

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
JOANNE NICKLAS,
Complainant

v.

DOCKET NO. 96-BEM-3149

GARGANO & ASSOCIATES,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Complainant, Joanne Nicklas. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for unlawful discrimination on the basis of handicap when it terminated her employment and failed to provide her with a reasonable accommodation in violation of M.G.L. Chapter 151B, section 4(16). 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. M.G.L. c. 151B, s. 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 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 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 Hearing Officer's decision, we conclude that Complainant prevailed on her claim in this matter and is entitled to an award of reasonable attorneys' fees and costs. See M.G.L. c. 151B, s. 5. Complainant has filed a petition seeking attorneys' fees supported by detailed contemporaneous time records, requesting fees in the amount of \$5,654.55. Respondent has filed an opposition thereto.

M.G.L. Chapter 151B allows prevailing complainants to recover attorneys' fees. The determination of whether a fee sought is reasonable is subject to the Commission's discretion. The Commission has adopted the "lodestar" methodology for fee computation. By this method, the Commission will first calculate the number of hours reasonable expended to litigate the claim and multiply that number by a reasonable hourly rate. Baker v. Winchester School Committee, 14 MDLR 1097 (1992).

Only those hours that are reasonably expended are subject to compensation under M.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. Id. at 1099.

Complainant has filed a Petition seeking attorneys' fees for a total of 44.7 hours charged at rates ranging from \$95.00 to \$165.00 per hour. Complainant's Petition is accompanied by detailed, contemporaneous time records. Having reviewed the contemporaneous time records that support this request, we conclude that the amount of time spent on preparation and litigation of this claim is reasonable. Our review points to no evidence that the hours spent were duplicative, unproductive, excessive or otherwise unnecessary to the prosecution of the claim. Furthermore, all hours for work performed are sufficiently documented. We conclude that the hours for which reimbursement is sought is reasonable.

However, upon review of the billing records in this matter, we discovered two errors that compel us to reduce the amount of attorneys' fees to be reimbursed, to wit: a bill for \$75.00 for work performed on February 17, 1997 was billed twice, and eight hours of work performed in August and September at a rate of \$95.00 per hour was mistakenly billed for \$1,197.00 instead of \$760.00. We therefore reduce the requested amount for attorneys' fees, \$5,654.55 by \$512.00 and arrive at a final amount: \$5,142.55.

ORDER

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

It is hereby ordered that:

- (1) Respondent pay to Complainant the sum of \$26,253.80 in damages for lost

wages with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed, until such time as payment is made.

(2) Respondent pay to Complainant the sum of \$50,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed, until such time as payment is made.

(3) Respondent pay to Complainant the sum of \$5,142.55 in attorneys' fees and in costs.

(4) Respondent pay to the Complainant the sum of \$1,230.00 for out-of-pocket expenses, with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made.

(5) Respondent pay to the Commonwealth of Massachusetts the sum of \$10,000.00 as a civil penalty. Payment shall be forwarded to the Clerk of the Commission.

(6) All ordered payments shall be made within sixty (60) days of receipt of this decision. 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 noncomplying 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 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 18th day of October, 2004.

Dorca I. Gomez
Chairwoman

Cynthia A. Tucker
Commissioner