

COMMONWEALTH OF MASSACHUSETTS

COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
JEANNINE PETTIFORD,  
Complainants

v.

DOCKET NO. 99-BEM-1852  
DOCKET NO. 00-BEM-0884

CITY OF NEW BEDFORD  
POLICE DEPARTMENT,  
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty Waxman in favor of Complainant Jeannine Pettiford. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for unlawful discrimination on the basis of gender and retaliatory transfer in violation of M.G.L. Chapter 151B. Respondent 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. G.L. c. 151B, Section 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); G.L. c. 30A.

It is the Hearing Officer’s responsibility to evaluate the credibility of 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, or was otherwise not in accordance with the law. See 804 CMR 1.16(f).

We have carefully reviewed Respondent’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 determinations with respect to the credibility of witnesses and her 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 in its entirety.

#### ATTORNEY’S FEES

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. See M.G.L. c. 151B, Section 5. In determining the reasonableness of a fee request the Commission will first calculate the number of hours reasonably expended to litigate the claim and then multiply that number by an hourly rate considered to be reasonable. 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.

Complainant has filed a petition seeking attorneys’ fees in the amount of \$136,450 and costs in the amount of \$10,884.35. Complainant has also filed a supplemental petition seeking additional attorneys’ fees in the amount of \$16,000. Respondent has filed oppositions thereto.

Only those hours reasonably expended for the work in question are subject to compensation under G.L. c.151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. A calculation of the hours expended involves separating out work done in relation to the individual doing the work (e.g., senior partner, junior associate, 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 the prosecution of the claim are subtracted, as are hours that are insufficiently documented. See generally Grendel’s Den v. Larkin, 749 F.2d 945 (1<sup>st</sup> Cir. 1984); Miles v. Samson, 675 F.2d 5 (1<sup>st</sup> Cir. 1982); Furtado v. Bishop, 635 F.2d 915 (1<sup>st</sup> Cir. 1980); Baird v. Bellotti, 616 F. Supp. (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 up all hours expended by all personnel. The Commission carefully reviews the complainant’s submission and will not readily accept the proffered number of hours as reasonable. See, e.g., Baird v. Bellotti, supra.

Complainant’s counsel, Paul Griffin, seeks reimbursement for 682.25 hours of work performed at an hourly rate of \$200.00 for a total of \$136,450.00. In a supplemental petition, counsel seeks reimbursement for 80 hours of work performed at an hourly rate of \$200.00 for a total of \$16,000. The total amount of fees sought by Complainant is

\$152,450.00. Based upon our review of both petitions, we conclude that a reduction of 25% or more is in order to account for excessive time billed for certain tasks. For example: a 50% reduction for 102 hours billed for the preparation of proposed findings of fact in the post-hearing memorandum, a 50% reduction for 188 hours billed for legal research and preparation relating to the proposed conclusions of law in the same memorandum, a 25% reduction for 15 hours billed for drafting a second memorandum involving minimal discovery, a 25% reduction for 12 hours billed for drafting a two-page second complaint, and a 25% reduction for 5.5 hours for additional research relating to the matter on appeal.

We conclude that Attorney Griffin's hourly rate of \$200.00 is 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 in Boston of similar experience.

We therefore award attorneys' fees in the amount of \$ 85,337.50

Complainant's counsel also seeks reimbursement for costs in the amount of \$10,884.35. We find that these costs are adequately documented and reasonable. Accordingly, we award them to Complainant.

#### INTEREST

The Hearing Officer did not assess interest against the Respondent on her award of damages. While the Complainant has not moved for an award of interest in this appeal, we deem an assessment of interest to be proper for the following reasons. At the time of the Hearing Officer's decision in this matter, the Commission relied on the Appeals Court decision in City of Boston v. Massachusetts Commission Against Discrimination, 39 Mass. App. Ct. 234, 245 (1995), with respect to the issue of interest against a municipality. In City of Boston, the Appeals Court held that the Commission was precluded from imposing interest on damage awards against public employers by

principles of sovereign immunity. Id. at 245. While the Commission has always believed that City of Boston was wrongly decided, it considered itself bound by the ruling.

Recently the Appeals Court has reversed itself on this issue. Trustees of Health and Hospitals of the City of Boston, Inc. v. MCAD, 65 Mass. App. Ct. 329,337 (2005). The Appeals Ct. held that the SJC has made it clear that prejudgment interest is authorized by G.L. c. 151B and that this broad authorization is sufficient to constitute a waiver of sovereign immunity. Id. at 338-339. The court accepted the reasoning adopted by the SJC in Bain v. City of Springfield, 424 Mass. 758, 763 (1997) recognizing that sovereign immunity with respect to punitive damages may be waived by necessary implication.

We concur with the Appeals Court's most recent conclusion in the Trustees case and firmly believe that a prohibition against imposing interest on awards to public employees who are victims of discrimination runs contrary to legislative intent, deprives complainants of make-whole relief, and undermines the Commission's "authority to fulfill its mandate of protecting citizens of the Commonwealth from discriminatory employment decisions and punishing unlawful discrimination in the workplace." See Stonehill College v. Massachusetts Commission Against Discrimination, 441 Mass. 549, 562 (2004).

Therefore, we conclude that interest is properly assessed against the Respondent in this case and that the Hearing Officer's award should be modified to include an assessment of interest on all the damages awarded, and we hereby modify the Hearing Officer's Order accordingly.

#### ORDER

For the reasons set forth above, we hereby affirm the findings of fact and conclusions of law and the Order of the Hearing Officer and issue the following ORDER

of the Full Commission:

(1) Respondent shall henceforth cease and desist from engaging in unlawful discrimination and retaliation.

(2) Respondent shall pay to Complainant the sum of \$6,600.00 in lost wages with interest thereon at the rate of 12% per annum from the date the Complaint was filed until such time as payment is made or this Order is reduced to a court judgment and post-judgment interest begins to accrue.

(3) Respondent shall pay to Complainant the sum of \$75,000 in emotional distress damages with interest thereon at the rate of 12% per annum until such time as payment is made or this Order is reduced to a court judgment and post-judgment interest begins accrue.

(4) Respondent shall pay the Complainant's attorneys' fees in the amount of \$85,337.50 and costs in the amount of \$10,884.35.

(5) The Training Provisions set forth in the Decision of the Hearing Officer shall be incorporated herein.

This order represents the final action of the Commission for purposes of M.G.L. c.30A. 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, 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 22<sup>nd</sup> day of May, 2006.

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Walter J. Sullivan  
Commissioner

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Cynthia A. Tucker  
Commissioner