

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

DONALD GILLIS,
Complainant

v.

DOCKET NO. 95-BEM-0986

TOWN OF HULL,
Respondent

ORDER OF THE HEARING OFFICER UPON
REMAND FROM SUPERIOR COURT

This matter comes before me upon a remand from the Superior Court (Chin, J.) for “further proceedings regarding the issue of emotional distress only”, because the decision of Stonehill College v. Massachusetts Commission Against Discrimination, 441 Mass. 549 (2004), “...changed the law regarding emotional distress awards.” I have thoroughly reviewed the record in this matter and address the Court’s order as follows.

In Stonehill, *supra*, the Supreme Judicial Court upheld the authority of the Commission to award damages for emotional distress to plaintiffs who prevail in discrimination complaints before the Agency. The only change effectuated by the decision in Stonehill was the elimination of the presumption of emotional distress damages from the mere act of discrimination. I did not rely upon that presumption in calculating damages for emotional distress. The Court enumerated the standards that should be applied in rendering such awards and stated that such awards should be “fair and reasonable and proportionate to the distress suffered.” *Id.* at 576. The Court went on to state that some factors that should be considered in rendering such awards

include: “(1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant attempted to mitigate the harm...” Id. at 576. Stonehill did not make new law on this point. The Commission has long considered these factors in awarding emotional distress compensation. *See, e.g., Baldelli v. Town of Southborough*, 18 M.D.L.R 167, 169 (1996), aff’d, 1998 WL 1270644 (Mass. Super. Ct. June 30, 1998); Jorge v. Silver City Dodge, Inc., 15 M.D.L.R. 1518, 1535-36 (1993).

The above considerations were addressed in Findings of Fact no. 15 of my initial decision. The finding was based on testimony from Complainant and from his wife. I re-iterate those findings with additional support from the record to satisfy the Court’s concern that the criteria in Stonehill were considered and satisfied.

Complainant testified and I find that he was “elated” at the prospect of returning to work. However, after the chief told him he could get more bang for his buck with a younger man, Complainant felt “emptied out”. He testified that he went home after the meeting and he “felt terrible” and was “crushed”. (TR86) I found Complainant’s testimony to be credible.

Complainant’s wife Lorraine Gillis testified credibly that after returning from the Retirement Board meeting Complainant’s mood was “completely changed”, he was “into himself” and did not want to talk much about the meeting. In the months that followed, Complainant withdrew from family and friends, stopped socializing with many friends and stopped going out every Sunday for breakfast. Lorraine Gillis testified credibly that at the time of the chief’s remarks, a friend of Complainant’s asked her if he had offended Complainant because Complainant had stopped calling him. She testified that

Complainant's decreased desire to socialize continued up until the time of the public hearing. I credit her testimony in its entirety and was persuaded that Complainant's distress was severe and ongoing.

Thus, I find that Complainant suffered from lasting emotional distress as a direct result of Respondent's discriminatory conduct. I concluded in my initial decision that Respondent's failure to rehire Complainant caused emotional distress. I reiterate that Complainant suffered emotional distress that supports an award of \$50,000. I find that this award is fair and reasonable, and proportionate to the emotional pain he suffered and comports with the criteria enunciated in Stonehill, *supra*.

In accordance with the Superior Court remand order, I have reviewed and assessed my earlier findings in light of the decision in Stonehill and conclude that the award of \$50,000 in damages for emotional distress is supported by the evidence in the record, meets the standards articulated in Stonehill and is fair and reasonable. Therefore I hereby Order that the award of \$50,000 remain in effect.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within 10 days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 25th day of May, 2005

JUDITH E. KAPLAN,
Hearing Officer