

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

-----  
EBONY ABEL,  
Complainant

v.

Docket No. 01 BEM 0219

KIESSLING TRANSIT, INC. and  
VERE JESSAMY,  
Respondent

-----

Appearances: Laurence E Hardoon, Esq. for Complainant  
Stephen M. Foley, Esq., for Respondent Kiessling Transit

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On January 25, 2001, Ebony Abel (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) charging that Vere Jessamy sexually harassed her while they were both employed by Respondent Kiessling Transit, Inc.

The MCAD issued a probable cause finding and certified the case for public hearing on May 25, 2006. A public hearing was conducted on July 24, 25, and 26, 2007 and September 14, 2007. The parties introduced two joint exhibits.<sup>1</sup> Complainant introduced eight exhibits.<sup>2</sup> Respondents submitted four exhibits into evidence.

<sup>1</sup> Joint Exhibit 1 consists of the parties’ stipulated findings which are incorporated into this decision.

<sup>2</sup> At the public hearing, Complainant’s Exhibit 6 was taken into the record de bene. Having reviewed its contents, the exhibit is rejected as evidence.

To the extent the parties' proposed findings are not in accord with or are irrelevant to the findings herein, they are rejected. To the extent the testimony of various witnesses is not in accord with or is irrelevant to my findings, the testimony is rejected. Based on all the relevant, credible evidence<sup>3</sup> and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. In May of 2000, Complainant began to work for Respondent Kiessling Transit, Inc. At the time, she was a nineteen year old woman living at home with her mother and brothers.
2. Respondent Kiessling Transit, Inc. is a company of more than six employees located at 22 Messina Drive in Braintree MA. It is owned by Paula Kiessling. The Company offers "The Ride" to handicapped riders of the MBTA. In 2000, Claire Depillo was the General Manager and Lisa Stevens was the Office Manager. At the time of public hearing, DiPillo had been an employee of Kiessling Transit for thirty years; Stevens for twelve years. On weekdays in 2000, The Ride typically provided 450 to 500 rides a day.
3. Complainant had no psychiatric history prior to commencing employment with Kiessling Transit in May of 2000. She graduated from Randolph High School in June of 1998. Complainant describes herself as "average" academically in high school. During the time she attended Randolph High School, Complainant played varsity soccer and track and field. She was a junior varsity and varsity cheerleader and was captain of her junior varsity cheerleading team. Complainant

---

<sup>3</sup> The audio record of the proceedings contains some "off the record" conversations of various participants in the proceedings. I have refrained from listening to these conversations in reviewing the testimony of the witnesses. Relevant testimony, where cited, is indicated by day and time.

participated in the school chorus and in theatrical productions, was a class president, played town baseball and travel soccer, and took part in volunteer activities. While she was a high school student, Complainant worked at McDonald's and at a retail clothing store. According to Complainant, she drank alcohol "once in a while" on weekends while she was in high school but did not abuse alcohol or drink alone. Complainant described herself as confident, outspoken, ambitious, friendly, energetic, and trusting prior to the summer of 2000. Complainant's mother describes Complainant during that period as happy, outgoing, in good physical condition, caring, confident, and ambitious.

4. Between the time that Complainant graduated from high school and began to work for Respondent, she continued to work at a clothing store, worked for a swimming pool company, began a job at Tedeschi Food Market, and took classes for two semesters at Massasoit Community College and for one semester at Quincy College. Complainant was not successful in her college courses. She testified that she was not ready to attend college at that time.
5. Complainant obtained employment at Respondent Kiessling Transit with the help of Respondent Vere Jessamy. Jessamy had been an employee with Kiessling Transit since July of 1999. According to Complainant's credible testimony, Jessamy gave her a job application, encouraged her to apply, and submitted the application for her. Complainant knew Jessamy because his son was a classmate of hers and because his daughter[s] attended her mother's day care facility. Jessamy was approximately fifty years old in 2000.

6. During the time that Complainant worked for Respondent, she was a “reservationist,” also known as “call taker.” Reservationists respond to phone calls from customers who contact Respondent’s call center at 22 Messina Rd. After incoming calls are recorded by reservationists, their rides are arranged by “schedulers.” Customers are subsequently notified of their scheduled rides by “call-backers.” Reservationists, schedulers, and call backers work in a single room with partitions. Dispatchers and drivers work out of a different location.
7. Jessamy’s duties consisted primarily of scheduling rides but, according to Complainant’s credible testimony, Jessamy sometimes distributed work assignments to the call backers, referred to himself as the “only black manager,” and sometimes told call-takers that they could leave early if their work was finished. Complainant testified that she and other employees sought Jessamy’s advice for job-related questions, that Jessamy was, at times, the only manager on duty during the 4:00 p.m. to 8:00 p.m. call back shift, that she would ask Jessamy for permission to leave work at the end of the day, that he attended meetings upstairs with other managers, that he appeared to go and come as he pleased, that he appeared to take a Company vehicle home when he chose to do so, that he came to work at times other than his own shift, and that he gave her feedback on her job performance. According to Office Manager Lisa Stevens, Jessamy had a business card describing himself as “Operations Manager.”
8. Company owner Paula Kiessling characterized Jessamy as “upper management” in communications with the MBTA. Complainant’s Exhibit 7. She identified Jessamy in her response to Interrogatory 11 as a “supervisor in working on

scheduling.” Complainant’s Exhibit 8. Kiessling admitted in her testimony that she told Jessamy he was designated as a manager for MBTA purposes. Day 3 at 1:29.

9. Respondent employee Jenny Cabral testified that she considered Jessamy to be a manager in 2000 because he would distribute the assignment schedule for call backers, she would go to him with questions or for permission to leave the premises, he sometimes distributed paychecks as did other managers, and he told her what needed to be done. Cabral corroborated Complainant’s testimony that Jessamy came and went as he pleased and that he participated in managerial meetings. I credit Cabral’s testimony.
10. Complainant testified credibly that between the start of her employment at Kiessling Transit and July of 2000, Jessamy frequently gave her rides to and from work; ordered, picked up, and paid for her lunch; took her to the bank in order to cash her paycheck on Fridays; twice gave her rides to the Dedham House of Correction to visit her boyfriend; and on one occasion paid a court fine for her which she repaid the same day. Complainant acknowledged that she went out to eat with Jessamy on her first day of work but thereafter declined subsequent restaurant invitations and refused his requests that she go into his house.
11. Complainant testified that she considered Jessamy to be one of her supervisors. When she was with Jessamy, Complainant did not ask any other managers for permission to leave work in order to cash her paycheck. Jessamy gave her assignments, corrected her work if she made a mistake, and complimented Complainant when she did a good job.

12. Paula Kiessling testified that Claire DiPillo worked “24/7” but DiPillo testified that she worked a regular Monday to Friday schedule in 2000 and was not expected to be at work on weekends. Reservationist Vicki Schepis testified that DiPillo had a regular work schedule from Monday to Friday, 8:00 a.m. to 4:00 p.m. and that Schepis did not recall DiPillo working other than her regular hours. I credit the testimony of DePillo and Schepis relative to DiPillo’s schedule rather than that of Paula Kiessling.

13. Vicki Schepis was the weekend supervisor of reservationists, i.e., the weekend shift manager, in the summer of 2000. Joint Exhibit 2. Schepis testified that she worked every Saturday and Sunday from 4:00 a.m. to at least 6:00 p.m. for a two to three year period including the summer of 2000. I do not credit Schepis’s testimony that she worked at least fourteen (14) hours per day every Saturday and Sunday for a two to three year period including the summer of 2000. I do credit her testimony that she would go out on the road on Saturdays and Sundays to handle emergencies.

14. Complainant testified that during the first few months of her employment, Jessamy made inappropriate sexual comments to her such as asking about the color of her panties, telling her he needed an “extra hand” when going to the bathroom, and saying that he “liked the view” when she bent over. Complainant testified that Jessamy would press himself against her when she greeted him with a hug and that he would brush his arm across her chest. I credit Complainant’s testimony.

15. Jessamy frequently bought lunch for Complainant and other young female employees. Reservationist Vicki Schepis testified that Jessamy would buy lunch for and flirt with the younger girls in the office. Office Manager Lisa Stevens described Jessamy as a “pretty flirtatious and flamboyant guy.” She testified that he was “overly friendly” with the eighteen and nineteen year old girls in the office and displayed this behavior “from the first day he started working.”
16. One Christmas, Jessamy gave Victoria’s Secret panties to employees “Kristin” “Nicole,” and Jenny Cabral. Day 2 at 00:27:00. According to Cabral, Jessamy thereafter asked her if she was wearing the panties and made other sexual comments. Cabral testified that Jessamy frequently made comments about how the girls in the office dressed or looked. I credit Cabral’s testimony.
17. Business was slower on weekends and there was less need for staff. Complainant and Cabral both testified that they were occasionally alone in the office with Jessamy during some weekend shifts in the summer of 2000. I credit their testimony over the testimony of Paula Kiessling, Claire DePillo, Lisa Stevens, and Vicki Schepis that during weekends in 2000, the office was always staffed by multiple schedulers and reservationists.
18. Complainant testified that on one weekend in July of 2000 when she was alone in the office with Jessamy, he penetrated her vagina with his finger[s] as she bent over to get a transfer form out of a drawer during a phone call. According to Complainant, as she talked on the phone to a client, Jessamy pulled down her pants and put his finger[s] inside of her. Complainant testified that she froze but then continued with the phone call and did not react physically or verbally to the

assault. After Jessamy removed his finger[s], he pulled up Complainant's pants<sup>4</sup> and left. According to Complainant, Vicki Schepis then knocked on the door separating the garage from the office and asked why the door was locked. Complainant testified that Jessamy later called her and said, "I'm sorry. I couldn't help myself." Complainant testified that she hung up the phone, finished her shift, and didn't report the assault because she was ashamed, lacked courage, needed the job, and didn't think anyone would believe her. I credit her testimony.

19. Complainant testified that following her sexual assault in July of 2000, she stopped taking rides from Jessamy, stopped going to the bank with him, and stopped wearing dresses to work, but continued to allow him to pay for lunch. I credit Complainant's testimony.
20. Complainant testified that on one weekend in August of 2000 when she was again alone in the office with Jessamy, he approached her from behind as she talked on the phone to a customer, reached over her shoulders, brushed his hands past her breasts, slipped his hands into the front of her pants, and again penetrated her vagina with his finger.<sup>5</sup> According to Complainant, she again froze, continued with the phone call, did not react to the assault, and did not report what happened. I credit Complainant's testimony.
21. Complainant testified that following the assaults, she stopped talking to people in the office, didn't smile or joke, stopped hugging people when she greeted them, and felt embarrassed and dirty. According to Complainant, she began to abuse

---

<sup>4</sup> At the probable cause hearing on related criminal charges against Jessamy, Complainant testified that she pulled up her own pants after the sexual assault. I do not consider this a significant contradiction.

<sup>5</sup> In her prior affidavit to the MCAD, Complainant states that Jessamy reached down the front of her pants to penetrate her but does not mention that he touched her breasts. In her prior deposition, Complainant states that Jessamy touched her breasts on the outside of her clothing, not the inside of her shirt.

alcohol, started smoking, experienced disrupted sleeping patterns, distanced herself from other people, avoided being touched, behaved in an edgy and nervous manner, began to snap a lot, experienced a deteriorating relationship with her younger brothers, failed at college, became depressed, had difficulty concentrating, and had suicidal ideations. Complainant's mother, Pauline Anderson, testified that after the summer of 2000, Complainant became withdrawn, down-spirited, negative, unmotivated, and distant. Anderson described her daughter as "fundamentally not a happy girl."

22. Complainant continued to work at Kiessling Transit following her two assaults in the summer of 2000. In October of 2000, fellow employee Jenny Cabral came forward with allegations that Jessamy had made sexual comments to her, that he engaged in sexual banter with another male employee, and that in October of 2000, he came up behind her in the company garage, put her paycheck in her back pocket, left his hand there while he felt her buttocks, and said something like, "Oh, that feels good." Cabral testified that she also froze and did not react during the incident. Day 2 -- 00:36:00 to 38:04. Cabral told her mother about the assault, skipped her next shift, reported the incident to Office Manager Lisa Stevens, and quit her job. Joint Exhibit 2. I credit Cabral's testimony.
23. Cabral went to the same high school as Complainant but was several years younger. She described Complainant as an acquaintance but not a friend. Cabral testified that she has never spoken to Complainant about their experiences with Jessamy and had no contact with Complainant from 2001 to 2007.

24. On or about October 14, 2000, following Cabral's disclosure to the Company that she was sexually assaulted by Jessamy, Complainant informed General Manager Claire DiPillo that she, too, had been assaulted by Jessamy twice during the previous summer. Joint Exhibit 1. A third employee also reported that she had been harassed by Jessamy in the form of inappropriate telephone calls made to her house. Complainant's Exhibit 7; Day 3 – 01:28:05. The Company conducted an investigation into Jessamy's conduct toward Cabral, Complainant, and the third female employee. Jessamy was administratively suspended pending the completion of the investigation. He was subsequently fired, effective October 25, 2000.
25. Following Jessamy's termination, Cabral returned to work at Kiessling Transit. She remained an employee for approximately eight more months. Complainant also continued to work at Kiessling Transit for approximately eight more months.
26. Complainant started taking classes at Fisher College in the fall of 2000 while she continued to work at Kiessling Transit. She attended the school for two semesters. Complainant testified that she did "okay," but admitted that she brought alcohol to school in her purse and went to the school nurse for help with depression. Complainant's school records from Fisher College indicate that during November of 2000, she reported being digitally raped and fondled the previous July by her "supervisor," was referred to the Rape Crisis Center in Cambridge, and was taken by School Nurse Roberta Lecke to the emergency room at Massachusetts General Hospital (MGH) for a psychiatric evaluation. Complainant's Exhibit 2. Complainant informed Lecke that she had stopped

- drinking in January of 2000 but medical records indicate she subsequently began to drink again. Id.
27. Complainant testified that during the time she attended Fisher College, she wanted to jump in front of a train and once lay down in the street. A Fisher College faculty member reported to Lecke on 11/22/00 that Complainant sat in class with ear phones, not participating, and wrote “stupid, stupid” on a full sheet of paper instead of taking an exam.
28. Medical records from MGH indicate that in November of 2000, Complainant reported that she was digitally raped in July of 2000 by one of her “managers.” Complainant’s Exhibit 1. Complainant described feeling “low” and suffering from increased sleeping, decreased energy, decreased interest in socializing, decreased appetite, crying spells, feelings of hopelessness, and decreased concentration. She admitted consuming one pint of rum per day plus beer. Id. The MGH note of 11/22/00 includes “diagnostic impressions” of PTSD and alcohol abuse, with possible major depression or substance-induced mood disorder. Complainant was advised to agree to psychiatric hospitalization but refused. She was given 25 mg. of Zoloft which was subsequently increased to 50 mg. and then to 100 mg. Complainant’s diagnosis was later expanded to PTSD and full-blown depression.
29. From the latter part of 2000 until 2005, Complainant received psychiatric/therapeutic assistance from MGH, including group therapy for sexual assault victims and meetings with social worker Virginia Segal, LICSW. Notes dated 11/27/00, 12/7/ 00, and 6/26/01 from MGH state that Complainant was

smiling and feeling better. However, subsequent notes state that she had stopped therapy, was missing medical appointments, was failing to take medication regularly, was sleeping irregularly, was too depressed to function at work, was drinking excessively, and was using marijuana daily. Complainant reported on 9/3/03 that she was drinking less and on 12/01/04 that her mood was “good,” but on 10/2/03, 1/26/05 and 5/06/05, she reported drinking alcohol again, smoking cigarettes and marijuana, feeling down and depressed, having poor concentration, not going to school or work, and engaging in high risk behaviors. Complainant’s progress notes from MGH are documented through mid-2005. Complainant’s Exhibit 1; Respondent’s Exhibit 5.<sup>6</sup> Throughout this period, Complainant attended medical appointments and therapy sessions only sporadically.

30. In January of 2001, Complainant filed sexual harassment charges against Respondent with the MCAD.
31. In April of 2001, Complainant received a job warning and suspension for excessive absenteeism. Complainant’s Exhibit 8, Answer 15.
32. Complainant stopped working at Respondent Kiessling Transit on or around May 26, 2001. Complainant’s Exhibit 8, Answer 15.
33. On July 19, 2001, Complainant reported to the Braintree Police that she had been sexually assaulted by Vere Jessamy. Respondent’s Exhibit 3. On December 21, 2001, Quincy Criminal Court, Coven, J. found probable cause and held the criminal matter over for the Grand Jury. The case was subsequently dismissed on April 5, 2002. Id.

---

<sup>6</sup> Respondent’s Exhibit 5 consists of excerpts of medical records from MGH which Respondent’s attorney submitted post-hearing on September 18, 2007.

34. In August of 2001, Complainant began working at South Coastal Bank. She testified that she remained a bank employee until she was terminated in April of 2003, but MGH records indicate that she stopped working in November of 2002 because she was too depressed to function at work. Complainant's Exhibit 1 (progress note of 1/3/03). Following her stint at the bank, Complainant testified that she did not work for eighteen months, until approximately October of 2004. She subsequently obtained employment at Filenes until approximately April of 2005. Complainant testified that she left because she couldn't concentrate, didn't want to see people, and was drinking a lot. Complainant testified that she remained unemployed until approximately June of 2005. Since that time, Complainant has worked sporadically.
35. Complainant enrolled in U Mass Boston in the fall of 2001. She took courses at the school for approximately four years but frequently did not attend class and did not graduate. Complainant's medical record from the University Health Service contains an assessment of depression on November 20, 2002. Complainant's Exhibit 3.
36. Complainant testified that while she was attended U Mass Boston, she had periods of compulsive eating, gained weight, and began to wear a size 10, According to Complainant, she was not concerned about her appearance and stopped exercising. I credit Complainant's testimony that she continued to suffer from depression at U Mass Boston, but I do not credit that her weight gain took place between 2001 and 2005. Medical records from Fisher College establish that

Complainant weighed 160 pounds as early as September of 2000. Complainant's Exhibit 2 (9/1/00).

37. On September 27, 2003, Complainant was arrested for trespassing at the South Shore Plaza. At the time, Complainant accused the arresting police officer[s] of grabbing her breast but never filed charges. Complainant testified that she was intoxicated at the time.

38. Dr. Lisa Livshin, a licensed psychologist in Massachusetts since 1989, has extensive experience treating people with sexual trauma, and was recognized in this proceeding as an expert witness. Complainant's Exhibit 4. She examined Complainant on 9/25/06 and 10/03/06, administered psychological testing including the Beck Depression Inventory, and reviewed Complainant's treatment/medical records, school transcripts and deposition of 9/6/06. Complainant's Exhibit 5. Dr. Livshin reported that Complainant appears to have been extremely traumatized, that Complainant's "trauma sequelae" are consistent with those of adults who have been sexually victimized, and that they include: nightmares, depression, substance abuse, re-experiencing of the traumatic event, self-abusive, high risk behaviors, sexual issues, self-blame, poor concentration, emotional numbing, retribution fantasies, high autonomic arousal, and persistent suicidal ideation. Id. Dr. Livshin diagnosed Complainant as suffering from Post-Traumatic Stress Disorder, Major Depression, and Alcohol Dependence and Abuse. Dr. Livshin rejected the possibility that Complainant was "faking" her symptoms on the basis that it would be difficult to malingering for seven years. According to Dr. Livshin, Complainant's lack of follow through with her

treatment is a consequence of her alcohol abuse. Dr. Livshin testified that Complainant's prognosis is very poor because she has been unstable for a significant period of time.

39. Dr. Livshin testified that it is well-documented and not unusual for a young woman to freeze during a sexual assault, especially when the perpetrator is in a position of trust and authority.

40. Prior to the July 24, 2007 public hearing, Paula Kiessling, Claire DiPillo, Lisa Stevens, and Vickie Schepis discussed Vere Jessamy's role in the Company and whether they considered him a manager/supervisor in 2000. They understood prior to testifying that the Company's liability for Jessamy's actions could be affected by Jessamy's employment status.

### III. CONCLUSIONS OF LAW

#### A. Sexual Harassment

M.G.L. c. 151B, sec. 4, paragraph 1 prohibits workplace discrimination, including sexual harassment. See Ramsdell v. Western Bus Lines., Inc., 415 Mass. 673, 676-77 (1993). Chapter 151B, sec. 4, paragraph 16A also prohibits sexual harassment in the workplace. See Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an

intimidating, hostile, or sexually offensive work environment. M.G. L. c. 151B, sec. 1, para. 18.

In order to establish a “hostile work environment” sexual harassment claim, Complainant must prove by credible evidence that: (1) she was subjected to sexually demeaning conduct; (2) the conduct was unwelcome; (3) the conduct was objectively and subjectively offensive; (4) the conduct was sufficiently severe or pervasive as to alter the conditions of employment and create an abusive work environment; and (5) the employer knew or should have known of the harassment and failed to take prompt and effective remedial action. See College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987); Parent v. Spectro Coating Corp., 22 MDLR 221 (2000); MCAD Sexual Harassment in the Workplace Guidelines, II. C. (2002).

Sexual harassment must be objectively and subjectively offensive. See Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677-78 (1993). The objective standard means that the evidence of sexual harassment must be considered from the perspective of a reasonable person in the plaintiff’s position. Id. at 678. The reasonable woman inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker’s performance, and what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) *citing Harris v. Forklift Systems, Inc.*, 510 U.S.17 (1993); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000). The subjective standard of sexual harassment means that an employee must personally experience the behavior to be unwelcome. It is a personal one related to Complainant’s own reaction to the harassing conduct. See Couture v. Central

Oil Co., 12 MDLR 1401, 1421 (1990) (characterizing subjective component to sexual harassment as ... “in the eye of the beholder.”). An employee who does not personally experience the behavior to be intimidating, humiliating or offensive is not a victim within the meaning of the law, even if other individuals might consider the same behavior to be hostile. See MCAD Sexual Harassment in the Workplace Guidelines, II. C. 3 (2002); Ramsdell v. Western Bus Lines, Inc., 415 Mass. at 678-679.

The credible evidence in this case establishes that Complainant was subjected to sexual harassment that was objectively and subjectively offensive. The harassment began as inappropriate sexual comments such as Jessamy asking about the color of Complainant’s panties, telling her he needed an “extra hand” when going to the bathroom, and saying that he “liked the view” when she bent over. It proceeded to physical harassment consisting of Jessamy pressing himself against her when she greeted him with a hug and brushing his arm across her chest. The harassment culminated in two digital rapes. In the abstract, it is difficult to understand how a victim would fail to react the first time such an assault occurred much less put herself in a situation where a digital rape could happen a second time. However, the testimony of an expert in this area confirmed that such a reaction is not unusual, and Complainant’s testimony was believable, heart-rending, and compelling.

Complainant’s testimony is buttressed by the opinion of Dr. Lisa Livshin, a licensed psychologist in Massachusetts since 1989 with extensive experience treating people with sexual trauma. According to Dr. Livshin, it is well-documented and not unusual for a young woman to freeze during a sexual assault, especially when the perpetrator is in a position of trust and authority. Dr. Livshin characterized Complainant

as “extremely traumatized” and described her behaviors as consistent with individuals who have been sexually victimized. Dr. Livshin rejected the possibility that Complainant was “faking” her symptoms on the basis that it would be difficult to malingering for seven years.

Apart from the expert opinion of Dr. Livshin, Complainant’s circumstances at the time lend support to her testimony. She was only nineteen years old whereas Jessamy was fifty, she viewed Jessamy as a father figure since he was the parent of a school friend, and she considered him to be an authority figure at work. These circumstances, plus her feelings of shame, her concern that nobody would believe her, and the fact that she needed a job, lend support to her claim that she froze and was afraid to report the assaults. The office atmosphere at the time that Complainant began working at Kiessling Transit also supports her claims. Respondent’s managers acknowledge that Jessamy was a larger than life figure in the office in 2000. Weekend supervisor Vicki Schepis testified that Jessamy would buy lunch for and flirt with the younger girls in the office. Office manager Lisa Stevens described Jessamy as a “pretty flirtatious and flamboyant guy.” She testified that he was “overly friendly” with the eighteen and nineteen year old girls in the office and displayed this behavior “from the first day he started working.”

Although Complainant did not immediately report either digital rape, there is credible evidence that her relationship with Jessamy changed after the sexual assaults. Prior to the assaults she accepted rides from Jessamy to and from work, accepted rides to the bank in order to cash her paycheck, twice accepted rides from Jessamy to the Dedham House of Corrections to visit her boyfriend, and on one occasion let Jessamy pay a court fine for her. After the assaults, Complainant declined restaurant invitations, stopped

taking rides from Jessamy, and stopped wearing dresses to work. The fact that Complainant continued to allow him to pay for her lunch was simply a continuation of an office ritual that involved others as well as Complainant.

Jessamy did not participate in the public hearing in order to deny Complainant's accusations. Thus, Respondent's defense consists in large part of disputing that Complainant could have been alone with Jessamy at the office during weekend shifts. According to Respondent, the weekend shifts were staffed by multiple reservationists, schedulers, call-backers, and Vicki Schepis, in her role as the weekend supervisor/manager.

The above description of a bustling weekend office is at odds with credible testimony in the record that business was slower on weekends and there was less need for staff. Moreover, even if there were, at times, multiple employees in the office on weekends, Complainant and Cabral offered credible testimony that, at other times, they were alone in the office with Jessamy during the weekends. The claim by Schepis that she worked every Saturday and Sunday from 4:00 a.m. to at least 6:00 p.m. (i.e., fourteen hours per day) for two to three years, without any absences, is simply not credible. Common sense dictates that Schepis was not at Respondent's Braintree office every moment of every weekend during the summer of 2000, particularly since she was known to fill in for drivers on an as-needed basis. It was, no doubt, during the quiet moments of two lightly-staffed weekend shifts in the summer of 2000 that Complainant found herself alone with Jessamy. The fact that Respondent failed to provide attendance records to bolster its dubious claim that numerous individuals were always in the office during the summer weekends of 2000 is an additional reason for arriving at this conclusion.

Complainant's accusations are supported by the consistency with which she has made her claims over the many years since the incidents took place. Complainant initially reported being raped to a health care professional at Fisher College in November of 2000, was referred to a rape crisis center in Cambridge, and was taken to the emergency room at Massachusetts General Hospital (MGH) where she again reported the digital rapes. These initial reports significantly precede her MCAD filing, her criminal filing, and her MCAD testimony. Throughout, Complainant's claims have never varied in any major respect. Minor variations in her versions of the sexual assaults pertaining to whether Jessamy's hands moved outside or inside her shirt prior to penetrating her, whether Jessamy touched her breast prior to penetrating her, and whether she or Jessamy pulled up her pants after the penetration are explained more readily by the passage of time than by an intent to fabricate.

Finally, Complainant's accusations are corroborated by accusations that Jessamy sexually harassed other employees as well. There is credible evidence in the record that Jessamy gave Victoria's Secret panties to several young female employees, including Jennie Cabral, and thereafter asked Cabral if she were wearing the panties, among other sexual comments. In October of 2000, Cabral reported that Jessamy put her paycheck in her back pocket, left his hand there while he felt her buttocks, and said something like, "Oh, that feels good." Cabral testified that she, too, froze during the incident, but told her mother about the assault, skipped her next shift, reported the incident to management, and quit her job until she was invited back to work following Jessamy's termination. It was Cabral's actions that motivated Complainant to come forward. Any suggestion that the Complainant and Cabral acted in tandem is negated by the fact that they had no contact

between leaving Respondent's employ in 2001 and the date of public hearing in 2007. The validity of their claims is also buttressed by a third employee of Respondent who reported being sexually harassed by Jessamy in the form of inappropriate telephone calls to her house. At the time all these complaints were made in October of 2000, Respondent appeared to credit them, as evidenced by the fact that Respondent fired Jessamy for misconduct. Jessamy's termination undermines its current position that the assaults could not have taken place and that Complainant is a serial fabricator of sexual assaults as evidenced by her subsequent claim that Braintree police officers grabbed her breast during an arrest for trespassing at the South Shore Plaza in 2003. I decline to draw an adverse inference from the subsequent accusation against the Braintree police in view of the fact that Complainant never filed any charges against the police and acknowledges that she was intoxicated at the time.

Respondent argues that even if the assaults took place, which it does not concede, it is not liable for Jessamy's conduct because he was a scheduler, not a supervisor and, thus, the Company is not strictly liable for his actions. While it is true that Jessamy's duties consisted primarily of scheduling rides, he printed and circulated a business card describing himself as "Operations Manager" and held himself out as the "only black manager." Company owner Paula Kiessling acknowledged that she told Jessamy that he was a manager and described him as "Upper Management" in a document sent to the MBTA. Complainant and Jennie Cabral both testified that they considered Jessamy to be one of their supervisors in 2000. In school and medical documents dated November of 2000, Complainant refers to Jessamy as a "supervisor" and "manager."

Credible evidence establishes that Jessamy sometimes distributed work schedules to the call backers and told them that they could leave work early, responded to questions by Complainant and other employees relative to job-related matters, distributed paychecks, as did other managers, and told employees what needed to be done. At times, Jessamy was the only manager on duty during the 4:00 p.m. to 8:00 p.m. call back shift and during those times, Complainant would ask Jessamy for permission to leave work at the end of the day. Complainant did not seek permission from any other authority figure to leave the work site in order to cash her paycheck when she went with Jessamy. Jessamy attended meetings with other managers, appeared to come and go as he pleased, occasionally took a work vehicle home, came to work at times other than his own shift, and gave Complainant feedback on her job performance. According to Complainant, Jessamy sometimes corrected her work if she made a mistake, and complimented her when she did a good job.

Under College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987), an employer is strictly liable for sexual harassment committed by its supervisors, i.e., those on whom it confers authority. See College-Town, 400 Mass. at 165-166. The MCAD classifies employees as “supervisors” under c. 151B if they have authority to undertake or recommend employment decisions and/or the authority to direct the employee activities. See McCormick v. Modern Continental Construction Co., 27 MDLR 316, 324 (2005) (crew foreman considered to be supervisor because he communicated directives from management, directed members of crew, and controlled what they did); Williams v. Karl Storz Endovision, Inc., 24 MDLR 91 (2002) (individual with no formal supervisory position, no supervisory benefits, and no power to hire, fire,

or discipline, nonetheless considered supervisor because of authority to distribute and check work, give technical advice, give out tools and instructions, handle time cards, and let workers know about overtime); Fluet v. Harvard University, 23 MDLR 145, 163 (2001) (finding of supervisory relationship where individual assigns work, provides direction, monitors work, and recommends hiring, promotion, salary increases and discipline); Richards v. Bull HN Information Systems, 16 MDLR 1639, 1666-67 (1994) (group leader found to exercise supervisory authority and the power to control the workplace environment through his control of work flow and assignment of work).

Moreover, under the theory of apparent authority, an employer is liable for the actions of an individual whom others reasonably believe to be taken on the employer's behalf. See Noble v. Pereira d/b/a AUTOS by Joseph, 29 MDLR 50, 54 (2007) *citing* Girouard v. Bekiro Corp, 26 MDLR 24 (2004) and Przybycien v. Aid Maintenance Co., 13 MDLR 1266, 1382 (1991) (individual who held himself out as a supervisor and actually supervised complainant's work held to be a supervisor even though never formally designated as a supervisor or given authority to hire or fire). An agent acts with apparent authority if a third party reasonably believes that the agent is authorized to so act. See Floyd v Forest Hill Cab Company, 15 MDLR 1181 (1993) (cab driver who refused to pick up a Black customer found to act with apparent authority on behalf of cab company).

I conclude that Jessamy's activities satisfy the definition of apparent authority, if not actual authority, and render Respondent strictly liable for Jessamy's sexual harassment of Complainant. Respondent permitted Jessamy to behave as an authority figure in the office and to flaunt his apparent status as a supervisor. While Respondent

could not have foreseen the sexual assaults he would commit, it was common knowledge that he was a “pretty flirtatious and flamboyant guy” who was “overly friendly” with the eighteen and nineteen year old females in the office, and displayed this behavior “from the first day he started working.” Respondent’s attempt to minimize Jessamy’s role in the office is not credible in contrast to the more persuasive evidence that he acted as an authority figure and was considered a manager. Accordingly, Respondent is liable for Jessamy’s unlawful actions committed on company time and on company premises.

#### IV. Damages

Upon a finding of unlawful discrimination, the Commission is authorized to award remedies to effectuate the purposes of G.L. c. 151B and to render the injured Complainant whole. Remedies include damages for lost wages and benefits and for emotional distress Complainant has suffered as a direct result of Respondent’s discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988).

Insofar as lost wages are concerned, Complainant stopped working for Respondent on or about June 1, 2001. She was not constructively discharged because Jessamy was fired the year before, as soon as his sexual assaults were reported to the Company. The record indicates that Complainant voluntarily left Respondent and that her employment record thereafter consisted of numerous jobs from which Complainant was fired due to her alcoholism. Complainant acknowledges one period of unemployment lasting eighteen months. I conclude that Complainant’s voluntary decision to leave the employ of Respondent and her inability to work following her

employment with Respondent disqualifies her for back or front pay. To the extent that Complainant's inability to work is attributable to the emotional ravages of her sexual harassment, she is entitled to compensation in the form of emotional distress damages.

Turning to the issue of emotional distress damages, Complainant's entitlement to an award of monetary damages can be based on expert testimony and/or Complainant's testimony as to the cause of her distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation, while not necessary to sustain an award for emotional distress, is beneficial. See Stonehill, 441 at 576. An award must rest on substantial evidence that is causally connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. Id.

There is credible evidence in this case which portrays Complainant, prior to her employment with Respondent, as a confident, ambitious, energetic, and well-adjusted high school graduate. She describes herself as an "average" high school student who participated in numerous sports, engaged in extra-curricular activities, and had part-time employment. Although Complainant drank alcohol with friends on weekends, there is no evidence that she was an alcoholic prior to working for Respondent.

Following her sexual assaults, Complainant stopped talking to people in the office, didn't smile or joke, stopped hugging people when she greeted them, and felt embarrassed and dirty. She began to abuse alcohol, smoked cigarettes and marijuana,

experienced disrupted sleeping patterns, distanced herself from other people, avoided being touched, behaved in an edgy, irritable, and nervous manner, experienced a deteriorating relationship with her younger brothers, became depressed, had difficulty concentrating, and had suicidal ideations.

In the fall of 2000, just weeks after the sexual assaults, Complainant transferred to Fisher College which she attended for two semesters. Complainant testified that during the time she attended Fisher College, she felt like she wanted to jump in front of a train and once lay down in the street. A Fisher College faculty member reported that Complainant sat in class with ear phones, not participating, and wrote “stupid, stupid” on a full sheet of paper instead of taking an exam. Complainant admitted that she brought alcohol to school in her purse. A psychiatric evaluation resulting from a MGH emergency room visit recommended that Complainant be admitted for in-patient psychiatric care, which Complainant refused. She did, however, pursue out-patient treatment for years, including group therapy for sexual assault victims and individual therapy.

MGH medical records through 2005 diagnose Complainant as suffering from Post-Traumatic Stress Disorder (PTSD) and full-blown depression. She is described in the records as feeling “low” and suffering from increased or irregular sleeping, decreased energy, decreased interest in socializing, decreased appetite, crying spells, feelings of hopelessness, and decreased concentration. Complainant has, at times, stopped therapy, missed medical appointments, failed to take medication regularly, stopped working, and consumed as much as one pint of rum per day plus beer and marijuana. At other times, Complainant is described as feeling better and limiting her alcohol intake.

Complainant enrolled in U Mass Boston in the fall of 2001. She took courses at the school for approximately four years but frequently did not attend class and did not graduate. Complainant's medical record from the University Health Service also contains an assessment of depression on November 20, 2002.

Dr. Livshin testified that she examined Complainant on 9/25/06 and 10/03/06; administered psychological testing including the Beck Depression Inventory; and reviewed past treatment/medical records, school transcripts, and Complainant's 9/6/06 deposition. Dr. Livshin concluded that Complainant suffers from PTSD, Major Depression, and Alcohol Dependence and Abuse. According to Dr. Livshin, Complainant appears to have been extremely traumatized and exhibits conditions that are consistent with those of adults who have been sexually victimized, including nightmares, depression, substance abuse, re-experiencing of the traumatic event, self-abusive and high risk behaviors, sexual issues, self-blame, poor concentration, emotional numbing, retribution fantasies, high autonomic arousal, and persistent suicidal ideation. Dr. Livshin attributed Complainant's lack of follow through with her treatment to her alcohol abuse. Dr. Livshin testified that Complainant's prognosis is poor because she has been unstable for a significant period of time.

The above evidence supports a conclusion that Complainant was a well-functioning young woman prior to being sexually assaulted during the summer of 2000 and that after the assaults, her life fell apart. Complainant became an alcoholic, developed a major depression, was unable to finish her college education, was unable to hold down a job, became withdrawn, and had suicidal thoughts. Complainant blames herself for freezing when assaulted by Jessamy rather than fighting back. Her testimony

in this regard was persuasive, as was her general sense of despair. As a witness, Complainant whispered, failed to make eye contact, and looked very sad. She conveyed the most substantial emotional distress I have witnessed in years of conducting discrimination hearings.

The record is replete with Complainant's attempts to seek help from doctors, nurses, therapists, and counselors, demonstrating numerous, if not successful, attempts to mitigate her harm. Complainant has taken anti-depressants since leaving Respondent and has participated in group and individual therapy.

In order to refute the picture of Complainant's emotional devastation resulting from sexual harassment and her struggles to obtain help thereafter, Respondent points to evidence that prior to the summer of 2000, Complainant engaged in adolescent drinking, was unsuccessful in completing college courses, and likely weighed around 160 pounds. According to Respondent, this evidence undermines Complainant's assertion that she began to drink, to fail in her college studies, and to gain weight in response to Jessamy's abuse. Respondent also relies on the fact that Complainant has failed to attend therapy on a consistent basis in order to alleviate her depression and may have been the victim of physical abuse by her boyfriend in 2003.

These factors, while relevant, pale in comparison to the emotional ravages of her sexual harassment. Regardless of any academic difficulties, sporadic drinking, or weight gain on the part of Complainant prior to the summer of 2000, she appears to have been a robust, hard working, ambitious, and positive young woman at the time she started working for Respondent. In any event it is not unusual for a complainant to suffer distress caused by factors separate and apart from the discriminatory act. See Williams,

v. Karl Storz Endovision, Inc. 24 MDLR 91 (2002); Raffurty v. Keyland Corp., 22 MDLR 125, 128 (2000)); Rosati v. Town of Warren Bd. of Health, 19 MDLR 34, 38 (1997); Fiske v. R.P. Liquor, Inc., 16, MDLR 1042, 1057 (1994). The presence of other stressors in a complainant's life does not absolve a respondent from liability for the distress caused by its actions. See Raffurty, 22 MDLR at 128; Franklin Publishing Co., Inc. v. MCAD, 25 Mass. App. Ct. 974, 975 (1988).

Here, the presence of other stressors, to the extent they existed, were minor in comparison to the overwhelming impact of Jessamy's actions. Based on the foregoing description of Complainant's emotional state, I conclude that she is entitled to \$200,000.00 in emotional distress damages.

### III. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G.L.ch. 151B, sec. 5, Respondents are ordered to immediately cease and desist from further acts of discrimination and retaliation. In addition:

- (1) Respondents shall pay Complainant, within sixty (60) days of receipt of this decision, the sum of \$ 200,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
- (2) Respondent Kiessling Transit Inc. shall conduct basic annual training sessions concerning sexual harassment for all employees and supervisors.

- a. Within thirty (30) days of the receipt of this decision, Respondent Kiessling Transit Inc. shall select a trainer to conduct the initial training sessions. The training may be provided by the Commission, or may be provided by a trainer who is a graduate of the MCAD's certified "Train the Trainer" course.
- b. At least one month prior to the training date, Respondent Kiessling Transit Inc. must submit a draft training agenda to the Commission's Director of Training along with notice of the training date(s) and location(s). The Commission has the right to send a representative to observe the training session(s).
- c. Following the training, Respondent Transit Inc. shall send to the Commission the names of persons who attended the training and the date and time of each training session.
- d. Respondent Kiessling Inc. shall repeat this training at least one time for all new supervisors and employees who were hired or promoted after the date of the initial training session.:

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 ten (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 24th day of April, 2008.

---

Betty E. Waxman, Esq.,  
Hearing Officer