

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
MICAELA BURKE,  
Complainant

v.

DOCKET NO. 97-BEM-4389

NERONHA FINISHING CO.  
and JOSEPH NERONHA,  
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Eugenia Guastaferrri in favor of Complainant, Micaela Burke. Following an evidentiary hearing, the Hearing Officer concluded that Respondents were liable for unlawful sexual harassment and constructive discharge in violation of M.G.L. c. 151B, Section 4(16). The Respondents filed an appeal to the Full Commission.

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 Officer. M.G.L. c. 151B, Section 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 Hearing Officer's responsibility to evaluate the credibility of witnesses and/or to weigh the evidence when deciding disputed issues of fact. The Full

Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role 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(f).

#### I. RESPONDENTS' PETITION FOR REVIEW

Respondents first contend on appeal that the Hearing Officer erred as a matter of law when she found that Respondents were liable for sexual harassment. Specifically, they claim that Complainant's supervisor's (Gannon Hurley) conduct did not constitute "sexual harassment" according to the governing statutory language. Respondents argue that "a simple request for a date" does not constitute sexual harassment. They contend that "a request for a date is a request for a social relationship which may or may not progress to a sexual relationship."

Had Hurley made only "a simple request for a date" in this matter, the result may have been different. Respondents correctly point out that a lone request for a date, with nothing else, generally does not give rise to a claim for sexual harassment in the workplace. However, that is not the case here. The Hearing Officer specifically found that Hurley talked about Complainant to her sister all the time, asked whether Complainant had a boyfriend, indicated that he wanted to date Complainant and appeared to be obsessed with Complainant. When Hurley eventually asked Complainant for a closer personal relationship and she declined, he persisted several times with his request. Having known Hurley for a considerable period of time and worked in close quarters with him for eight months, Complainant understood Hurley's request not merely to be one for a simple date, but for a close relationship with a sexual component.

Further, the Hearing Officer found that what occurred in the aftermath of Hurley's overtures to Complainant clearly supported her conclusion that Hurley's interest in Complainant went far beyond "a simple request for a date." Almost immediately after Complainant rejected his advances, Hurley destroyed a chair of great sentimental value to Complainant in order to show her how it hurt to lose something important. He then went on to subject Complainant, over an eight week period, to numerous acts of retaliation for her rejection of him, including threatening her with physical harm, sabotaging her work equipment and throwing a two-by-four at her boyfriend. Given the specific circumstances and factual context of this case, we find that there was substantial evidence to support the Hearing Officer's decision with respect to Complainant's sexual harassment claim.

Respondents next contend on appeal that the Hearing Officer erred as a matter of law when she found that Complainant was constructively discharged. Respondents cite case law for the proposition that "in order to amount to a constructive discharge, adverse working conditions must be unusually aggravated or amount to a continuous pattern before the situation will be deemed intolerable." Rubin v. Household Commercial Financial Services, Inc., 51 Mass. App. Ct. 432, 746 N.E.2d 1018 (2001) quoting GTE Products Corp. v. Stewart, 421 Mass. 22, 653 N.E.2d 161 (1995). Respondents argue that the legal standard for establishing a claim of constructive discharge is a high one and that the Hearing Officer erred in finding that the standard was met in this case. Specifically, they argue that Joseph Neronha's ultimatum that either Complainant or Hurley would "have to go" did not translate into constructive discharge, since he did not indicate that Complainant would be the one to go.

While we agree with Respondents that the legal standard for establishing a claim of constructive discharge is high, we do not agree that it went unmet in this case. As illustrated in the discussion of Complainant's sexual harassment claim above, Respondents seek to avoid the greater factual context and circumstances of

Complainant's experience with Respondents. The Hearing Officer specifically found that Complainant was subjected to an eight week period of harassment that went unabated, despite Complainant's numerous complaints to Neronha about Hurley's conduct. Neronha, the owner of the company, first ignored her and then stated to her that he would hate to lose Hurley, an experienced and competent employee. Finally, Hurley, yelled at her to "get the hell out of here" only minutes before Neronha's ultimatum. Considering this evidence in the full context of the matter, the Hearing Officer found: "Based on all the events leading to June 9, 1997, coupled with Neronha's ultimatum to her and Hurley on that day, I conclude that a reasonable person in Complainant's position would have felt compelled to resign." We find that there was substantial evidence to support the Hearing Officer's finding that Complainant's working conditions were "unusually aggravated" and that she was subjected to a "continuous pattern" of conduct that ultimately proved intolerable.

We have carefully reviewed these contentions and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law with respect to the Hearing Officer's finding of sexual harassment and constructive discharge. We find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them.

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision.

## II. COMPLAINANT'S PETITION FOR ATTORNEY'S' FEES AND COSTS

Having affirmed the Hearing Officer's decision, we conclude that Complainant prevailed in this matter and is entitled to an award of reasonable attorneys' fees and costs. See M.G.L. c. 151B, Section 5. Complainant has filed a petition seeking attorneys' fees and expenses, supported by detailed contemporaneous time records, requesting fees in the

amount of \$18,217.50 and costs in the amount of \$331.40. Respondents have filed no opposition thereto.

A. FEES

M.G.L. Chapter 151B allows prevailing Complainants to recover attorneys' fees. The determination of whether a fee sought is reasonable is subject to the Commission's discretion. The Commission has adopted the lodestar methodology for fee computation. By this method, the Commission will first calculate the number of hours reasonable expended to litigate the claim and multiply that number by a reasonable hourly rate. Baker v. Winchester School Committee, 14 MDLR 1097 (1992).

Only those hours that are reasonably expended are subject to compensation under M.G.L. c.151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Id. at 1099.

Counsel Douglas McCormac and Sara Quinn for Complainant seek reimbursement for 97.2 hours of work and 24.25 hours of work, respectively, that they performed at an hourly rate of \$150.00. Having reviewed the contemporaneous time records that supports this request, we conclude that the amount of time spent on preparation and litigation of this claim is reasonable. Our review points to no evidence that the hours spent were duplicative, unproductive, excessive or otherwise unnecessary to the successful prosecution of the claim. Furthermore, all hours for work performed are sufficiently documented. We conclude that the hours for which reimbursement is sought is reasonable. We also conclude that Attorney McCormac's and Attorney Quinn's hourly rate of \$150.00 is supported by documentation of their legal experience and expertise in the area of employment discrimination law. We conclude that the rate charged by Attorneys McCormac and Quinn is consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases and is well within the

range of rates charged by attorneys in Boston of similar experience.

We therefore award fees based on the following rates submitted by counsel: 97.2 hours x \$150.00/hour = \$14,580.00 plus 24.25 hours x \$150.00/hour = \$3,637.50. The total amount of fees awarded is \$18,217.50.

**B. COSTS**

Complainant's counsel also seeks reimbursement for costs in the amount of \$331.40. These costs include expenses related to the taking of depositions in this matter. We find that these costs are adequately documented and reasonable. Accordingly, we award them to Complainant.

**III. ORDER**

The Respondents' appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer, including awards for lost wages and emotional distress, is confirmed in its entirety.

It is hereby ordered that:

(1) Respondents pay to Complainant the sum of \$4,135.00 in damages for lost wages, with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed, until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

Payment shall be made within sixty (60) days of receipt of this decision.

(2) Respondents pay to Complainant the sum of \$25,000.00 in damages for emotional distress, with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed, until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue. Payment shall be made within sixty (60) days of receipt of this decision.

(3) Respondents pay to Complainant the sum of \$18,217.50 in attorneys' fees and \$331.40 in costs. Payment shall be made within sixty (60) days of receipt of this decision.

(4) The Parties shall notify the Clerk of the Commission as soon as the ordered payments have been made.

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 17<sup>th</sup> day of November, 2003.

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Walter J. Sullivan, Jr.  
Commissioner

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Cynthia A. Tucker  
Commissioner