

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
LEANNE SULLIVAN
Complainant

v.

DOCKET NO. 97-BEM-4511

JIMBOS SOUTH
Respondent

DECISION OF THE FULL COMMISSION

A. RESPONDENT'S APPEAL TO THE FULL COMMISSION

On March 13, 2006, Hearing Officer Eugenia Guastaferrri issued a decision in favor of the Complainant in the above-entitled matter. Respondent was duly notified of the decision and its right of appeal to the Full Commission. On March 20, 2006, Respondent filed a timely notice of appeal to the Full Commission.

The Commission's Rules of Procedure at 804 C.M.R. 1.23(1)(a) require that, in addition to a Notice of Appeal, an aggrieved party must file a Petition for Review within 30 days of receipt of the decision of the single commissioner or hearing officer, setting forth:

1. facts showing the appellant to be aggrieved;
2. all matters alleged to have been erroneously decided;
3. all other matters on which the appellant relies and;
4. the relief to which the appellant believes he is entitled.

Respondent has failed to file a timely Petition for Review as required by 804 C.M.R 1.23. As a result of this failure to perfect its appeal in accordance with Commission regulations, Respondent's appeal to the Full Commission on the merits of the claim and damages is hereby dismissed. Accordingly, the decision of the hearing officer with respect to liability and damages is final and binding. Respondent shall comply with the Order of the hearing officer within 60 days of receipt of this Order. The Complainant shall notify the Clerk of the Commission if the Respondent fails to comply with the Order of the hearing officer within the time period allotted.

B. COMPLAINANT'S PETITION FOR ATTORNEY'S FEES AND COSTS

On March 20, 2006 Complainant filed a Motion for Attorney's Fees and Costs supported by contemporaneous time records and an affidavit. On March 29, 2006 Respondent filed an Opposition to Complainant's Motion for Fee and Costs. The Opposition seeks a 25% reduction in the fees sought by Complainant's attorney. This request is based on the fact that: 1) a number of entries in the contemporaneous time records that indicate only "review of file" and "research" and fail to state with specificity the task performed; 2) entries in which multiple tasks are identified making it virtually impossible to decipher the nature, time and effort spent on each task; 3) that there are multiple entries for hearing preparation which fail to indicate the tasks undertaken in preparation, and; 4) that 30 hours for preparation of a post-hearing brief in a relatively simple and straightforward case that took under 10 hours to try and where there was only one witness, is excessive.

Having reviewed the records we concur with Respondent's opposition. We note that the proceeding was a default hearing, that Complainant was the sole witness in the matter, and that Complainant's counsel had only to prepare direct examination of her client and was not required to prepare to cross-examine any witness of Respondent. Moreover this case involved a relatively straightforward claim of sexual harassment, did not involve complex issues and was not document intensive. Given all of the above, we conclude that a 25 % reduction in the fees sought is appropriate. The post-hearing brief in large part required a mere summary of Complainant's testimony and an application of the evidence to the law.

We have also reviewed Complainant's request for costs and find it to be reasonable.

Therefore we award to Complainant as follows:

- 1) Attorneys fees in the amount of \$23, 587.50 which is a 25% reduction from the amount sought of \$ 31,450.00.
- 2) Reasonable costs in the amount of \$852.56

Respondent shall pay to Complainant a total of \$24, 440.06 in fees and costs.

So Ordered this 3rd day of May, 2006.

Walter J. Sullivan, Jr.
Commissioner

Cynthia A. Tucker
Commissioner