

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

DONALD GILLIS,  
Complainant

v.

DOCKET NO. 95-BEM-0986

TOWN OF HULL,  
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a remand decision of Hearing Officer Judith Kaplan in which she reaffirmed her original award of \$50,000 in damages for emotional distress suffered by Complainant. In her original decision, the Hearing Officer concluded that Respondent subjected Complainant to discrimination on the basis of age and handicap in violation of M.G.L. c. 151B, § 4. In that decision, the Hearing Officer awarded Complainant, *inter alia*, \$50,000 in emotional distress damages. The Full Commission affirmed this decision; however, the Superior Court remanded the case with the instruction that the Hearing Officer reconsider the award of emotional distress damages in light of the Massachusetts Supreme Judicial Court's decision in Stonehill College v. MCAD, 441 Mass. 549 (2004). The Hearing Officer has done so in her latest Order and Respondent has filed a timely Petition 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 Hearing 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 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 1.23.

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.<sup>1</sup> 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 therefore deny the appeal and affirm the decision below in its entirety.

#### ATTORNEYS' FEES AND COSTS

As a result of having prevailed in this matter, Complainant is entitled to an award of reasonable attorneys' fees and costs. See M.G.L. Chapter 151B, section 5. Complainant has filed a petition seeking attorneys' fees and costs after remand supported by detailed contemporaneous time records. Respondent has filed an opposition. Complainant requests reimbursement for fees in the amount of \$23,204.00 and costs in the amount of \$91.00.

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<sup>1</sup> We note that Respondent argues in its Petition that the Commission exceeded its authority by appointing a Hearing Officer to conduct the public hearing in this matter. However, this argument is beyond the scope of the Court's remand order, which directed the Hearing Officer to address "the issue of emotional distress only." As such, we decline to rule on this argument.

## A. FEES

The determination of what is a reasonable fee is one that the Commission approaches utilizing its discretion and its understanding of the litigation of a claim of discrimination in the administrative forum of the Commission Against Discrimination. In reaching a determination of what is a reasonable fee, the Commission has adopted the lodestar method for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). This method requires the Commission to undertake a two-step analysis. First, the Commission will calculate the number of hours reasonably expended to litigate the claim and then multiply that number by an hourly rate considered to be reasonable. Second, the Commission will examine the resulting figure, known as the “lodestar”, and adjust it either upward or downward or not at all depending on various factors.

A calculation of the hours reasonably expended involves separating out work done in relation to the individual doing the work (e.g., senior partner, junior associates, and paralegal). Time beyond that consistent with a standard of reasonable efficiency and productivity is eliminated. Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours that are insufficiently documented. Grendel’s Den v. Larkin, 749 F.2d 945 (1<sup>st</sup> Cir. 1984); Miles v. Samson, 675 F. 2d5 (1<sup>st</sup> Cir. 1982); Brown v. City of Salem, 14 MDLR 1365 (1992).

The Commission’s efforts to determine the number of hours reasonably expended will involve more than simply adding all hours expended by all personnel. The Commission carefully reviews the Complainant’s submission and will not simply accept the proffered number of hours as “reasonable.” *See e.g.*, Baird v. Belloti, 616 F. Supp. 6 (D. Mass. 1984).

Complainant seeks reimbursement for 80 hours of work performed by counsel at an hourly rate of \$250.00 and \$320.00. Having reviewed the contemporaneous time records that

support the attorneys' fees request, we conclude that the amount of time spent on preparation and litigation of this claim is reasonable. Our review points to no evidence that the hours spent were duplicative, unproductive, excessive or otherwise unnecessary to the prosecution of this claim. Furthermore, all hours of work performed are sufficiently documented. We also conclude that the hourly rate of Complainant's counsel is consistent with rates customarily charged by individuals with comparable expertise and experience in employment law cases in the same geographic region. We therefore award Complainant reimbursement of fees in the amount of \$23,204.00 which is the amount requested.

B. COSTS

Having found that the request for costs is reasonable and adequately documented, we award Complainant costs in the amount of \$91.00.

ORDER

For the reasons set forth above, we hereby affirm the Order of the Hearing Officer Upon Remand from Superior Court, and Respondent's request for a hearing is DENIED. Further, in addition to the relief ordered by the Hearing Officer in her July 14, 2000 decision, we order the following relief:

Respondent shall pay Complainant the sum of \$23,204.00 in supplemental attorneys' fees and \$91.00 in supplemental costs. Respondent shall pay these sums to Complainant within 60 days of receipt of this decision.

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 non-complying 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 seeking judicial review within 30 days of receipt of this decision and 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 13<sup>th</sup> day of September, 2005.

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CYNTHIA A. TUCKER,  
Commissioner

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WALTER J. SULLIVAN, JR.,  
Commissioner