

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION AND  
KOFI ASIMPI

Complainant

v.

Docket No. 98-BEM-2570

RELIEF RESOURCES, INC.,  
Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

The Complainant, Kofi Asimpi, (“Complainant”) filed a complaint with this Commission on August 18, 1998. After an investigation by this Commission, the Investigating Commissioner issued a probable cause finding on Complainant’s allegations of retaliation. Attempts to conciliate the matter failed and on April 4, 2001 the case was certified for public hearing. A public hearing commenced on December 10, 2001. Following the conclusion of Complainant’s case, Respondent filed a “Motion For Required Finding As To Fact And Law” asking for such finding to enter in Respondent’s favor.<sup>1</sup> I took said motion under advisement to issue a ruling prior to hearing Respondent’s case in chief. I also granted Complainant time to file an opposition to said motion. The Complainant did submit an opposition, which I received and considered. Respondent’s motion was denied. This case concluded on the second day of hearing, March 26, 2002.

The parties have submitted proposed findings of fact and proposed conclusions of law, which I have considered, along with careful review of the

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<sup>1</sup> I view the document submitted by the Respondent as a “Motion for a Directed Verdict”

entire record. To the extent that any of the proposed findings are not in accord with my findings and conclusions, they are rejected or are considered not relevant or material to the issues presented. To the extent that testimony of witnesses is not in accord with the findings herein, such testimony was not credited.

Based upon all the credible evidence and the reasonable inferences drawn therefrom, I make the following findings of fact, conclusions of law, and order:

## II. FINDINGS OF FACT

1. The Respondent, Relief Resources Inc. (“Respondent”) is in the business of providing temporary staffing to human service organizations.
2. The Complainant, Kofi Asimpi (“Complainant”) is an African male who was born and raised in Ghana. His studies at the University of Ghana included theology and business. He served as Ghana’s director of the national campaign for Christ. He holds a doctor of Philosophy from Boston University.
3. On April 2, 1997, Complainant began his employment with the Respondent as a direct care human service worker and was considered a member of the Field Staff. The Complainant was assigned to work at various human services facilities in the Greater Boston area. These facilities were clients of the Respondent for whom Respondent provided staffing.
4. Douglas Hammond (“Hammond”), owner of the Respondent, testified that he is involved in community organizations creating opportunities for people of color. The Respondent’s mission is to support human service organizations and provide various types of human service opportunities to staff. Generally the field staff works for the facilities to which they are assigned on a temporary basis. Often, a facility will express interest in retaining a staff

member or a staff member will express interest in remaining at the site. Many African immigrants who have held temporary positions through the Respondent have ultimately obtained permanent jobs.

5. Hammond testified that Respondent has a diverse staff, of which 60 to 64% are minorities (non-Caucasian). Respondent recruits its staff by word-of-mouth through the African immigrant community in the Greater Boston area. Approximately 70% of the staff is referred from other staff. During the relevant time period, 1997 to 1998, 50% of the field staff was comprised of immigrants from Africa. Respondent has strong connections to the Nigerian community in Rhode Island. Complainant heard about the job opportunity with the Respondent from Esther Tambe, an African immigrant employee.
6. As a member of the field staff, Complainant's duties included administering medication, cooking, cleaning and counseling the residents at the facilities to which he was assigned. Complainant stated that he enjoyed the position because he liked working with people, preferred to stay in the Boston area, and was comfortable with the nature of the temporary assignments.
7. In May 1997, Complainant was assigned to the League School, which was both a day and residential program for children with autism. The principal of the League School called Hammond to complain that Complainant had fallen asleep, leaving the children unsupervised. As a result, he would not allow Complainant to be reassigned to the facility.
8. Hammond also received a complaint from the River Street facility, run by CMH (Center for Mental Health). The program manager reported that Complainant had dozed during his afternoon shift. Hammond testified that he urged the program manager to allow Complainant to work there again and she agreed. On another occasion, the manager contacted Hammond indicating she no longer wanted Complainant assigned to her facility due to what she termed

as poor performance. Hammond testified that Complainant was upset to learn this as he enjoyed his work at River Street.

9. Hammond testified that the Clement Street facility also asked that Complainant not return to work there. Hammond spoke with Complainant and then asked the facility to allow him to work there again. Notwithstanding Hammond's efforts to assign Complainant to this facility, Complainant was banned from Clement Street due to a second error involving dispensing of medication.
10. Hammond testified that the program manager of the Norfolk Street facility called him and requested that Complainant not be re-assigned there. Hammond spoke at length with her on Complainant's behalf and she agreed to have Complainant re-assigned to her facility. However, during a subsequent assignment at Norfolk Street, Complainant was involved in an incident with one of the resident's dogs. As a result, the manager cancelled Complainant's next scheduled shift and requested that Respondent send a different field staff worker. Complainant did not receive any communication from Respondent prior to reporting to work again at Norfolk Street. He was angry to find out that he was being replaced and engaged in a heated discussion with staff at Norfolk Street. After that incident, Respondent received a request that Complainant not be assigned to work at any of the CMH facilities.
11. The business agreement between Respondent and its facilities provides that Respondent will honor an agency's request that certain field staff not be reassigned.
12. Hammond testified that after each incident, Hammond or Bob Lindner counseled Complainant. Respondent continued to try to place Complainant in other facilities. Hammond testified that Respondent enjoyed its relationship with Complainant. Hammond understood that Complainant needed the work

and wanted to work in community service. Hammond testified that so many complaints from facilities were not typical and he found the frequency of complaints about Complainant to be most unusual. Respondent considered Complainant to be a high maintenance employee, due to the need to deal both with the complaints from the facilities and from him.

13. Complainant testified that during his year of employment with the Respondent, there were one or two sites where he chose not to be reassigned. These included the Evergreen Center, which he believed was unappreciative of his work and where he felt he did more work than other staff. The other was the Germain Lawrence School, a residential program for adolescent girls, where Complainant was allegedly not treated well by the director. Complainant testified that he had a difficult experience there restraining a suicidal runaway and he felt he was not prepared to use physical restraints. The sites to which Complainant could be sent were further limited by the fact that he did not drive and depended on public transportation.
  
14. Among the sites where Complainant was assigned to work on a temporary basis was Adams Street, a community home for mentally ill adults in Waltham, Massachusetts. A predictable number of hours and accessibility to public transportation combined to make Adams Street a good fit for Complainant. Complainant testified that, of all the facilities to which he was assigned, Adams Street was one of the best because of the positive relationship he had with the facility's supervisor. Despite Complainant's positive feelings about this facility, he testified that while working at Adams Street he was subjected to verbal and physical harassment by one of the mentally ill residents, who on one occasion kicked Complainant's leg. This resident also called the Complainant "unintelligent" and accused Complainant of eating residents' food, watching television while on the job, and failing to change clothes. I credit the Complainant's testimony that the resident made these statements and accusations.

- 15.** Complainant testified that the resident did not treat Caucasian staff on his shift in the same disparaging manner. Complainant acknowledged that the resident never made any express references to the Complainant's race or national origin and Complainant knew that there was Black field staff assigned to other shifts, but there was no evidence that the same resident treated them in a similar manner. Complainant concluded that the resident's behavior towards him was racially motivated because there were no other Blacks on the shift.
- 16.** Complainant did not report the resident's conduct to his superiors at the Respondent's main office. Instead, he wrote a three-page letter, dated March 1, 1998, directly to the manager of the Adams Street facility. (Complainant's Exhibit 1). This letter sets forth in detail what Complainant believed to be harassing conduct by the resident, and Complainant's conclusion that the conduct was racially motivated. The letter accused the resident of being very negative towards him and physically assaulting him on December 8, 1997. Complainant also recounted the resident's alleged comments to him about being unintelligent. Another member of the staff witnessed these comments and verbally defended the Complainant. Complainant notes in his letter that the resident did not apologize. On February 21, 1998, Complainant sought out another resident of the facility to witness the resident's erratic behavior. The resident also commented on Complainant's use of the T.V. asserting that the T.V was for clients and not for staff. Later that evening, the resident questioned Complainant's use of the phone and disconnected the phone from the outlet. Complainant warned the resident if he physically assaulted him, he would call the police. Complainant asked four other residents to witness this heated discussion. At the conclusion of the letter, Complainant threatened to sue the resident if the harassing behavior did not cease.
- 17.** On March 13, 1998, Respondent received a copy of this letter via facsimile from Kathy Harper of the Adams Street facility. After Hammond reviewed the

letter, he spoke with Kathy Harper. Her clinical concern was the inappropriate involvement of other residents in a dispute between Complainant and a mentally ill patient. She stated that Complainant was to be instructed not to return to the Adams Street site.

18. Following his discussion with Harper, Hammond called Complainant. Hammond was concerned that the situation with at the Adam's Street facility had not been reported directly to Respondent. Hammond testified that he had no knowledge of the issues addressed in the letter prior to March 13. Hammond expressed his concerns about some of the allegations in the letter, specifically Complainant's threat to sue the Adams Street resident. I find that prior to its receipt of Complainant's letter to the Adams Street facility, Respondent was not aware that Complainant felt he was the victim of discriminating treatment by a resident.
19. Hammond took issue with the reference in Complainant's letter that he involved other residents in the dispute. Hammond testified that he had concerns about Complainant's lack of empathy for mentally ill residents. He further testified that Complainant's letter to the facility manager was inappropriate, not merely because of threat to sue the consumer (which Hammond felt was premature), but because it was a breach of protocol and did not allow Respondent to intervene, mediate and diffuse the situation. Hammond testified that, if Hammond had been made aware of the issues earlier, Complainant could have been coached and redirected to help him manage the situation with the resident.
20. The following day, March 14, 1998, Complainant was assigned to the High Street facility in West Medford<sup>2</sup>. The High Street assignment was not an ongoing placement like Adams Street. Hammond testified that it was a hit or miss situation, usually requiring staff only if someone was out sick.

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<sup>2</sup> It is not clear from the hearing tapes whether the assignment was West Medford or West Milford.

21. Complainant did not receive any further assignments from Respondent. Hammond testified that it was difficult to place the Complainant since most of their client facilities had been adamant that Complainant not return and because there were several facilities where Complainant refused to work. The Complainant required assignments that could be reached by public transportation, and much of Respondent's work was shifting to the suburbs. Respondent was faced with a narrow population within the groups of mentally ill residents with whom Complainant could work. Hammond testified that once the Adams Street site was no longer available to Complainant, few, if any other placements were possible.
22. In March 1998, Hammond was in the process of removing himself from the role of "field coordinator." He testified that he needed to take a stronger management role, as many of the field staff did not know he was the owner of the company, because he was a placement person for the organization. He decided that he would no longer take calls from staff and had his calls redirected to the coordination staff. Hammond testified that this was not a measure directed against Complainant. I credit Hammond's testimony that he no longer accepted any field staff calls.
23. Complainant spoke with a coordination staff person who informed him that CMH (Center for Mental Health) had rendered their decision that Complainant would no longer be placed in any CMH facility. Hammond testified that he spoke with Jeanie Bush and understood that she would continue to try to find other placements for Complainant.
24. Hammond testified that once an employee is not placed, he/she is "inactivated." Hammond testified that Complainant remained employed but was notified on May 19, 1998 that he had been reclassified as "inactive." This

reclassification allegedly took place because the regional coordinator had not received a request for assignment from him for a period of thirty days. However, Respondent's records show that outgoing calls to Complainant were made on 3/18/98 and 3/20 and that incoming calls from Complainant were received on 3/19, 3/27, 3/31, and 4/2. After this reclassification, Complainant placed calls to Respondent on 5/29, 5/31, 6/1, 6/3, 6/5, and 6/12. (Exhibit C-5 Respondent's Answers to Interrogatories from the Complainant). Further, staff at Respondent's Cambridge office contacted Complainant on 4/15/98 asking Complainant if he would conduct an orientation for newly employed field staff. The details were never provided to Complainant and his calls to the Cambridge office, regarding this opportunity, were not returned. I find that Complainant did attempt to stay in contact with the Respondent, that he was no longer called for work, and was thus terminated for all practical purposes.

### III. CONCLUSIONS OF LAW

M.G.L. ch.151B, sec. 4(4) prohibits employers from discharging, expelling or otherwise discriminating against a person who has opposed any practice prohibited by Chapter 151B or who has filed a complaint alleging a violation of Chapter 151B. In order to establish a prima facie case of retaliation, a Complainant must show that, (1) he was engaged in a protected activity; (2) that the employer was aware of the protected activity, (3) he subsequently was subject to an adverse employment action; and (4) evidence existed sufficient to establish a retaliatory motive or the adverse employment action followed the protected activity within such time as a retaliatory motive can be inferred. Richards v. Bull HN Information Systems, Inc. 16 MDLR 108,1639 (1996). To succeed on a claim of retaliation, "the plaintiff must prove that he reasonably and in good faith believed that the employer was engaged in wrongful discrimination, that he acted reasonably in response to his belief and that the employer's desire to retaliate against him was a determinative factor in its decision to terminate his employment." Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000) quoting Tate v. Department of Mental Health, 419 Mass. 356, 364 (1995).

The Respondent argues that Complainant fails to establish a prima facie case because his letter to the assigned facility's manager does not constitute "protected conduct." I disagree. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelly v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000). The Complainant reasonably believed that he was being subjected to harassment based upon his race and/or national origin. On March 1, 1998, he wrote a letter to the manager of the Adams Street facility, detailing what he believed to be harassment, based upon his race. On March 13, 1998, Respondent received a copy of said letter. On March 14, 1998, Complainant worked his last shift for Respondent. Respondent alleges that there is no causal connection between the Complainant's letter and his being placed on inactive status. However, the Complainant has shown that there was adverse employment action following the protected activity within such close time proximity that a retaliatory motive could be inferred. Where, as in this case, there is no direct evidence of retaliatory motive, the Commission follows the burden-shifting framework set forth in Wheelock College v. MCAD, 371 Mass. 130,136 (1976).

At this second stage of analysis, the Respondent assumes the burden of articulating some legitimate, nondiscriminatory reason for the action in question. The Respondent has set forth several legitimate reasons for not assigning the Complainant to its client facilities after March 14, 1998. The Respondent has shown that the Adams Street facility was the last available client, which regularly used Respondent's services, to which Complainant could be assigned. Although Complainant was assigned to High Street on March 14, 1998, High Street was not a regular customer of the Respondent and it only requested services on an intermittent basis. I conclude that the Respondent was extremely limited to where Complainant could be assigned due to numerous facilities that would not accept him as well as his own refusal to work at certain sites. (Findings of Fact #6,7,8,9,12) In addition to the site limitations, Respondent did take issue with some of the allegations within the Complainant's letter to the Adams Street facility. Hammond testified that he viewed the tone of the letter as inappropriate. He concluded that the

Complainant's conduct was inappropriate when he drew other mental health residents into his conflict with the resident. Hammond was also concerned that Complainant attempted to hold a mentally ill consumer to the same standard of conduct that one would expect of a mentally healthy person. He testified that the Complainant's threat of legal action against the mentally ill individual was premature, given that Complainant had not previously informed the Respondent of the problem or provided Respondent with an opportunity to investigate and, if possible, rectify the situation. (Finding of Fact #18)

While it is clear that the Respondent did take issue with the Complainant's letter, I find that Respondent's failure to assign the Complainant after March 14 was due to legitimate business reasons and concern for professional standards. Respondent was frustrated at Complainant's growing performance problems at numerous facilities. In addition, Complainant's poor handling of his difficulties with a mentally ill resident at Adams Street was demonstrative of the ongoing difficulties incurred in placing Complainant. If, after March 14, 1998, Respondent had but one possible intermittent client with whom to place the Complainant, it is reasonable that Respondent would not be able to retain Complainant. I believe that if the Complainant had promptly reported his issues with the resident to the Respondent, before involving other mentally ill residents or the client manager of the facility, the Respondent could have addressed the situation and perhaps enabled Complainant to remain at Adams Street. In failing to follow protocol by reporting the incident to the Respondent, Complainant jeopardized his own future employment at that site as well as at other remaining suitable facilities.

Once an employer sets forth non-discriminatory reasons for its actions, the analysis moves to the third stage, where the employee must show that the basis of the employer's decision was unlawful discrimination. Abramian, quoting Blare, supra at 442-443,446. This may be accomplished by showing that the reasons advanced by the employer for making the adverse decision are not true. In an indirect evidence case, if the fact finder is persuaded that one or more of the employer's reasons is false, it may, but need not infer that the employer is covering up a discriminatory intent, motive or state of mind. Lipchitz v. Raytheon Co., 434 Mass. 493 (Mass. 2001)

I have considered the fact that the Respondent in this case has set forth some inconsistent reasons, throughout these proceedings, for terminating the Complainant's employment. Despite the Respondent's alleged dissatisfaction with the Complainant's performance at numerous facilities, the Cambridge office of Respondent contacted Complainant on 4/15/98 asking Complainant if he would conduct an orientation for newly employed field staff. Complainant agreed and was told that further details would be forthcoming. The details were never provided to Complainant and his calls to the Cambridge office regarding this opportunity were not returned. This interaction with the Cambridge office took place during the time Respondent claimed that Complainant was on inactive status because of his failure to contact Respondent, from 3/22/98 – 4/22/98. Further, Respondent's records show Complainant did place calls during March, April and May. (Finding of Fact #24)

While I am persuaded that Respondent's purported reasons for placing the Complainant on inactive status because of his failure to contact the company are false, I do not infer from this inconsistency that Respondent is covering up a discriminatory intent, motive or state of mind. Lipchitz supra. Beginning in May 1997, the agencies to which Complainant was assigned began to complain about his performance. Complainant was banned from several facilities and he also asked not to return to several residences. Despite some serious allegations, including errors in dispensing medication and sleeping on his shift, the Respondent continued to seek out other facilities to which to assign the Complainant. The Respondent was left with one intermittent client who would accept the Complainant. Combined with Respondent's upset at the manner in which Complainant handled a conflict with a mentally ill resident, I conclude that Respondent had legitimate, non-discriminatory reasons for not assigning the Complainant to its client facilities and eventually terminating the Complainant from its employment roster.

I conclude that Complainant has failed to establish that Respondent engaged in unlawful retaliation. Complainant's case must be dismissed.

IV. ORDER

For the above stated reasons, the complaint is dismissed.

This constitutes the final order of the hearing officer in this matter. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within 10 days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

So Ordered this 15<sup>th</sup> day of January, 2003.

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HELENE HORN FIGMAN

Hearing Officer