

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION AGAINST  
DISCRIMINATION and JARVIS ALDRIDGE,  
Complainant

v.

Docket No. 98-BEM-3762

THOMAS O'CONNOR CONSTRUCTORS, INC.,  
Respondent

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER OF THE HEARING OFFICER ON REMAND**

On May 7, 2004, I issued a decision and order in favor of Complainant, Jarvis Aldridge. Specifically, I concluded that Respondent, Thomas O'Connor Constructors, Inc., had interfered with Complainant's right to a harassment-free work environment in violation of M.G.L. c. 151B, § 4(4A), and awarded Complainant \$25,000 in emotional distress damages.

Respondent filed a timely petition for review. As part of its appeal before the Full Commission, Respondent argued that the emotional distress award of \$25,000 should be vacated because it failed to comport with the factors set forth by the Supreme Judicial Court in Stonehill College v. MCAD, 441 Mass. 549 (2004). Contrary to Respondent's contention, the Full Commission concluded that the evidence of emotional distress was so substantial that "the award of \$25,000 was 'greatly disproportionate' to the injury proven and must be vacated." The Full Commission further held that "considering the factors articulated in Stonehill College, factors the Commission has long employed, Complainant

proved that he suffered significantly greater injury than the Hearing Officer awarded.” Consequently, the Full Commission remanded the issue of the award of emotional distress damages to the Hearing Officer to reconsider the award in light of the evidence of extensive emotional distress suffered by Complainant as a result of Respondent’s unlawful conduct.

In deciding this matter, I have considered the entire record, including the testimony and exhibits introduced at the Public Hearing, the stipulations of the parties, and the Proposed Findings and Conclusions of Law submitted by the parties after the Public Hearing. In consideration of the decision of the Full Commission and after a review of the record in this matter, I hereby amend my decision as follows.

In my initial decision, I concluded that Respondent interfered with Complainant in the exercise of his right to be free from harassment based on his race and color in violation of M.G.L. c. 151B, § 4(4A), as a result of the conduct of Paul Daley, who worked for Respondent as a supervisor. I found that Daley had made four racially derogatory comments during the period of August 27 to September 24, 1998, and directed his slurs toward either Complainant or another African-American worker. I further found that Daley’s conduct was sufficiently continuous and pervasive and went beyond “mere offensive utterances.” In addition, Daley’s conduct clearly had the effect of undermining Complainant’s ability to do his job at the UMass-Lowell job site and participate fully in the workplace.

I note that after my initial decision, the Full Commission in Blue v. Aramark

Corp., commented that they were “disturbed” with a hearing officer’s emotional distress award of \$35,000 to a complainant in a remarkably similar race discrimination case. 2004 WL 1920884, MCAD, Aug 20, 2004 (NO. 98-BEM-1796 In Blue, the hearing officer found that the complainant had been severely humiliated and demeaned in front of a large crowd of people after being subjected to hateful and offensive racial epithets. Relying on the standards cited by the Supreme Judicial Court in Stonehill College, the Full Commission noted that given the nature, character and severity of the harm suffered by the complainant, it believed a significantly larger award was warranted. *Id.*<sup>1</sup>

Upon further reflection and in light of the Full Commission’s decision in Blue, I conclude that Complainant is entitled to an award of \$50,000 in damages in compensation for the emotional distress he incurred as a direct and probable consequence of Respondent’s unlawful conduct. In support of this increased award, I note that Complainant testified credibly that as a result of Daley’s racial slurs, he suffered physical manifestations of distress and complained of being “very hurt”, and “angry and bitter.” Complainant’s wife, Lisa Aldridge, also testified credibly that her husband had lost a lot of weight and stopped sleeping well. Additionally, after Respondent failed to take any appropriate action against Daley, and upon Daley’s return to the workplace, Complainant became so distressed that he packed up his tools and walked off the job site. Respondent’s

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<sup>1</sup> Although the Full Commission in Blue did not find that the Hearing Officer’s award constituted an abuse of discretion, it nonetheless commented that “this award seems to be at the low end of the spectrum of appropriateness” given the facts found by the Hearing Officer. I believe the evidence of emotional distress in the case at bar is at least equal to and probably more substantial than that presented in Blue.

own project manager admitted that Complainant “clearly appeared upset, disturbed and agitated” when they questioned him about this matter.

As to the severity of the harm, Complainant and his wife testified that Daley’s harassment affected his life outside of work. I credited his testimony that he became withdrawn and isolated, stopped playing with his children, and ceased communicating with his wife. Mrs. Aldridge also testified that before these events, Complainant was happy, content, and punctual. However, in August 1998, after Daley began making the racial epithets, she observed Complainant come home from work in a very disturbed and angry mood. She testified credibly that she talked with him about his attitude and he told her it was in response to Daley’s racial slurs. Mrs. Aldridge also corroborated her husband’s testimony that he became withdrawn, claiming that he locked himself in his room, avoided contact with their children, and stopped communicating and interacting with her. In addition, Complainant’s distress lingered for a significant period of time after the last incident. For example, Respondent admitted that when they approached Complainant about his complaint in October 1998, he appeared upset, disturbed and agitated. Afterwards, Complainant still experienced significant distress from the incident as evident from his walking off the job site when Daley returned to the job.

I, therefore, conclude that an award of \$50,000 to Complainant for the emotional distress damages he incurred as a direct and probable consequence of Respondent’s unlawful conduct to be more appropriate.

**V. ORDER**

This decision constitutes an amendment of the Decision and Order dated May 7, 2004, and is incorporated by reference therein. Respondent, Thomas O'Connor Constructors, Inc., shall pay Complainant, Jarvis Aldridge, within sixty (60) days of receipt of this decision, the sum of \$50,000.00 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.

The parties shall notify the Clerk of the Commission as soon as the above-described ordered payment has been made. If Respondent fails 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 decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 1<sup>st</sup> day of March, 2005.

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Edward R. Mitnick  
Hearing Officer