

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & MEREDITH ERVIN,)
Complainants)
v.) 99-BEM-0105
A.P.T.S., INC.,)
Respondent)
)
)
)

DECISION OF THE FULL COMMISSION

This matter has come before us following a decision of Hearing Officer Judith Kaplan in favor of Complainant Meredith Ervin, after an Order of Entry of Default was entered against Respondent who failed to appear at the public hearing. Hearing Officer Kaplan issued a default against A.P.T.S., Inc., pursuant to the Commission's Procedural Regulations at 804 CMR 1.21(8). Notice and Order of entry of the default were sent to Respondent via certified mail on March 7, 2001 and, to this date, Respondent has failed to petition the Commission for removal of the default.

After the hearing, the Hearing Officer issued a decision finding that Respondent terminated Complainant in violation of M.G.L. c.151B due to her handicap and she ordered Respondent to pay Complainant a total of \$12,973.09 in compensatory damages and \$20,000 for emotional distress. Respondent filed an appeal to the Full Commission, in which it objects to specific factual findings and the amount of the damages awards, but fails to request removal of the default or submit affidavits explaining Respondent's reason for failing to appear at the hearing.

As a result of Respondent's failure to remove the default, we find that Respondent lacks standing to appeal the Hearing Officer's decision. According to the Commission's regulations, a removal of a default may be sought if requested within ten days of receipt of the default notice. 804 CMR 121(8)(d). The request should be for removal of the default for good cause shown and "shall be in affidavit form." 804 CMR 1.21 (8)(d). Respondent failed to petition the Commission for removal of the default within ten days of receipt of the Notice, failed to submit an affidavit and in fact, failed to request removal of the default at any time. The Commission has no obligation to act on the pleadings of a defaulted party.

Whereas Respondent lacks standing to appeal the Hearing Officer's decision due to its failure to remove the default against it, the appeal is dismissed. Accordingly, the decision of the Hearing Officer is final and binding. The Hearing Officer is directed to rule on Complainant's Petition for Attorney's Fees.

SO ORDERED this _____ day of November, 2002.

Cynthia A. Tucker
Commissioner

Walter J. Sullivan, Jr.
Commissioner