

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

_____)	
JAMES FARRICY,)	
Complainant)	
)	
v.)	96 BEM 0523
)	
SUFFOLK COUNTY)	
SHERIFF'S DEPARTMENT)	
Respondent)	
_____)	

DECISION AND ORDER OF THE FULL COMMISSION

This matter has come before us following the amended decision of Hearing Officer Judith Kaplan in which she found that Respondent subjected Complainant to unlawful retaliation in violation of M.G.L. c.151B. The Hearing Officer originally determined, in her decision dated December 1, 1998, that Respondent had not engaged in unlawful retaliation because it had not carried out its threat to transfer Complainant in retaliation for his support of a co-worker, Ann McAuliffe, who had filed a complaint of sexual harassment against Respondent. On March 31, 2000, the Full Commission reversed the Hearing Officer's decision on the grounds that Respondent's threat to transfer Complainant constituted unlawful retaliatory conduct prohibited by c.151B, and remanded the matter to the Hearing Officer. On September 19, 2000, the Hearing Officer issued an amended decision concluding that Respondent had engaged in unlawful retaliatory conduct and awarding Complainant \$5,000 in emotional distress damages. Respondent filed a timely appeal.

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 responsibility of the hearing officer to evaluate the credibility of witnesses and/or 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 1.16(8)(f).

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 in favor of Complainant, we conclude that Complainant has prevailed in this matter and is therefore entitled to an award of reasonable attorneys' fees and costs. 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.

A calculation of the hours reasonably expended involves separating out work done in relation to the individual doing the work (e.g., senior partner, junior associates, and paralegal). Time beyond that consistent with a standard of reasonable efficiency and productivity is eliminated. Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours insufficiently documented. *See generally* Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir. 1984); Miles v. Samson, 675 F.2d 5 (1st Cir.1982); Furtado v. Bishop, 635 F.2d 915 (1st Cir. 1980); Baird v. Belloti, 616 F.Supp. 6 (D.Mass 1984); and Brown v. City of Salem, 14 MDLR 1365 (1992).

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, *supra*.

Counsel Paul Griffin for Complainant seeks reimbursement for 142.75 hours of work performed at an hourly rate of \$200.00 for a total of \$28,550. Based upon our review of the petition, we conclude that a reduction of 25% is in order to account for excessive time billed for certain tasks, for instance: 50 hours billed for the preparation of a seven page opposition to Respondent's Petition for Review and 21.5 hours billed over the course of an eight-month period prior to the hearing for meetings with Complainant. We conclude that Attorney Griffin's hourly rate of \$200.00 is supported by documentation of his legal experience and expertise in the area of employment discrimination law and consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases and is well within the range of rates charged by attorneys of similar experience. We, therefore, award fees in the amount of \$21,412.50 (142.75 – 25% x \$200).

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 issue the following ORDER of the Full Commission:

- (1) Within forty-five (45) days of receipt of this Order, Respondent shall pay the Complainant \$5,000 in damages for emotional distress;
- (2) Within forty-five (45) days of receipt of this Order, Respondent shall pay the Complainant's attorney's fees in the amount of \$21,412.50;
- (3) The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made.

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 in superior court seeking judicial review. Such action must be filed within 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 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, s.6.

SO ORDERED this 5th day of February, 2004.

Dorca I. Gomez, Chairwoman

Cynthia A. Tucker, Commissioner

Walter J. Sullivan, Jr., Commissioner