

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION
and JOYCE CARRIER,
Complainant

v.

DOCKET NO. 00-BEM-3293

TOP FLITE MOVING and STORAGE
d/b/a CARMEL MOVERS,
Respondent

Appearances: Joseph F. Franzese, for Complainant

I. INTRODUCTION

On September 27, 2000, the Complainant, Joyce Carrier, filed a complaint with the Commission against Respondent alleging that she was subjected to sexual harassment in the workplace in violation of M.G.L. Chapter 151B, §§ 4(1) & (16A). The Investigating Commissioner found probable cause to credit the allegations of the Complaint and the matter was certified to public hearing. A Pre-Hearing Conference was held on May 17, 2004. The Respondent did not appear, after being duly notified of the Conference. A public hearing was held before me on July 12, 2004 at which the Respondent did not appear, after being duly notified. An Order of Default was entered on the record against Respondent and on July 13, 2004, the Order of Entry of Default and Notice of Entry of Default were mailed to Respondent's last known place of business by certified mail. The mail was returned as "Attempted Not Known." Respondent did not seek to remove the Default.

Having considered the evidence in the record, I make the following findings of fact and conclusions of law. Unless otherwise indicated, all findings of fact are based on the Complaint and the un rebutted testimony of the Complainant which I found to be in most part credible.

II. FINDINGS OF FACT

1. The Complainant, Joyce Carrier, is a 29 year old female who resides in Belmont, New Hampshire.
2. Complainant was hired by the Respondent, Top Flite Moving and Storage d/b/a Carmel Movers on August 16, 2000.
3. Respondent, Top Flite Moving and Storage, was a moving company located in Allston, Massachusetts and owned by Lior Raavid. Respondent was an employer within the meaning of M.G.L. c. 151B, §1(5), as it employed more than six employees.
4. Complainant worked full-time from August 16, 2000 until September 25, 2000 as an Administrative Assistant to the Administrator of Long Distance Moving. Her job was to assist the Administrator, which included such duties as faxing paperwork, making photocopies, typing, relaying quotes to customers by phone, and answering customers' general questions.
5. During Complainant's employment, Yariv (Vivo) Moshe was the Administrator for Long Distance Moving and her immediate supervisor.
6. On September 11, 2000, Moshe drove Complainant to the Central Square MBTA station in Cambridge after work. During the ten to fifteen minute ride, Moshe talked to the Complainant about "wanting to get together with her." He asked Complainant to go

on a date with him and told her that she was beautiful, that she had a “nice ass,” and that he wanted her sexually. Complainant expressed to Moshe that she did not want to date him or have a sexual relationship with him and she did not want to discuss it anymore. Complainant testified that she felt uncomfortable in the car with Moshe, as a result of this conversation and because he was looking at her like she was naked. I credit Complainant’s testimony regarding this incident.

7. On the following day, September 12, 2000, Complainant was faxing papers in the copy room at Respondent’s place of business when Moshe entered the copy room. Complainant testified that Moshe put his arms around her waist from behind and started kissing her neck. Complainant protested, telling Moshe that she was there to work. Moshe then grabbed her buttocks and Complainant slapped him. Moshe did not respond to the slap and proceeded to leave the room. I credit Complainant’s testimony that this incident occurred and that Moshe’s advances were unwelcome.

8. On September 13, 2000, Complainant was smoking a cigarette in the back of the workplace when Moshe approached her from the front, placed his arms around her, and attempted to kiss her. Complainant pulled away and said no. She then left work and went home for the day. I credit her testimony that this incident occurred and that Moshe’s advances were unwelcome.

9. On the following day, September 14, 2000, Complainant had to stay late at work. Moshe offered to give her a ride to the Central Square, Cambridge MBTA station because they were leaving work late in the evening. During the ride, Complainant testified that Moshe put his hand on her leg and said she was “playing hard to get.” She declined his advances, saying that he was married and she had a boyfriend. Moshe

continued to try to talk to her but once they reached Central Square the Complainant testified that she simply got out of the car and left. I credit her testimony that this incident occurred.

10. At some point, between September 11, 2000 and September 25, 2000, Moshe made disparaging remarks about Complainant's boyfriend of two years, Sylvester Anghuy, calling him a "short little fucker." Complainant testified that these remarks angered and irritated her. I credit her testimony that Moshe made these remarks and that this upset her.

11. On September 15, 2000, Moshe advised Complainant that she had to accompany him to the company's storage unit in Ashland, Massachusetts. While they were at the storage unit two other movers were also present. Complainant testified that whenever the movers were occupied doing something else Moshe grabbed her buttocks, tried to kiss her and tried to touch her breasts. Each time this happened, Complainant told Moshe to leave her alone and to "knock it off." I credit her testimony that this occurred.

12. From September 16, 2000, the day after they traveled to Ashland together, until Complainant's last day of work on September 25, 2000, Moshe refused to talk to her or look at her. Complainant was given virtually no work to do and spent each day staring at her computer.

13. On September 25, 2000, Complainant was called into Nino Raavid's office. Nino Raavid was the boss of both Complainant and Moshe. Ms. Raavid told Complainant that her work did not meet company standards and therefore she was being terminated. Raavid told Complainant that Moshe had reported that she messed up everything and got all the phone numbers and addresses wrong which resulted in Respondent losing

thousands of dollars. Complainant denied that she had made such errors and attempted to inform Ms. Raavid about Moshe's behavior but Ms. Raavid stated that she was not Complainant's boss and Complainant would have to discuss this matter with Moshe.

14. Complainant testified that she does not believe that her work was unsatisfactory as she had received no previous complaints about her performance or any errors. Rather, Complainant asserts that Moshe wanted her terminated because she refused to have sex with him.

15. At the time of her termination by the Respondent, Complainant was earning approximately \$400.00 per week. When asked initially how much she was earning per week Complainant could not recall. Upon further prompting from her attorney, she stated she believed she was earning approximately this amount. There is no documentary evidence in the record reflecting Complainant's earnings.

16. Complainant was ineligible to collect unemployment compensation following her termination and she testified she was unable to find work until March of 2001, six months after her termination from Respondent. During this time period, Complainant was unable to pay her rent and was financially supported by her boyfriend. In the summer of 2001, Complainant's boyfriend could no longer afford to help her with paying her rent and therefore Complainant gave up her apartment and moved in with him.

17. Complainant claims to have been deeply upset by her experiences at Top Flite Moving and Storage. She stated she was "pissed off" and depressed because of what Moshe had done and because she had no money to pay her bills. Additionally, Complainant testified that she ceased having sexual relations with her boyfriend for a period of some three months because she did not want him to touch her.

18. Complainant's boyfriend, Sylvester Anghuy, testified that he had been in a relationship with the Complainant for approximately two years and that they saw each other every day. Beginning in mid-September and continuing after Complainant's termination, Mr. Anghuy testified that Complainant was very "removed" and "not the person he was dating." They stopped doing things they usually did such as going to the movies. Mr. Anghuy testified that previously he and Complainant had a normal physical relationship but as a result of these incidents in the workplace they did not have sexual relations for three to four months following her termination. At the time, Mr. Anghuy was unsure of what was wrong with the Complainant so he kept asking her what was bothering her. On one occasion, Complainant broke down and told him how Moshe touched her, tried to get intimate with her, and called Mr. Anghuy names. Mr. Anghuy testified that after the Complainant told him this information, Complainant could not look at him, it was like she was "feeling dirty." I credit his testimony.

19. The period between Complainant's termination on September 25, 2000, and the starting date of her next job in mid-March of 2001, was approximately six months. Complainant seeks back pay from the Respondent in the amount of approximately \$400.00 per week for approximately six months of full time work for a total of approximately \$9,600.00.

20. Complainant suffered emotional distress as a result of the actions of Moshe and her subsequent termination. She was angry and upset by what had happened to her and her resulting financial problems. These feelings adversely affected her relationship with her boyfriend of two years.

III. CONCLUSIONS OF LAW

M.G.L. c. 151B, §4, paragraph 1 prohibits workplace discrimination, including sexual harassment and gender-based harassment. *Ramsdell v. Western Bus Lines, Inc.*, 415 Mass. 673, 676-77 (1993). M.G.L. c. 151B, §4, paragraph 16A specifically prohibits sexual harassment in employment. *Doucimo v. S & S Corporation*, 22 MDLR 82 (2000). *Quid pro quo* sexual harassment is defined as “sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when...submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions.” M.G.L. c. 151B, §1, paragraph 18(a). In order to establish a prima facie case of “*quid pro quo*” sexual harassment, Complainant must show that (1) she is a member of a protected class; (2) she was subjected to unwelcome sexual advances of which her employer knew or should have known;¹ (3) the tangible terms and conditions of her employment were then adversely changed; (4) the change was causally connected to her rejection of the sexual advances. *See e.g., Rushford v. Bravo’s Pizzeria and Restaurant and O’Brien*, 22 MDLR 171 (2001); *Shanley v. Pub 106, Inc.*, 22 MDLR 333(2000); *Hinojosa v. Durkee*, 19 MDLR 14, 16 (1997).

The Complainant has shown by a preponderance of the evidence that she was subjected to *quid pro quo* sexual harassment in the workplace by her supervisor, Yariv (Vivo) Moshe. Complainant has proven that she is a member of a protected class because of her gender (female). I credit her testimony that her supervisor, Yariv Moshe, made advances of a sexual nature to Complainant on numerous occasions when he asked her to

¹ In *Collegetown v. MCAD*, the court held that an employer is strictly liable for the conduct of supervisors or managers. 400 Mass. 156, 165, n.5 (1987).

go on a date with him, asked her to have a sexual relationship with him, and initiated unwanted sexual contact with Complainant that included kissing her and touching her. Complainant indicated to him that his conduct was unwelcome and that she did not wish to have a sexual relationship with him. Shortly after he had been rejected by Complainant in his requests for a sexual relationship, Moshe engaged in a series of acts that altered the terms and conditions of Complainant's employment including refusing to give her any work and refusing to talk to or look at her which made her job of assisting him virtually impossible. Moreover, based on the timing of Complainant's rejection of Moshe's sexual advances and her subsequent termination from employment, I conclude that her termination was the result of her rejection of Moshe's advances. Despite the fact that Complainant was told her work was not up to Respondent's standards, these allegations were made by Moshe after she rejected his advances and there is no evidence in the record to support this assertion. Complainant testified credibly that she had received no complaints about her work from anyone.

Although there is no evidence that her employer knew of the sexual harassment until Complainant attempted to tell Ms. Raavid about it at the time she was terminated, Respondent is strictly liable for the sexual harassment committed by its supervisor against the Complainant. *College-Town Div. of Interco v. MCAD*, 400 Mass. 156, 165-167 (1987). An employer is liable for the actions of its managers and supervisors because they are conferred with substantial authority over subordinates and thus are considered agents of the employer. *MCAD Guidelines on Sexual Harassment* p.8. Moreover, once Respondent's owner was placed on notice of the harassment, she had an obligation to investigate the charges made by Complainant. This is particularly true

where the complaints about Complainant's performance originated with Moshe and could possibly be construed as retaliation for her having rejected his sexual advances.

Based on all of the above, I conclude that Complainant has established an un rebutted prima facie case of *quid pro quo* sexual harassment in violation of G.L. c. 151B.

IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to grant remedies that will make the Complainant whole and eliminate the discriminatory practice, including lost wages and emotional distress damages. M.G.L. c. 151B, §5; College Town v. MCAD, 400 Mass. 156 (1987). Complainant seeks reimbursement for the wages she lost due to her inability to find a job after being unlawfully discriminated against and subsequently terminated by Respondent. In addition, Complainant seeks an award of monetary damages in compensation for the emotional distress she suffered as a direct and probable result of Respondent's unlawful harassment.

Lost Wages

An award of lost wages is a calculation of the money Complainant would have earned had she remained working for the Respondent. Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182 (1985). Complainant seeks lost wages for the time period between her date of termination, September 25, 2000, until approximately six months later, mid-March 2001, when she obtained employment elsewhere. Since Respondent did not appear at the public hearing to defend there is no evidence in the record with respect to mitigation of damages and Complainant's attempts to find other work. At the time of her termination, Complainant's best recollection was that she was

earning approximately \$400.00 per week. Based on the evidence presented at the public hearing, I find that Complainant is entitled to \$9,600 in lost wages, calculated as follows:

24 weeks @ \$400.00 per week.

Emotional Distress Damages

In Stonehill College v. MCAD, the Supreme Judicial Court specifically enumerated the standards to be applied in rendering emotional distress awards. The Court stated that such awards should be “fair and reasonable and proportionate to the distress suffered.” 400 Mass. 549, 576 (2004). The Court further noted certain factors to be considered in rendering such awards: “(1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant attempted to mitigate the harm...” Id. at 576.

I conclude that Complainant suffered emotional distress as a direct result of Respondent’s discriminatory conduct. I believe Complainant’s credible testimony that she was upset and angered by Moshe’s advances and her subsequent termination which she viewed as the quid pro quo for rejecting those advances. I also believe that these feelings adversely affected her relationship with her boyfriend for a period of at least three months. Complainant’s testimony regarding the emotional impact of Moshe’s unlawful conduct towards her is corroborated by the credible testimony of her boyfriend. However, the fact that Complainant accepted a ride from Moshe right after he had made a number of unwelcome sexual advances to her which included touching her inappropriately and attempting to kiss her, raises a question about how disturbing she actually found Moshe’s conduct. I also conclude that Complainant was far more angry

than she was distressed and that the emotional impact was not severe or long lasting.

Given the nature and brief duration of the harm Complainant suffered, I conclude that she is entitled to an award of damages for emotional distress in the amount of \$7,500.00.

V. ORDER

Respondent is hereby Ordered:

- 1) To pay to the Complainant, Joyce Carrier, within 45 days, the amount of \$9,600.00 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 post judgment interest begins to accrue.
- 2) To pay to Complainant, Joyce Carrier, within 45 days, the amount of \$7,500.00 in damages for emotional distress 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 post judgment interest begins to accrue.
- 3) To immediately cease and desist from engaging in or condoning any practices that constitute sexual harassment in the workplace.

The parties shall notify the Clerk of the Commission if Respondent fails to comply with this Order within the time limits prescribed.

This Order constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file an appeal to the Full Commission pursuant to 804 C.M.R. 1.23 by filing a Notice of Appeal with the Clerk of the Commission within 10 days of receipt of this decision and a Petition for Review within 30 days of receipt.

So Ordered this 28th day of June, 2005

Eugenia M. Guastaferr
Hearing Officer