

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION  
and DONNA MORRISSEY,  
Complainant

v.

DOCKET NO. 96-BEM-0975

HOLIDAY INN,  
Respondent

**DECISION OF THE FULL COMMISSION**

This matter came before us following a decision of Hearing Officer Kenneth Grooms in favor of Complainant. Following an evidentiary hearing, the Hearing Officer concluded that Respondent subjected Complainant to discrimination on the basis of sexual harassment in violation of M.G.L. c. 151B, § 4(1). The Hearing Officer dismissed complainant's complaint of constructive discharge from employment. Respondent 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 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(1)(h).

We have carefully reviewed the petition for appeal 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 therefore deny Respondent's appeal and affirm the decision below in its entirety.

Having affirmed the Decision of the Hearing Officer, we conclude that Complainant has prevailed in this matter and is therefore entitled to an award of reasonable attorneys' fees and costs. See, e.g., Texas State Teachers Assn. v. Garland Independent School Dist., 489 U.S. 782 (1989). In rendering a determination of what is a reasonable fee, the Commission has adopted the lodestar methodology for fee computation. See Fontaine v. EBTEC Corp., 613 N.E.2d 881, 891 (1993); Baker v. Winchester School Committee, 14 MDLR 1079 (1992); Brown v. City of Salem, 14 MDLR 1365 (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 successful

claim and then multiply that number by an hourly rate considered to be reasonable. Second, the Commission will then examine the resulting figure, known as the “lodestar”, and will adjust it either upward or downward or not at all depending on several factors.

Complainant must prevail on at least one of her claims to qualify as a “prevailing complainant” within the meaning of M.G.L. c.151B, s.5. Complainant did not prevail on her claim of constructive discharge from employment; however, she did succeed on her claim of sexual harassment in the terms and conditions of employment and is therefore a prevailing party entitled to an award of attorneys’ fees. See e.g., Texas State Teachers Assn. v. Garland Independent School Dist., 489 U.S. 782 (1989). Thus, one question we will address in reviewing Complainant's application for fees is whether the request ought to be reduced to reflect the partial success of Complainant's claim. See M.G.L. c.151B, s.5. Ordinarily, the Commission will examine the fee information and then arrive at some determination whether to reduce the fee award by a certain percentage. This approach is necessitated because billing records ordinarily are kept by case rather than by claim within the case. See e.g., Full Commission opinion in Sanderson v. Town of Wellfleet (1995).

In support of her petition for attorneys’ fees and costs, Complainant submitted an affidavit of counsel and an itemized record of billing hours and costs. Complainant submitted a petition seeking \$38,000.00 in fees and \$281.23 in costs.

To support her claim for attorneys' fees, Complainant's counsel submitted contemporaneous time records outlining the work performed. The Commission concludes that the amount of time spent by Complainant's counsel on preparation and litigation of this matter is reasonable. There is no evidence that the hours spent were duplicative, unproductive, excessive, or otherwise unnecessary to successfully prosecute Complainant's claim.

Given the facts of this case, we believe that on the whole, the interrelationship of the successful with the unsuccessful claim is substantial. That is, we believe that nearly all of the work done to litigate the unsuccessful claim was useful and necessary to litigate the successful claim as well. Nonetheless, a portion of the hours must be reduced to reflect the fact that Complainant did not prevail on all of her claims. We believe that a 30% reduction is sufficient in this regard to effectuate the purposes of a fee shifting mechanism which recognizes success, failure and on the whole a measured approach to fee awards. It is our opinion that after this 30% reduction is made, the hours billed are quite reasonable given the facts, legal issues, and the extremely vigorous defense that was put on by counsel for the respondent.

In this case, the lodestar figure is: \$26,600.00. We conclude that the lodestar figure is a reasonable one and does not require enhancement. Further, we have examined the costs in this matter and find that \$281.23 represents a reasonable figure of costs incurred incident to litigation of this matter.

## ORDER

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

1. Respondent Holiday Inn shall immediately cease and desist from conduct in the workplace that creates a hostile work environment on any basis prohibited under M.G.L. c. 151B.

2. Respondent Holiday Inn shall pay Complainant the sum of \$50,000.00 in damages for emotional distress, plus interest on the award of emotional distress damages at the statutory rate of 12% per annum from the date the complaint was filed until such date judgment is made or this order is reduced to a court judgment and post-judgment interest begins to accrue. Respondent Holiday Inn shall pay this sum to Complainant within 60 days of its receipt of this decision.

3. Within 60 days of receipt of this decision, Respondent Holiday Inn shall submit to the Commission's Director of Training a written policy for reporting, responding to and investigating complaints of discrimination and harassment. The Commission shall promptly notify Respondent Holiday Inn as to whether its policy is acceptable. If the Commission determines that Respondent Holiday Inn's policy is unacceptable, it will return the policy for revision, as appropriate. If, after 21 days for revision, Respondent Holiday Inn fails to submit an acceptable policy, the Commission shall prescribe the details of a policy in a supplemental order.

4. Within 30 days of its receipt of the Commission's final action on Respondent Holiday Inn's written anti-discrimination and harassment policy, Respondent Holiday Inn shall schedule all employees, including its owners, supervisors and managers, to attend comprehensive training that addresses workplace discrimination and harassment. The training shall include, but not be limited to, definitions of discrimination and harassment in the workplace, the supervisor's role in recognizing and preventing retaliation and other forms of harassment, the appropriate methods of conducting an investigation, responding to discrimination and/or harassment complaints, and Respondent Holiday Inn's liability under G.L. c. 151B and federal law for unlawful discrimination and harassment. This training must be at least 4 hours in length and must be completed within 90 days of Respondent Holiday Inn's receipt of the Commission's action on its written anti-discrimination and harassment policy.

5. Respondent Holiday Inn shall submit the training agenda to the Commission's Director of Training for approval at least 30 days prior to the proposed training session(s). The agenda shall provide that no more than 25 employees shall attend each training session held.

6. At least three weeks prior to the training date(s), Respondent Holiday Inn shall inform the Commission's Director of Training, in writing, of the proposed training dates and locations so that the Commission has the option of sending a representative to attend and observe one or more of the training sessions as it is conducted.

7. Respondent Holiday Inn shall select a trainer who has completed the Commission's certified discrimination or harassment prevention training courses, or shall submit another proposed trainer's resume to the Commission's Director of Training for approval at least 30 days prior to the initial training session. Respondent Holiday Inn shall give a copy of this decision to the approved trainer as background information.

8. Within 30 days after each training session, Respondent Holiday Inn must submit documentation to the Commission's Director of Training of its compliance with this order. The documentation must be signed by the trainer and identify the training agenda, participants who completed the training session, the date and time of each training session, and a list of all employees as of the training date(s).

9. Once a year for three years after completion of the initial training session(s), Respondent Holiday Inn shall repeat the initial training session for all employees hired and employed since the date of the previous training session. Respondent Holiday Inn shall also conduct a refresher course (at least two hours in duration) once each calendar year for all other employees, including managers and supervisors, for a total of three years.

10. In the event Respondent Holiday Inn is sold, the successor employer must complete these training requirements within the stated time frames if any of the following conditions apply:

a. A majority of Respondent Holiday Inn's managers employed as of the date of this decision continue to work for the successor employer as of the succession date;

b. A majority of Respondent Holiday Inn's governing board (such as the board of directors or trustees) as of the date of this settlement continue to serve on the successor employer's board as of the succession date;

c. The new owner is a relative of Respondent Holiday Inn's owner; and/or

d. Respondent Holiday Inn retains an interest in the successor entity.

11. We award reasonable attorneys' fees to Complainant in the amount of \$26,600.00 and reasonable costs in the amount of \$281.23. Respondent Holiday Inn shall pay this sum to Complainant within 60 days of its 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 25<sup>th</sup> day of September, 2003.

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Dorca I. Gomez, Chairwoman

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Cynthia A. Tucker, Commissioner

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Walter J. Sullivan Jr., Commissioner