

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
JOSEPH MORSE,  
Complainants

v.

DOCKET NO. 99-BEM-2343

MASSASOIT COMMUNITY COLLEGE,  
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty Waxman in favor of Complainant, Joseph Morse. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for unlawful discrimination on the basis of age in violation of M.G.L. Chapter 151B section 4(1)(B). 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).

#### I. RESPONDENT'S PETITION FOR REVIEW

We have carefully reviewed Respondents' 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 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.

#### II. COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS

Having affirmed the Hearing Officer's decision, we conclude that Complainant prevailed on his claim in this matter and is entitled to an award of reasonable attorneys' fees and costs. See M.G.L. c. 151B, Section 5.

Complainant has filed a petition seeking attorneys' fees and expenses, supported by detailed contemporaneous time records, requesting fees in the amount of \$17,604.58 and costs in the amount of \$1,068.49. In addition, Complainant's counsel requests reimbursement for additional fees and costs associated with the probate of Complainant's

estate, which was necessary only for the purpose of pursuing this litigation. Respondent has indicated that the letter accompanying its Petition for Review in this matter shall also serve as an opposition to Complainant's requests for attorneys' fees and costs.

A. FEES

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 and its understanding of the litigation of a claim of discrimination in the administrative forum. In rendering a determination of what is a reasonable fee, the Commission has adopted the lodestar methodology for fee computation. See Fontaine v. EBTEC Corp., 415 Mass. 309, 324 (1993). 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.

In this matter, Complainant's attorney, Thomas J. Canavan, filed an affidavit in support of Complainant's Petition for Fees and Costs, requesting a total of \$17,604.58 in attorneys' fees. He also attached a detailed time log that details the hours expended during the litigation of this matter before the Commission. Attorney Canavan has requested that his 92.42 hours be compensated at the hourly rate of \$185.00 for work

performed between 1999 and 2003, and at the hourly rate of \$200.00 for work performed between 2004 and 2006.

We have examined the facts of this case, Attorney Canavan's affidavit and attached time records. Having reviewed the contemporaneous time records that support the request for fees, 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. We also conclude that given Attorney Canavan's experience in the area of employment discrimination law, his hourly rates of \$185.00 and \$200.00 are consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases and are well within the range of rates charged by attorneys of similar experience in the Boston area. We therefore award Complainant's counsel fees in the amount of \$17,604.58.

**B. COSTS**

Complainant's counsel also seeks reimbursement for costs in the amount of \$1,068.49. These costs include expenses related to the taking of depositions in this matter, photocopies, postage, parking, and tapes. We find that these costs are adequately documented and reasonable. Accordingly, we award them to Complainant.

**C. PROBATE FEES AND COSTS**

Complainant's counsel also seeks reimbursement for fees and costs associated with the probate of Complainant's estate. Complainant died on December 16, 2003. According to Complainant's counsel, Complainant died intestate and without any probate

assets, save the Charge of Discrimination in this case listed as the estate's sole asset on the probate inventory. Attorney Canavan states in his affidavit that the action pending before the MCAD only, compelled the filing of a petition for the administration of Complainant's estate, since Complainant died without assets. Therefore, he asserts that he is entitled to reimbursement for fees and costs associated with that probate filing. We conclude that these fees and costs constitute a legitimate and necessary expense toward the successful prosecution of Complainant's claim. Accordingly, we award reimbursement of additional fees and costs in the amount of \$779.42.

### III. INTEREST

The Hearing Officer did not assess interest against Respondent on her award of damages. While 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. At the time the Commission considered itself bound by this ruling.

However, this issue has been put to rest by the recent decision of De Roche v. MCAD, 447 Mass. 1 (2006). The Court determined that prejudgment interest is authorized by M.G.L. c. 151B and that this broad authorization is sufficient to constitute

a waiver of sovereign immunity. *Id.* at 12-15. The Court affirmed its prior position that the broad remedial language of M.G.L. c. 151B permits awards of interest, even against public employers, stating that by “a natural and ordinary reading of the statute,” the Legislature has expressed its intention “that sovereign immunity with respect to the imposition of interest on an M.G.L. c. 151B damage award has been waived.” *Id.* at 14.

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

#### IV. 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, Massasoit Community College, shall immediately cease and desist from engaging in unlawful discrimination because of an individual’s age in violation of M.G.L. c. 151B.

(2) Within sixty (60) days of receipt of this Order, Respondent shall pay to Complainant’s estate the sum of \$25,000 in emotional distress damages 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) Within sixty (60) days of receipt of this Order, Respondent shall pay the Complainant's attorneys' fees in the amount of \$17,604.58 and costs in the amount of \$1,068.49. Respondent shall also pay the Complainant fees and costs in the amount of \$779.42 that were incurred in connection with the probate of Complainant's estate.

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, § 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, § 6.

SO ORDERED this 15<sup>th</sup> day of August, 2007.

---

Walter J. Sullivan, Jr.  
Chairman

---

Martin S. Ebel  
Commissioner