

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

HELENE COHEN AND THE  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION,  
Complainants

v.

DOCKET NO. 00-BEM-0662

NATIONAL RAILROAD PASSENGER  
CORPORATION, d/b/a/AMTRAK,  
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Edward R. Mitnick in favor of Respondent, National Railroad Passenger Corporation d/b/a/ Amtrak. 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 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 Hearing Officer's responsibility to evaluate the credibility of the witnesses and/or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. 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 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 conclusions 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.

### III. ORDER

The Complainant's appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer is confirmed in its entirety.

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, § 8.

Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of receipt of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, § 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, § 6.

SO ORDERED this 24th day of October, 2007.

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Walter J. Sullivan, Jr.  
Chairman

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Martin Ebel  
Commissioner