)(g), a party seeking to present additional evidence must show "that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it" at public hearing. Complainant has filed a separate motion for leave to present the following additional exhibits: (1) a January 15, 2003 consent agreement between Peter Manzelli, II and Electricman, Inc. and the Board of State Examiners of Electricians; (2) notes of a phone conversation between Santos and Melino concerning Complainant; and (3) Complainant's witness summons for the keeper of records of RES.

Complainant first requests to submit a 2003 consent agreement ("2003 agreement") between Peter Manzelli and Electricman, Inc. and the Board of State Examiners of Electricians. The 2003 agreement revokes Manzelli's master electrician license due to statutory violations that he committed while working as a master electrician for, and corporate officer of, Electricman, Inc. Manzelli had previously worked for RES as its master electrician. Complainant has failed to show that the 2003 agreement is "material to the issues" in this case as the agreement relates solely to Manzelli's employment with Electricman. Complainant argues that Manzelli had business affiliations with individuals from RES while he worked for Electricman. This does not change the fact though that the

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<sup>1</sup> Furthermore, the Commission "shall not be bound by the strict rules of evidence prevailing in courts of law or equity." G.L. c. 151B, § 5. As a result, "[a]n administrative [hearing officer] must have considerable discretion ... to admit evidence that is arguably relevant." *Morris v. Board of Registration in Medicine*, 405 Mass. 103, 108, cert. denied, 493 U.S. 977 (1989).

2003 agreement concerns violations committed by Manzelli after he left RES. Moreover, Manzelli had little connection to the employment decision at issue. Melino, not Manzelli, terminated Complainant and Complainant offered evidence at hearing with respect to Manzelli for comparator purposes, not to suggest that he was involved in the decision to terminate Complainant. For these reasons, Complainant's request to introduce this evidence is denied.

Complainant also seeks to introduce Santos' notes of the May 1998 phone conversation between him and Melino. As discussed above, the Hearing Officer credited Melino's testimony that Santos suggested during this conversation that RES characterize its termination of Complainant as a lay-off so that he could qualify for unemployment benefits. (Decision, ¶ 19.) Complainant argues that Santos' notes rebut that finding. Complainant further argues that allowing these notes into evidence would not prejudice RES as he produced the notes to opposing counsel during discovery.

The production of these notes by Complainant during discovery shows that he had them prior to public hearing. In fact, Complainant submitted at hearing a memorandum by Santos regarding the same conversation as the notes. 804 C.M.R. 1.23(1)(g) does not allow Complainant to re-litigate his case with evidence that he chose not to produce at public hearing. *See Fanion v. Director of the Division of Employment Security*, 391 Mass. 848, 851 (1984) (plaintiff not allowed to introduce new evidence on appeal under G.L. c. 30A as her motion to do so "amount[ed] to no more than a request to retry her claim"). As Complainant has failed to offer a good reason for his failure to introduce these notes at the hearing, his motion to introduce them now is denied. For the same reason, Complainant's motion to introduce his witness summons for the keeper of records of RES is also denied.

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 this 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, we hereby affirm the findings of fact and conclusions of law of the Hearing Officer. Complainant's appeal to the Full Commission is hereby dismissed.

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 pursuant to M.G.L. c.30A in the Superior Court within thirty (30) days of receipt of this decision.

SO ORDERED this 8<sup>th</sup> day of March, 2005.

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Dorca I. Gomez  
Chairwoman

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Cynthia A. Tucker  
Commissioner