

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & LORENZA WHITE,
Complainants

v.

DOCKET NO. 98-BEM-1431

CITIZENS BANK,
Respondent

Appearances:

Scott W. Lang & Jennifer L. Davis for Complainant

Brian H. Lamkin & Mark B. Dubnoff for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 11, 1998, Lorenza White filed a complaint with this Commission charging Respondent Citizens Bank with discrimination on the basis of race, color and national origin in violation of M.G.L.c.151B for failing to promote her to the position of full-time teller. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on October 1-3,8,10,14 and 15, 2003. After careful consideration of the entire record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Lorenza White resides in Dennisport, Massachusetts. Complainant was born in Mexico and moved to New York at the age of 17. She is a dark-skinned Hispanic woman of Mexican Indian Ancestry. Complainant is married to John White, a Caucasian man. They have a son who was 11 years old at the time of the public hearing. The Whites moved to Cape Cod in April 1996.

2. Respondent Citizens Bank is an employer within the meaning of M.G.L. c.151B. At all times relevant to this matter, Respondent operated a bank branch in South Dennis, Massachusetts. The South Dennis branch employed eight or nine people, five of whom were tellers. The population of South Dennis is predominantly Caucasian.

3. John White had visited Cape Cod with his family since he was a child, and the Whites moved from New York to the Cape when John White completed law school in 1996. The Whites had decided that John would drive a cab at night while studying for the bar examination and Complainant would also seek employment. Complainant applied for a job with Respondent.

4. On or about May 20, 1996, Complainant was hired as a part-time teller in Respondent's South Dennis branch. Complainant initially worked 20 hours per week, but her schedule was increased to 25 hours per week shortly after her hire. Complainant hoped to eventually work full-time as a teller.

5. Prior to working at Respondent, Complainant worked for 17 months as a teller for Flushing Savings Bank in New York with the goal of acquiring the necessary experience to obtain work at a bank on Cape Cod. (Tr. 626)

6. Between 1996 and 1998, Sandy Taylor, who is Caucasian, was the Branch Manager at Respondent's South Dennis branch, Susan Kelly, who is Caucasian, was the Assistant Manager and John Hamrin, who is Caucasian, was Administrative Teller. Taylor and Kelly hired Complainant. (Tr. 132, 510). Although at one point during Complainant's employment at Respondent, there was a Cape Verdean teller at the South Dennis branch, throughout most of Complainant's tenure she was the only non-Caucasian teller.

7. From 1996-1999, Julie Burke worked in Respondent's Quincy office as an assistant vice-president

of human resources.

8. The duties of a teller at Respondent included assisting customers with deposits, check cashing, withdrawals and loan payments.

9. Tellers were required to balance their cash drawer on a daily basis. Each teller's cash and transactions were tracked by computer, and at the end of each day, the cash in the drawer was supposed to match the amount shown by the computer. Sandy Taylor testified that discrepancies in cash drawers were common and were caused by a variety of factors, including a teller simply having miscounted the cash. By all accounts, if a teller were out of balance at the end of the day, all of the other tellers would help the teller who was out of balance find the error.

10. Taylor also testified that the total amount of a teller's cash discrepancies over time was often inflated, because while the cause of one day's discrepancy might be discovered and reconciled at a later date, the discrepancy from that day would continue to be figured into the teller's balancing record.

11. In addition to the duties described above,

tellers were expected to sell bank products to customers and to refer customers to the bank's customer service department. Both full-time and part-time tellers had quarterly sales goals.

12. Hamrin, who was Complainant's direct supervisor, testified that Complainant was a good teller who performed her job well. By all accounts, Complainant was quiet, had a pleasant demeanor and got along well with her customers.

13. In May 1997, Complainant received her first annual performance review. Complainant received an overall performance rating of "meets expectations" and a rating of "exceeds most expectations" in the category of sales, as she had met or exceeded her sales goals for the three quarters preceding her review. (Exh. 5)

14. On June 2, 1997, Julie Burke sent to Sandy Taylor an "employee data change" form authorizing an increase in Complainant's salary, accompanied by a hand-written note from Burke to Taylor that stated,

Although I don't know the employee, from a write-up, she seems like a valuable asset. To keep her motivated, would we want to consider giving her more so as to be able to promote her via the TOPS program [a program to promote tellers]. I just get concerned when I see these tellers at

\$7 to \$8 an hour, when other banks pay more. Let's discuss when you have some time. Thanks
(Exhs. 8 and 9).

It is reasonable to conclude that this note refers to Complainant because it was sent to Taylor along with the employee data change for Complainant. Burke did not know that Complainant was Hispanic when she wrote this note.

15. On July 27, 1997, Complainant was promoted to the position of Advanced Teller. Complainant's promotion was based on a "job skills inventory" signed by Hamrin and Taylor assessing her skills as a teller and her ability to perform the more complex tasks associated with the rank of Advanced Teller.

16. On July 7, 1997, Tara Maxwell, a Caucasian woman with no prior banking experience, was hired as a part-time teller in the South Dennis branch.

17. During Complainant's employment at Respondent, Respondent operated the Career Advancement Program ("CAP") which was created as a means to post and fill jobs internally. The CAP written policy stated, among other things; "newly hired employees are eligible to post after

nine months of employment."

18. In January 1998, Amy Downey, a full-time teller, left the South Dennis branch to become a "floater", creating an opening for a full-time teller. The full-time position vacated by Downey was posted as part of Respondent's "CAP" program and Complainant learned of the opening through that internal posting. Complainant had, by this time, been employed by Respondent for 17 months.

19. Three employees submitted applications for the full-time position; Complainant, Tara Maxwell and Kathy Bliss, who worked in Respondent's grocery store branch in Hyannis. On January 30, 1998, Sandra Taylor and Susan Kelly interviewed Kathy Bliss, Tara Maxwell and Complainant for the full-time teller position. Maxwell had learned of the interview the day before, but Complainant learned of her interview only minutes before it occurred. Complainant told Taylor during her interview that she intended to stay at the South Dennis branch if selected for the promotion.

20. At the time she applied for the full-time position, Bliss was a part-time "sales associate", the title given to tellers who work in Respondent's grocery

store branches. According to Taylor, associates in grocery store branches are trained to be aggressive at marketing and selling bank products. Taylor testified that she chose Bliss for the position of full-time teller in South Dennis because "she just had this experience in a grocery store, and I just thought... in speaking with her in the interview, she would have the qualifications to sell and wait on customers in a traditional branch." (Tr. 198).

21. Taylor and Kelly first offered the full-time position to Bliss on February 11, 1998. Taylor testified that she talked to Bliss' supervisor about her record before offering Bliss the position. However Taylor did not review Bliss' balancing or sales records. Taylor did not retain her notes from her interview with Bliss. Bliss turned down the position on February 17 because of its low salary.

22. Taylor and Kelly next offered the position to Maxwell on February 20, 1998. Maxwell, who had worked for Respondent for only seven and one half months, accepted the promotion.

23. Complainant was on vacation when Respondent made

the decision to offer the full-time position to Maxwell. Taylor called Complainant at home on February 23, 1998 to inform her of the decision. Complainant testified that she was "in shock" when Taylor told her that Maxwell had been promoted and thought she must have misunderstood Taylor. (Tr.61). John White was present when Complainant received the telephone call from Taylor and he recalled her hanging up the phone, crying and blurting out that Tara Maxwell had been offered the full-time position. John White testified that Complainant was angry, bitter, frustrated and disappointed after receiving the telephone call. (Tr.646-50) I credit his testimony.

24. When Complainant returned to work on February 26, 1998 she was visibly upset and crying. She felt upset and confused by Respondent's decision to promote someone with much less experience and seniority than she had with Respondent. (Tr.69) Kelly approached Complainant and asked her if she were upset. Complainant said she was, and Kelly invited Complainant to meet with her and Taylor in the ATM room. Complainant asked about Maxwell's qualifications for the job. Taylor responded that Maxwell had been selected for her "bubbling personality" and good record of "balancing". Complainant responded that no one had ever

before expressed concern about her balancing record. According to Taylor, she told Complainant that the decision to promote Maxwell over her was based on sales efforts and results, balancing records and enthusiasm. Complainant asked Taylor and Kelly if she had been rejected for the position because she was Hispanic. Taylor denied that race was a factor in her decision. Taylor told Complainant that she was doing an excellent job. Complainant felt hurt, disappointed and upset and began once again to cry.

25. Complainant never felt that she was subjected to any discriminatory treatment by Respondent until she was turned down for the full-time position.

26. On her lunch break, Complainant, who usually ate lunch at the bank's lunchroom, called her husband to pick her up for lunch because she did not want to be at the bank. She returned from lunch feeling discouraged, disappointed and embarrassed about her physical appearance. Complainant testified that she was very uncomfortable and acutely aware and embarrassed about the difference in physical appearance between herself, a dark skinned Hispanic woman, and her Caucasian co-workers. Later that afternoon, Complainant submitted her written resignation

effective March 13, 1998.

27. Complainant testified that the two-week period from the time that she returned to work on February 26 until her last day of work on March 13, 1998 was very tense and acutely uncomfortable for her. She felt that she could no longer trust anyone, felt she was being observed and was very self-conscious about her physical appearance. She felt that all the time and effort she had put into her job at Citizens was for nothing and that to obtain a full-time job, she had to prove herself ten times more than her co-workers. I credit this testimony. (Tr. 79) John White testified that during this two-week period Complainant was dismayed and acutely uncomfortable working at Respondent and continued to be bitterly disappointed, frustrated and angry. I credit this testimony.

28. At or near her last day of employment, Taylor called her into her office, nearly in tears, and told Complainant, "I'm sorry if I hurt you."

29. Julie Burke of Respondent's human resources department conducted an exit interview with Complainant via telephone on March 13, 1998. Complainant told Burke during

her exit interview that Taylor had told her that she offered Maxwell the full-time position because of her "bubbling personality". During the exit interview, Burke asked Complainant if she would consider a full-time position if one became available in the future. Complainant said she would have to think about it. She also told Burke that she was thinking of leaving banking altogether to try other areas of employment.

30. Teller balancing reports from the period July 1, 1997 to February 12, 1998 include information regarding Complainant's and Maxwell's balancing performance subsequent to the full-time teller interviews and after Respondent made its job offer to Kathy Bliss. The reports contain no information on Bliss, to whom Respondent first offered the position. During this eight-month period, the balancing report shows that Complainant's balancing errors totaled \$690.20 and Maxwell's totaled \$259.00 (Exh. 18). Though Complainant's balancing errors were higher than Maxwell's, they were well within Respondent's requirements.

31. Complainant had more sales experience than Tara Maxwell and had exceeded her sales goals for every quarter of employment, except the first quarter of Fiscal Year

1998, October through December 1997 immediately preceding the promotion of Maxwell. (Exh. 3-5; Exh. 11-12; Exh. 15; Tr. p. 263-264, p. 297-p. 298, p. 377). However for the first month of the second Quarter of the fiscal year (January 1-31, 1998), Complainant had already achieved 40% of her sales goal for the quarter, and if she followed that track, would have exceeded her sales goal for that quarter.

32. During the first quarter of Fiscal Year 1998, the only quarter for which Maxwell had sales goals and the quarter immediately preceding the selection of the full-time teller, Maxwell achieved 135% of her sales goals.

33. Taylor testified that she and Kelly chose Maxwell over Complainant because of Maxwell's "bubbling" personality. They also took into consideration both Maxwell's and Complainant's balancing and sales performance. Further, Taylor testified that she was concerned about Complainant's commitment to the bank because on a previous occasion, Complainant had expressed her intention to resign from her position and then changed her mind. I do not credit Taylor's testimony that she considered Complainant's sales, balancing and commitment to the bank as factors in the decision to promote Maxwell over

Complainant.

34. Taylor testified that she believed that Maxwell was more likely than Complainant to reach and exceed her sales goals in the future based on their immediate performance histories and Maxwell's enthusiasm about sales.

35. Julie Burke testified that Taylor told her that Complainant and Maxwell were both "very good candidates" for the full-time teller position, but that Taylor selected Maxwell because of her settlement record and because she was more sales-oriented. Burke also testified that Taylor expressed concerns about Complainant's long-term commitment to the job because Complainant had once given notice and later rescinded her notice.

36. Burke testified that when managers requested exceptions to the nine-month requirement of the "CAP" program, Respondent's Human Resources Department asked managers to justify or explain such requests. Burke stated that when considering an exception to the policy, the Human Resource Department would determine the teller's length of service and her rank. However, Burke and the Respondent's Human Resources Department were not involved in reviewing Complainant's and Maxwell's qualifications for the full-

time teller position until after Taylor made the selection decision.

37. Burke testified that when Respondent had more than one candidate meeting the nine-month service provision, the Human Resource Department would consider the "competencies" required for the position, including sales ability and sales experience, which were very important criteria for tellers.

38. Burke testified that the dollar amount of Complainant's balancing errors was greater than that of Maxwell, however, Complainant was never counseled regarding discrepancies in her balancing and there was nothing out of the ordinary in either Complainant's or Maxwell's balancing record.

39. Amy Downey trained and worked with both Complainant and Maxwell. Downey testified that, although both Complainant and Maxwell were qualified for the full-time position, she believed that Complainant would have been offered the position because of her length of service at the bank. Downey did not think Maxwell was eligible because she had worked at the bank for fewer than nine

months.

40. Complainant exceeded Respondent's expectations in her sales performance. In evaluating Complainant for her promotion to Advanced Teller on July 24, 1997, Hamrin and Taylor found her to have consistently met her sales referral goals.

41. Complainant's sales experience exceeded Maxwell's sales experience when Maxwell was selected for the full-time teller position. At the time, Maxwell had one completed quarter of evaluated sales experience, while Complainant had six completed quarters of evaluated sales experience.

42. On June 12, 1998, Julie Burke called Complainant to offer her a full-time teller position that had become available at Respondent's Hyannis branch. Complainant told Burke that she would get back to her. Burke gave birth to a baby a few days later and handed the matter over to her supervisor, Christopher Coffin, Respondent's Senior Vice-President of Human Resources.

43. On June 16, 1998, Coffin wrote to Complainant to confirm the offer of a full-time position in Hyannis with

credit for seniority and benefits and no requirement to withdraw her claim before the MCAD. On June 18, 1998, Complainant wrote to Coffin, stating that she could not accept the position because she had no means of transportation to Hyannis.

44. In July 1998, when another full-time position became available in the South Dennis branch, Coffin called Complainant and left several messages for her regarding the opening, but Complainant did not return his calls. Coffin then wrote to Complainant in order to provide her with additional time to respond.

45. On August 24, 1998, Complainant wrote back to Coffin that she was not able to accept any position with Citizens Bank.

46. Complainant testified that following her resignation, her self-confidence "plummeted" and she felt there were no opportunities for her in the customer service industry. She felt aware of her difference and felt her physical appearance was going to play an important role in her career choice. She testified that she felt frustrated and upset that in "this day and age" situations like this

could happen and she felt that competence was not always the most important thing. I credit this testimony.

47. Complainant testified that she refused to pursue a career in the banking industry or in an office atmosphere, as she had lost confidence that she would function well in such an environment. She testified that she had to find another career goal and another field where personality and appearances did not matter, such as serving in a uniform where the humanistic part of you made a difference. I credit this testimony.

48. Complainant testified that Respondent's failure to promote her created tension in her marriage. She became insecure about her relationship because her husband is Caucasian. She argued with her husband over these matters, especially over the move to Cape Cod. They moved to Cape Cod with the excitement, with the idea that this would be a great place to raise their family and suddenly Cape Cod became a place where she didn't want to be. (Tr. 83-84)

49. Complainant testified that following Respondent's decision, she wanted to make sure she did not project her feelings of insecurity on to her son and felt the need to

return to Mexico to reaffirm and feel more secure about her roots. Shortly after her last day of employment, she took her son out of school and took him to Mexico for three weeks. She had always felt proud of her background and that she was fortunate to come from another culture and to adopt a new culture. She felt fortunate to gain value from both cultures and felt that was a valuable quality to offer at a job.

50. Complainant continued to feel upset, angry distressed and disappointed and questioned her self-worth after her departure from Respondent.

51. Complainant testified that the full-time position represented many things, including the opportunity for advancement and the ability to afford health care for her family.

52. At the time she tendered her resignation from Respondent, Complainant was earning \$8.17 per hour and worked 25 hours per week. Thus, her weekly wages were \$204.25.

53. Maxwell testified that she did not receive a

raise when she was promoted and there is no evidence that Complainant would have received an increase in wages along with the promotion. If Complainant had received the full-time position, she would have worked 40 hours per week at \$8.17 per hour, thus her weekly wages would have been \$326.80. The difference in wages between the full-time position and the part-time position is \$122.50 per week.

54. After returning from Mexico, Complainant began seeking employment in the restaurant industry where she had had extensive experience. In May 1998, she obtained a job as a waitress at Anthony's of Dennis, an Italian restaurant where she earned an average of \$260.00 per week. The difference between her wages at Anthony's of Dennis and the wages she would have received as a full-time teller is \$66.00 per week.

III. CONCLUSIONS OF LAW

A. Discrimination on the Basis of Race, Color and National Origin

In order to establish a prima facie case of discriminatory failure to promote, Complainant must show

that she is a member of a protected class who was qualified for the position, that she was denied the position and the position was awarded to someone not of her protected class. Alves v. Town of Freetown Police & Board of Selectmen, 18 MDLR 112 (1996). See Puckett v. Commercial Aviation Services, 24 MDLR 77 (2002). (finding evidence of race discrimination when persons outside of the Complainant's protected category were selected for promotional opportunities that were denied to the Complainant, a qualified candidate). I find that Complainant has established a prima facie case of discrimination based on race, color and national origin.

As a Hispanic woman of Mexican Indian decent, Complainant is a member of a protected class based upon her race, color and national origin. Further, Complainant has shown that her job performance either met or exceeded her employer's expectations and she was well qualified for the promotion and that she was rejected for the position of full-time teller. Finally, Respondent offered the position to two Caucasian women, first to Kathy Bliss, who rejected the position and then to Tara Maxwell, who accepted the position.

Once Complainant has established a prima facie case of discrimination, the burden of production shifts to

Respondent to offer legitimate, non-discriminatory reasons for its conduct. Abramian v. President and Fellows of Harvard College, 432 Mass 107(2000).

Respondent's articulated reasons for choosing Tara Maxwell for the position were Maxwell's outgoing personality and sales ability, her superior balancing record and Taylor's concern about Complainant's lack of commitment to the bank. I find that Respondent has articulated legitimate, non-discriminatory reasons for offering the promotion to Maxwell.

Once Respondent has articulated legitimate, non-discriminatory reasons for its conduct, Complainant must show that Respondent's reasons are a pretext for unlawful discrimination. A fact finder may, but need not, infer that an employer is covering up a discriminatory intent, motive or state of mind if one or more of the reasons identified by the employer are false. Lipchitz v. Raytheon Company, 434 Mass. 493, 498, 507 (2001). The employee need not disprove all of the non-discriminatory reasons proffered by the employer for its decision-making, only that "discriminatory animus was a material and important ingredient in the decision making calculus." Chief Justice for Administration and Management of the Trial Court v. Massachusetts Commission Against Discrimination, 439 Mass.

729, 735 (2003). I now discuss each of Respondent's articulated reasons in turn.

With regard to the Respondent's assertion that Maxwell's sales record and ability were a reason she was chosen over Complainant, I find this reason to be pretextual. Complainant had thirteen more months of sales experience than Tara Maxwell and had consistently exceeded her sales goals, except for one quarter where her sales dipped below her goals. Moreover, during the month preceding the decision to hire Maxwell, Complainant's sales were already at 40% of her sales goals for that quarter. While Tara Maxwell also exceeded her goals, she had only one measured quarter of sales performance at the time of her selection for the full-time teller position. In that quarter, Tara Maxwell exceeded her sales goals by only one referral.

Respondent also contends that Complainant's record of cash balance discrepancies was a factor in its decision to hire Maxwell. I find this articulated reason to be pretextual as well. Although Complainant's cash balance discrepancies were higher than Maxwell's, those discrepancies were de minimus and were well within Respondent's required limits. They had never before been a matter of concern to Respondent in terms of evaluating

Complainant's performance. Further, according to Taylor, teller balancing errors were quite common, and balancing error records sometimes appeared inflated because of balancing discrepancies that were later resolved, but nonetheless remained on the teller's record as errors. Further, there was no evidence that Respondent ever considered the balancing record of Kathy Bliss, the teller initially offered the promotion. I conclude that the disparity between the balancing records of Complainant and Maxwell were inconsequential and Respondent's consideration of this matter was pretextual.

Respondent also claimed that concern about Complainant's long-term commitment to the bank was a factor in its decision to offer the position to Maxwell. However, I find this reason to be pretextual, given that during her interview, Complainant assured Taylor that she intended to remain at the bank if promoted. Moreover, given Respondent's concern about high turnover among tellers, one would reasonably presume that promoting tellers with seniority and a good record, such as Complainant, would discourage lower paid employees from leaving. The terms of the CAP program support this reasoning, recommending promotions to those who have been with the bank for nine months or more. Further, in failing to promote Complainant

Respondent ignored the CAP program as well as the recommendations of its own human resources department to encourage the promotion of Complainant.

Finally, Respondent cites Maxwell's outgoing personality as a factor in offering her the promotion over Complainant. While Respondent may have believed that Maxwell's outgoing personality would lead to greater sales, nonetheless "... even when nondiscriminatory reasons play some role in a decision not to hire a particular applicant, that decision may still be unlawful if discriminatory animus was a 'material and important ingredient' in the decision-making calculus." [citations omitted] Chief Justice for Administration and Management of the Trial Court, et al. v. MCAD, 439 Mass 729, 735(2003). Thus while one motive of Respondent may have been legitimate, I conclude that the other reasons advanced by Respondent for promoting Maxwell over Complainant were pretext for discrimination. Respondent's decision-makers ignored Complainant's experience and higher rank, her job performance and her actual sales results, and offered pretextual justifications for hiring Maxwell. In this case, I find that unlawful discriminatory animus was a "material and important ingredient" in Respondent's decision to hire Maxwell over Complainant.

For the reasons stated above, I conclude that Respondent engaged in unlawful discrimination on the basis of race, color and national origin, in violation of M.G.L. c.151B.

B. Constructive Discharge

Complainant has alleged that she was constructively discharged. A constructive discharge occurs when an "employer's conduct effectively forces an employee to resign." GTE Products Corporation v. Stewart, 421 Mass. 22, 33-34 (1995). A constructive discharge can occur when the employer "materially breaches [an] employee's contract of employment in some manner short of termination" or makes "working conditions so intolerable that the employee feels compelled to quit." Constructive discharge occurs where, "based on an objective assessment of the conditions under which the employee has asserted [s]he was expected to work, it could be found that they were so difficult as to be intolerable." GTE Products Co. v. Stewart, at 34 (1995). In order to prevail on her constructive discharge claim, Complainant must establish that Respondent made her working conditions so intolerable that a reasonable person in her position would have felt compelled to resign. McKinley v.

Boston Harbor Hotel 14 MDLR 1226, 1240 (1992). The standard for constructive discharge "is, and should be, a strict one," and requires that an employee must demonstrate that "the threat of physical or psychic harm was so great as to preclude ever returning to work." She must also show that she exhausted all possibilities to continue working and that resignation proved to be the final and only alternative. Id. at 1241.

Complainant was upset, disappointed and distressed by Respondent's failure to promote her. However, the test for whether or not constructive discharge occurred is an objective, not subjective one. Complainant endured no taunts, threats or hostility at her workplace following the failure to promote her. Her supervisors were sympathetic and Taylor apologized for hurting her feelings. Thus, I conclude that Complainant's objective working environment was not so intolerable so as to compel her to leave her employment. I also conclude that it was not so intolerable as to preclude her from seeking other avenues of relief, such as registering an informal or formal complaint, if she felt she had been discriminated against in the denial of a promotion. Complainant failed to exhaust reasonable alternatives to leaving her employment, including rejecting two job offers with Respondent, and then making clear to

Respondent that she wanted no other job at Respondent. Eggert v. Cabot Corp., 21 MDLR 131 (1999). Therefore, I conclude that Complainant fails to make out a case of constructive discharge in this matter.

IV. REMEDY

A. Lost Wages

Because of my ruling that Complainant voluntarily left her employment, I conclude that Complainant is entitled only to the difference between her wages as a part-time teller and the wages that she would have received as a full-time teller, and after she obtained employment at Anthony's restaurant, the difference between her wages there and the position of full-time teller. Further, the period of lost wages ends when Respondent made an unconditional offer to Complainant of a full-time position at the South Dennis branch. Thus I conclude that Complainant is entitled to lost wages in the amount of \$1,998.00 ($\$122.50/\text{week} \times 12 \text{ weeks} + \$66.00/\text{week} \times 8 \text{ weeks}$.)

B. Emotional Distress

The Commission is authorized to award damages for emotional distress damages that resulting from unlawful

discrimination. Stonehill College v. Massachusetts Comm'n Against Discrimination 441 Mass. 549 (2004) Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303(1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Court 172(1985). Such emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill, supra, at 576. Some of the factors to be considered are; the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has suffered and reasonably expects to suffer and whether the complainant has attempted to mitigate the harm. Id. The Complainant must show a sufficient causal connection between the Respondent's unlawful act and the Complainant's emotional distress. Id. I conclude that Complainant suffered substantial emotional distress as a result of Respondent's unlawful discrimination against her. Complainant experienced a severe loss of self-confidence and tension in her marital relationship. Complainant became extremely self-conscious about her appearance, race and national origin, and went through a period of soul-searching during which she took her son to Mexico, her country of origin for several weeks. Complainant also became distrustful and lamented that in "this day and age"

she would be subjected to discrimination. She felt as though her hard work and dedication and competence did not matter. She felt that she could not continue to work in a field that valued appearance more than competence or what was inside. I conclude that Complainant's emotional distress was causally connected to Respondent's discriminatory conduct. Her emotional distress was severe, lasting for a period of many months. I therefore conclude that Complainant is entitled to an award for emotional distress in the amount of \$100,000.00.

V. ORDER

Respondent is hereby Ordered to:

(1) Immediately cease and desist discriminating on the basis of race, color and national origin.

(2) Pay to Complainant Lorenza White the sum of \$1,998.00 for lost wages within 60 days of receipt of this decision with interest thereon at the rate of 12% per annum from the date the complaint was filed until such time as payment is made.

(3) Pay to the Complainant Lorenza White the sum of \$100,000 in damages for emotional distress within 60 days of receipt of this decision, with interest thereon from the date the complaint was filed until such time as payment is

made.

The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made. If any Respondent fails to comply with the terms of this Order within the time period allotted, Complainant shall notify the Clerk of the Commission.

This constitutes the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten 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 30th day of August, 2004.

JUDITH E. KAPLAN,
Hearing Officer