

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

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| LEANN WILLIAMS,<br>Complainant            | ) |             |
|   | ) |             |
| v.  | ) | 96 SEM 0299 |
|   | ) |             |
| KARL STORZ ENDOVISION, INC.<br>Respondent | ) |             |
|   | ) |             |
|   | ) |             |

**DECISION AND ORDER OF THE FULL COMMISSION**

This matter has come before us following a decision of Hearing Officer Edward Mitnick in favor of the Complainant. Following an evidentiary hearing, the Hearing Officer concluded that the Complainant was subjected to discrimination in employment on the basis of unlawful sexual harassment in violation of M.G.L. c. 151B. However, the Hearing Officer dismissed the portion of the complaint which alleged that the Complainant was subject to retaliation in violation of M.G.L. c. 151B. The Respondent then filed a timely Petition for Review.

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 commissioner or 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 responsibility of the hearing officer to evaluate the credibility of witnesses and or to weigh the evidence when deciding disputed questions of fact, and the Full Commission defers to these

determinations. See e.g. School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The role of the Full Commission 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 1.16(8)(f).

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 decision of the Hearing Officer in favor of the Complainant, we conclude that the Complainant has prevailed in this matter and is therefore entitled to an award of reasonable attorneys' fees and costs. The determination of what is a reasonable fee is one that the Commission approaches utilizing its discretion and its understanding of the litigation of a claim of discrimination in the administrative forum of the Commission Against Discrimination. In rendering a determination of what is a reasonable fee, the Commission has adopted the lodestar method for fee computation. See Fontaine v. EBTEC Corp., 415 Mass. 309, 613 N.E.2d 881, 891 (1993); Baker v. Winchester School Committee, 14 MDLR 1079 (1992); Brown v. City of Salem, 14 MDLR 1365 (1992). This method requires the Commission to undertake a two-step analysis.

First, the Commission will calculate the number of hours reasonable expended to litigate the claim and then multiply that number by an hourly rate considered to be reasonable. Second,

the Commission will then examine the resulting figure, known as the “lodestar”, and adjust it either upward or downward or not at all depending on various factors.

A calculation of the hours reasonably expended involves separating out work done in relation to the individual doing the work (e.g., senior partner, junior associates, and paralegal). Time beyond that consistent with a standard of reasonable efficiency and productivity is eliminated. Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours insufficiently documented. *See Grendel's Den v. Larkin*, 749 F.2d 945 (1st Cir. 1984); *Miles v. Samson*, 675 F.2d 5 (1st Cir.1982); *Furtado v. Bishop*, 635 F.2d 915 (1st Cir. 1980); *Baird v. Belloti*, 616 F.Supp. 6 (D.Mass 1984); *Brown v. City of Salem*, 14 MDLR 1365 (1992).

The Commission’s efforts to determine the number of hours reasonably expended will involve more than simply adding all hours expended by all personnel. The Commission carefully reviews the Complainant’s submission and will not simply accept the proffered number of hours as “reasonable”. *See e.g., Baird v. Belloti*, supra.

In this matter, counsel for the Complainant has submitted extensive affidavits and attachments thereto detailing the hours expended during the course of this matter before the Commission. Complainant is seeking \$329,636.25 in attorney’s fees and \$36,104.21 in costs.

Complainant’s request for attorneys’ fees includes the following:

|                        |                           |              |
|------------------------|---------------------------|--------------|
| Attorney Madge Casper: | 169.59 hours @ \$200/hr = | \$33,918     |
| Attorney Made Casper:  | 903.63 hours @ \$225/hr = | \$203,316.75 |
| Attorney Joe Casper:   | 16.62 hours @ \$200/hr =  | \$3,324      |
| Attorney Joe Casper:   | 396.14 hours @ \$225/hr = | \$89,131.50  |

Respondent objects to this request asserting a number of reasons including; a) Counsel for complainant conducted unnecessary and excessive pre-hearing discovery which should not be compensated, b) counsel for complainant is seeking fees for duplicative time spent in

litigation of the matter, c) the complainant did not succeed in establishing her claim of retaliation, d) the MCAD only awarded complainant \$20,000.00 in monetary relief, and, therefore, counsel should not be entitled to a fee which is exponentially greater than the relief afforded the complainant.

Based upon our review of Complainant's petition, we conclude that the following reductions must be made to Complainant's request:

1. Complainant acknowledged in her rebuttal to Respondent's opposition that 159.34 hours of Attorney Joe Casper's time was duplicative and therefore should be eliminated ( $159.34 \times \$225.00 = \$35,851.50$ ).

2. Further, we find that Attorney Madge Casper's expenditure of 238.20 hours to prepare Complainant's Proposed Findings of Fact and Conclusions of Law was excessive and accordingly excise 100 hours from her request ( $100 \times \$225 = \$22,500$ ).

3. Our final reduction in hours arises from Complainant's failure to prove her retaliation claim. We do not find the two claims interconnected in their proofs. See Hudson v. Pembroke/Hanover Elks Lodge, 24 MDLR 19, 20 (2002). Accordingly, we will reduce the remaining hours of the lodestar equation by a factor of 50% to reflect the fact that Complainant did not prevail on that portion of her claim.

After we make the above-described reductions, we conclude that the remaining amount of time spent by Complainant's attorneys on preparation and litigation of this claim is reasonable. We see no other evidence that the hours spent were duplicative, excessive, or otherwise unnecessary to the successful prosecution of his claim. Accordingly, we conclude that the remaining hours for which Complainant's counsel seeks reimbursement are reasonable.

Complainant's attorneys charged \$200-\$225 per hour, rates supported by documentation of their legal experience and expertise in the area of employment discrimination law. We conclude therefore that the rates charged by Complainant's attorneys are consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases. The rates are also well within the rates charged by attorneys in the market in which Complainant sought counsel with similar experience. See, e.g., Baker v. Town of Winchester School Committee, 14 MDLR 1097 (1992). We conclude that Complainant is entitled to an award of attorneys' fees in the amount of \$135,615.38. Although this sum exceeds Complainant's recovery of damages in this case, we are not required to and, indeed, decline to make additional reductions. See, e.g., Salmon v. Costco Wholesale Corporation, 23 MDLR 142 (2001); Patel v. Everett Industries, 18 MDLR 182 (1996).

As to Complainant's requests for \$36,104.21 in costs, we agree with the Respondent that the travel, parking and meal costs totaling \$787.90 should be excluded from the award. See Jenkins vs. Northampton Hilton Inn, 24 MDLR 1, 2 (2002).<sup>1</sup> The rest we find reasonable.

## **ORDER**

For the reasons set forth above, we hereby affirm the findings of fact, conclusions of law and the Order of the Hearing Officer and issue the following ORDER of the Full Commission:

- (1) Within forty-five (45) days of receipt of this order, Respondent is hereby ordered to pay Complainant, Leeann Williams, the sum of \$20,000.00 in damages for emotional distress plus interest at the statutory rate of 12% per annum from the date the

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<sup>1</sup> "Costs associated with mileage, parking and tolls are typically viewed as overhead costs as opposed to reimbursable costs directly related to this litigation. Therefore, these items should be deducted from the amount requested." Id. at 2.

complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

- (2) Within forty-five (45) days of receipt of this order, Respondent is hereby ordered to pay Complainant's attorneys' fees in the amount of \$135,615.38 and \$35,316.31 in costs.

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 within thirty (30) days of receipt of this decision 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 1<sup>st</sup> day of July, 2004.

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Cynthia A. Tucker, Commissioner

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Walter J. Sullivan, Jr., Commissioner