

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

ERICA DANIELS,
Complainant

v.

DOCKET NO. 00-SPR-0463

VERONICA WASHINGTON,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Edward R. Mitnick in favor of Complainant Erica Daniels. Following an evidentiary hearing, the Hearing Officer concluded that Respondent Veronica Washington had discriminated against Complainant Erica Daniels in violation of M.G.L. c. 151B, s. 4(11) by unlawfully attempting to raise her rent and then evict her from her apartment because Complainant had children under six years of age. Respondent appealed 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 to weigh the evidence when deciding disputed issues of fact. 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 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 otherwise not in accordance with the law. See 804 CMR 1.16(8)(f).

Respondent has appealed the decision of the Hearing Officer on the grounds that: 1) the Hearing Officer failed to identify and consider material facts; 2) the Hearing Officer identified material facts that were not supported by the evidence or omitted; 3) the Hearing Officer improperly analyzed the case as a direct evidence case when the case should have been analyzed under a disparate treatment analysis; 4) raising a tenant's rent because the tenant brings an additional child into the apartment to reside is not a per se violation of M.G.L. c. 151B, section 4(11); and 5) the Hearing Officer's compensatory damage award was arbitrary and/or an abuse of discretion.

With regard to the Hearing Officer's alleged failure to identify and consider material facts and identifying material facts that were not supported by the evidence or were omitted, we find that the Hearing Officer assessed all of the evidence and ultimately found Complainant's evidence to be more persuasive. It is the responsibility of the Hearing Officer to weigh the evidence, assess credibility and decide disputed questions of fact. "An agency adjudicator does not have to make detailed findings concerning every aspect of the matter before him; his findings need only embrace those facts necessary to support his decision in sufficient detail to permit judicial review." Chief Justice of Administration and Management of the Trial Court v. MCAD, SJC-08899 (2003). The Hearing Officer made detailed findings indicating that he assessed all the evidence, made

credibility determinations and reached a conclusion based upon those findings. We conclude that his findings of fact were supported by substantial evidence.

We further find that the Hearing Officer applied the correct legal standard in analyzing the case and that his conclusions of law were supported by the record evidence. We also note that the Hearing Officer's findings of fact would support a determination that Respondent violated chapter 151B, section 4(11) under the circumstantial evidence model as well.

With regard to emotional distress damages, when considering the request of a party to reduce a fact finder's award of damages for emotional distress, it is proper for the Full Commission to extend "great deference" to the Hearing Officer. Baldelli v. Town of Southborough, 18 MDLR 167, 170 (1996). "This is because the fact-finder had the exclusive opportunity to observe the witnesses and weigh the credibility of testimony based on demeanor and countless other intangible factors that occur in face-to-face communication." Said v. Northeast Security, Inc, 22 MDLR 315, 318 (2000). Applying the deference prescribed above, we find that the Hearing Officer's award to Complainant of \$15,000 in emotional distress damages was amply supported by the record evidence.

As a result of our 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.

COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS

Having affirmed the Hearing Officer's decision in favor of the Complainant, we conclude that the Complainant has prevailed in this matter and is entitled to an award of

reasonable attorney's fees and costs. See M.G.L. c. 151B, Section 5. 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 then examine the resulting figure, known as the "lodestar", and adjust it either upward or downward or not at all depending on various factors.

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). 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 (1st Cir.); Miles v. Samson, 675 F. 2d5 (1st Cir. 1982); Brown v. City of Salem, 14 MDLR 1365 (1992).

Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission will

consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Id. at 1099.

Complainant's counsel has filed a petition seeking attorney's fees and costs in the amount of \$9,180.00, charging a rate of \$180 per hour, and supporting the request with contemporaneous time records. Having reviewed the contemporaneous time records that support the attorney's fees request, and based on this and similar matters before the Commission, we conclude that the amount of time spent on preparation and litigation of this claim is reasonable.

We further conclude that Complainant's attorney's hourly rate of \$180 is consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases, and is within the range of rates charged by attorneys in the area with similar experience. Thus, the lodestar figure here is \$9,180.00 for attorney fees and costs.

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 shall pay Complainant, within 60 days of receipt of this decision, the sum of \$630.00 in lost wages; and the sum of \$150.00 in moving expenses, for a total of \$780.00, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

2. Respondent shall pay Complainant, within 60 days of receipt of this decision, the sum of \$15,000.00 in damages for emotional distress plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
3. Respondent shall pay to Complainant's counsel the amount of \$9,180.00 in attorney's fees and costs within 60 days of receipt of this decision.
4. The parties shall notify the Clerk of the Commission as soon as the above-described ordered payments have been made. If Respondent fails to comply with the terms of this Order within the time periods allotted, then Complainant is instructed to immediately notify the Clerk of the Commission.

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 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 1st day of March, 2004.

Dorca I. Gomez
Chairwoman

Walter J. Sullivan, Jr.
Commissioner