

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
HELEN ABRAMS,
Complainant

v.

96-BEM-3667

PADDINGTON'S PLACE,
JAMES SMITH and
SUSAN SMITH,
Respondents

DECISION OF THE FULL COMMISSION

This matter came before us following a decision of Hearing Officer Edward R. Mitnick in favor of the Complainant Helen Abrams. Following an evidentiary hearing, Hearing Officer Mitnick concluded that Complainant was subjected to discrimination in employment on the basis of handicap in violation of M.G.L. c. 151B. In so concluding, Mitnick ruled that Respondents harassed Complainant on the basis of her handicap, awarded damages for emotional distress and ordered Respondents to undergo training. The Hearing Officer also found that Complainant was not wrongfully terminated on the basis of handicap. Respondents then filed a timely Petition for Review. Complainant has submitted a petition for attorneys' fees.¹

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, §5.

¹ Complainant filed an appeal, *pro se*, four months after the Hearing Officer decision was issued. As such, it was untimely and will not be considered as part of this review.

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.

Respondents argue on appeal that the Hearing Officer exceeded his authority by finding them liable for harassment where Complainant did not specifically assert a claim of harassment in her handicap complaint. We disagree. The Commission has consistently held that harassment on the basis of handicap is subsumed within a claim for handicap discrimination under M.G.L. c.151B, § 4(16). Sleeper v. New England Mutual Life Insurance Co., 24 MDLR 55 (2002). Moreover, the right of a hearing officer to conform the decision to the facts adduced at the public hearing has long been recognized by the Commission. See e.g., Riggs v. Town of Oak Bluffs, 23 MDLR 306, 311 (2001). Finally, Respondents were on notice that Complainant's handicap claim included a harassment component as the evidence that was discovered by the parties and offered in support of Complainant's disparate treatment claim overlapped substantially with the evidence that proved Complainant's harassment claim. It was Respondents' own letters and statements to Complainant, all of which were identified by Complainant as supportive of her claim from the outset of the litigation, that the Hearing Officer relied upon in finding unlawful

harassment. As such, Respondents were on notice of Complainant's claim and the Hearing Officer did not exceed his authority by finding Respondents liable for unlawful harassment based on handicap.²

Next, Respondents also contend that the Hearing Officer's emotional distress award of \$10,000 is not supported in the record and was therefore punitive. We disagree. The Hearing Officer considered the evidence in light of the factors articulated in Stonehill College v. MCAD, 441 Mass. 549 (2004) and made specific findings in support of his award. The Hearing Officer found that Respondents' conduct caused Complainant to be "shocked", suffer from loss of self-esteem and become emotionally drained. We find that the record supports the emotional distress award.

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. 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.

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 attorney's fees and costs. See M.G.L. c.151B, s.5. 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 methodology requires the Commission to undertake a two step analysis: first, the Commission will calculate the number of

² Respondents' motion to submit additional evidence is hereby denied.

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 will adjust it either upward or downward or not at all depending on various factors.

In this matter, Complainant's attorney submitted an accounting of the expenditure of 20.50 hours in the prosecution of this claim, totaling \$3,075.00 in fees. Having reviewed the time records that support this request, we conclude that the amount of time spent on preparation and litigation of this claim is reasonable.

The records also indicate that the attorney billed at the rate of \$150/hr. We find that the rate charged by counsel is within the range of rates common to the marketplace within which Complainant obtained counsel and litigated her claim. See e.g., Baker v. Town of Winchester School Committee, supra. We therefore award attorney's fees in the amount of \$3,075.00.

ORDER

Respondents' appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer is affirmed in its entirety. It is hereby ordered that:

1. Respondents Paddington's Place, Susan Smith, and James Smith, shall pay Complainant, Helen Abrams, within forty-five (45) days of receipt of this decision, the sum of \$10,000.00 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.

2. Respondents Paddington's Place, Susan Smith, and James Smith, shall pay Complainant, Helen Abrams, within forty-five (45) days of receipt of this decision, the sum of \$3,075.00 in attorney's fees.

3. Respondent, Paddington's Place, shall conduct basic annual training sessions on unlawful disability discrimination for all managers and supervisors, including any employees vested with supervisory authority, employed by Paddington's Place. With respect to such training:

- a. Each training session for managers and supervisors must be at least four (4) hours in length. All managers and supervisors, as of the date of the training session, are required to attend. No more than twenty-five (25) persons may attend each training session. Respondent shall repeat this training, once each calendar year for the next five (5) years, for all new supervisors and managers who were hired or promoted after the date of the initial training session.
- b. Within thirty (30) days of the receipt of this decision, Respondent shall select a trainer to conduct the initial training sessions. The trainer must be selected from the list of trainers who have completed the Commission-certified discrimination prevention-training program, available from the Commission's Director of Training. Within one week of Respondent's selection of a trainer, a copy of this hearing decision must be forwarded to the trainer for his or her review.
- c. At least one month prior to the training date, Respondent must submit a draft training agenda to the Commission's Director of Training for approval; and, provide the Director of Training with one-month's advance notice of the training date(s) and location(s). If the Commission decides to send a representative to

observe the training sessions, Respondent will provide the Commission representative with unfettered access to the training sessions.

- d. Within one month after the completion of the training, Respondent must submit documentation of compliance to the Commission's Director of Training, signed by the trainer, identifying the training topic, the names of persons required to attend the training as identified in paragraph (a) above, the names of the persons who attended each training session, and the date and time of each training session.
- e. In the event that Respondent's business is sold, materially changed, or taken over by new management, any and all successor purchasers, assignors, managers, or operators of Respondent's business (hereinafter referred to as the "new owners") shall be responsible for fulfilling the training requirements specified in this decision if any of the following shall apply:
 - i. The majority of the managers and supervisors employed by Respondent as of the date of this decision continue to work for the new owners as of the succession date;
 - ii. The majority of Respondent's governing board (e.g., board of directors, trustees) as of the date of this decision continues to serve on the new owner's board as of the succession date;
 - iii. The new owners are relatives of Respondent, or previously employed by Respondent as a manager or supervisor; or,
 - iv. Respondent continues to retain an interest in the successor entity.
- f. For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.

The parties shall notify the Clerk of the Commission as soon as the above-described ordered payments have been made. If Respondents fail to comply with the terms of this Order within the time periods allotted, 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 noncomplying 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 in superior court seeking judicial review in accordance with M.G.L. c.30A, c.151B, s.6, and the 1996 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 thirty (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, s.6.

SO ORDERED this 11th day of February, 2005.

DORCA I. GOMEZ, Chairwoman

CYNTHIA A. TUCKER, Commissioner