

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
JEAN CLAUDE PIERRE,
Complainant

v.

DOCKET NO. 98-BED-1609

SALEM STATE COLLEGE,
Respondent

ORDER OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith Kaplan in favor of Respondent. Following an evidentiary hearing, the Hearing Officer concluded that Complainant was not subjected to discrimination in education in violation of M.G.L. c. 151C. The Complainant then filed a timely Petition for Review.

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 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. We find that, as a result of Respondent's dilatory conduct and refusal to participate in the administrative process, Complainant was prejudiced in his ability to prove his case. We specifically note that Respondent: 1) failed to file a conforming position statement; 2) failed to comply with all discovery requests; 3) failed to attend the Conciliation Conference ordered by the Investigating Commissioner; 4) failed to submit required memoranda and attend the Certification Conference ordered by the Investigating Commissioner; 5) failed to submit required memoranda and attend the pre-hearing conference ordered by the Hearing Officer; and 6) failed to appear at the public hearing.

The Commission will not sanction the deliberate disregard of its administrative process, particularly by a public institution of the Commonwealth. The Commission's mandate to eradicate discrimination resounds with particular force as it pertains to policing the Commonwealth's public institutions, as evidenced by the Legislature's specific directive to monitor the conduct of the Commonwealth's agencies and authorities. To this end, the Commission must ensure that entities of the Commonwealth that are accused of violating M.G.L. c.151B comply with its process.

Notwithstanding this charge, the Commission's statutory mandate requires that a determination of liability be based upon proof of discrimination. Thus, the remedial authority of

M.G.L. c.151B, s.5 may not be invoked simply to punish a recalcitrant respondent. See e.g., Berardi v. Medical Weight Loss Center, 23 MDLR 5, 9 (2001).

In this case, Respondent's complete refusal to participate in the administrative process prejudiced Complainant's ability to prove his case, because Complainant's allegations relied, in large part, on comparator evidence, proof of which was not readily available to him given Respondent's refusal to respond to his discovery demands. Absent such proof or contrary evidence from Respondent, the Hearing Officer was not in a position to evaluate the validity of Complainant's allegations. In light of these circumstances, equity mandates that the decision of the Hearing Officer be vacated and the case remanded for a new public hearing. We will not let Respondent benefit from its misdeeds. Complainant has a right to a full airing of his claim and to the Commission's full exercise of its authority in the prosecution of the complaint. We also deem it appropriate and in the interests of justice, given that we are ordering a new hearing, that Respondent be allowed to appear and defend against Complainant's charges.

ORDER

For the reasons set forth above, we hereby VACATE the findings of fact, conclusions of law and the Order of the Hearing Officer and REMAND this matter to the Hearings Unit for an expedited public hearing. We order the Clerk to assign a new hearing officer to the matter, who may make credibility assessments contrary to those of the previous hearing officer given the benefit of the full panoply of evidence. We also make the following orders:

- 1) The Chief of Enforcement, or his designee, shall file an appearance and participate, at his discretion, to ensure that this case is fully aired before the hearing officer.

- 2) Respondent shall comply with all outstanding discovery requests within forty-five (45) days of receipt of this Order. No other discovery shall be allowed.
- 3) Respondent shall pay, within thirty (30) days of receipt of this Order, \$1,000 in attorney's fees to Complainant as previously ordered by the Investigating Commissioner.
- 4) Respondent shall pay, within thirty (30) days of receipt of this Order, \$500 in costs incurred by the Commission as a result of Respondent's failure to appear at the Commission ordered Conciliation, Certification, and Pre-Hearing Conferences. Payment shall be made to the Commonwealth of Massachusetts and directed to the Clerk of the Commission.
- 5) Respondent shall pay an amount to be determined by the next assigned hearing officer to Complainant for his attorney's fees incurred as a result of Respondent's failure to attend the Commission ordered Conciliation, Certification, and Pre-Hearing Conferences. Complainant shall submit itemized, contemporaneous time records along with an affidavit in support thereof, to the Clerk of the Commission within thirty (30) days of receipt this Order.

This Order does not represent the final action of the Commission for purposes of M.G.L.

c. 151B, s.6 and c. 30A.

SO ORDERED this 25th day of May, 2004.

Dorca I. Gomez, Chairwoman

Cynthia A Tucker, Commissioner