

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
GEORGE PRICE,
Complainant

v.

DOCKET NO. 00-BEM-0262

H.T. BERRY COMPANY, INC.,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Edward R. Mitnick in favor of Respondent, H.T. Berry Company, Inc. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for unlawful retaliation in violation of M.G.L. c. 151B, § 4(4). Complainant filed an appeal 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 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 Complainant's contentions on appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law with respect to the Hearing Officer's findings and conclusions of law. We find the Hearing Officer's findings were supported by substantial evidence in the record and we defer to them. On the above grounds, we deny the appeal and affirm the Hearing Officer's decision.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact, conclusions of law and the Order of the Hearing Officer and incorporate herein the findings of fact, the conclusions of law and the Orders of the Hearing Officer.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint seeking judicial review pursuant to M.G.L. c. 30A and c. 151B, §6 in the Superior Court within thirty (30) days of receipt of this decision.

SO ORDERED this 9th day of November, 2004.

Dorca I. Gomez
Chairwoman

Cynthia A. Tucker
Commissioner