

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
KEXIN YU and XUEBIN FENG,
Complainants

v.

DOCKET NO. 03-BPA-01946
DOCKET NO. 03-BPA-01954

OCEAN, ACMA, GANG LI and
LEI XIAO,
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Edward R. Mitnick in favor of Respondents, Gang Li, Lei Xiao, the Overseas Chinese Entrepreneurs Association (OCEAN), and the American Chinese Medical Association (ACMA). Following an evidentiary hearing, the Hearing Officer concluded that the evidence failed to show that Respondents discriminated against Complainants, Kexin Yu and Xuebin Feng, based on their religion in a place of public accommodation in violation of M.G.L. c. 151B, § 98. Complainants have moved that the Full Commission vacate the decision of the Hearing Officer and remand the case for a new hearing before a different Hearing Officer.

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, § 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 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. Colonade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision 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.

Complainants in this case have appealed the decision and sought a remand for a new hearing on the grounds that the hearing officer was biased against Complainants. This allegation is based upon a number of factors outlined and addressed below. A finding of bias must rest upon a showing that the hearing officer had some personal or financial interest in the matter or upon evidence of misconduct on his part either in the conduct of the hearing or the decision making process. Absent such a showing, there is a presumption that the hearing officer conducted the hearing honestly and fairly. The Commission takes allegations of bias very seriously, and a finding of bias would require a remand for a hearing de novo before a different hearing officer. Heath v. Town of Greenfield Police Department, 5 MDLR 1235, 1240 (1983).

In this case, Complainants offer as evidence of bias, the Hearing Officer's credibility determinations in Respondents' favor, the weight he accorded videotaped evidence submitted by Complainants, and statements he allegedly made during a meeting with counsel following the close of the Complainants' case.

Complainants' arguments with respect to the Hearing Officer's credibility determinations and the weight accorded certain evidence are manifestly without merit. It is clearly within the province of the fact-finder to make determinations regarding the truth and veracity of witnesses

and the reliability of evidence. In this case, the hearing officer set forth extensive and detailed findings of fact and clearly explained his reasons for certain evidentiary determinations. He concluded, and his findings are supported by substantial evidence, that the Complainants' testimony was inconsistent, vague and confused. He also fully and adequately explained his reasons for concluding that the videotape was of little significance, namely the fact that the Complainants themselves made the tape, that it captured only 15 to 20 minutes of events that lasted several hours, that there were long gaps of time between the videotaped portions, and the fact that the videotape did not capture the initial exchange between the parties. However, the Hearing Officer offered clear and reasonable explanations for his reliance on some sections of the videotape evidence. In the end, the Hearing Officer concluded that the Respondents' explanation of the events depicted in the videotape were more credible than that of the Complainants.

Determinations of credibility are routinely entrusted to hearing officers, who are in the best position to judge the credibility of witnesses. Those determinations are entitled to deference by the Full Commission and the courts. School Committee of Chicopee v. MCAD at 406; Bowen v. Colonnade Hotel, at 1012. Absent other evidence of bias or unfairness, a Hearing Officer's "resolution of all critical credibility determinations in [Respondents'] favor reflects neither error nor bias." Heath at 1245. See also, Rizzi v. College Town, Inc., 6 MDLR 1511, 1515 (1984). Such a result indicates simply that the Hearing Officer found one party's explanation more believable and worthy of merit than the other's. See Heath at 1245.

With respect to the Complainants' allegation that the Hearing Officer demonstrated bias in his comments during a meeting with the parties at the close of the Complainants' case, both the Hearing Officer and Respondents attorneys vigorously dispute counsel for Complainants

account of the meeting in question. The parties had a discussion on the record after the meeting with the Hearing Officer in which the Complainants' counsel requested no further off the record discussions and described his version of the meeting. Respondents' attorney then stated for the record that the Hearing Officer had done nothing more than encouraged the parties to settle and the hearing officer admonished Complainants' counsel stating that he had "grossly mischaracterized" the Hearing Officer's comments.

Even if we were to accept Complainants' allegations as accurate, they are not sufficient to overcome the presumption of honesty and fairness in the hearing and decision making process to which the Hearing Officer is entitled. See Fetterman v. University of Massachusetts, 18 MDLR 126, 127 (1996). The record indicates that the Hearing Officer urged the parties to settle the case at the close of the Complainants' case; that he proposed possible settlement terms; that he reminded the parties of the protracted nature of the proceedings to date; and that he discussed findings he, as fact finder, might make based on the evidence introduced during the presentation of the Complainants case.¹ None of this demonstrates bias by the Hearing Officer. In fact such discussions are common and accepted procedure for jurists who often serve the best interests of all the parties by proposing a suggested resolution of the matter before them and facilitating such resolution with the consent of the parties.

We have carefully reviewed the Complainants' petition 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 our 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

¹ The Hearing took place over the course of eleven (11) days from November of 2005 to January of 2006. The Hearing Officer issued a forty (40) page decision with over seventy (70) findings of fact.

the Hearing Officer. Moreover we conclude that the proceedings below were conducted in a fair and impartial manner and find no evidence of bias, unfairness or dishonesty in the conduct of the Hearing Officer.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact, conclusions of law and Order of the Hearing Commissioner. Complainants' appeals to the Full Commission are hereby dismissed.

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 non-complying party to both civil and criminal penalties as provided in M.G.L. c. 151B, § 8.

Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within 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 Superior Court 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 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 28th day of October, 2008.

Malcolm S. Medley
Chairman

Martin S. Ebel
Commissioner

Sunila Thomas-George
Commissioner