

16, 2002. The parties have submitted proposed findings of fact and conclusions of law. Having considered the evidence in the record and the submissions of the parties, I make the following findings of fact and conclusions of law.

II. PROPOSED FINDINGS OF FACT.

1. The Complainant, Micaela Burke, is a 24 year old female who resides with her parents in Somerset, Massachusetts. Complainant grew up in Somerset. (Testimony of Burke)

2. Complainant was hired by the Respondents, Joseph Neronha and the Neronha Finishing Co., in or about August of 1996. At that time, she was 19 years of age and resided with her parents in Somerset. (Testimony of Burke and Neronha; Exhibit R-1)

3. Respondent, Neronha Finishing Co., Inc. is a Massachusetts Corporation which was first organized in January, 1999. The Corporation was not in existence at the time of the occurrences alleged by Complainant. During Complainant's employment, Joseph Neronha was the sole owner and proprietor doing business as the Neronha Finishing Co. The place of business was located in Fall River, Massachusetts. At the time of Complainant's separation, Respondents employed seven employees. (Testimony of Neronha; Answer to Complaint dated January 8, 1998; Exhibit A)

4. Complainant was a full-time employee of the Respondents, employed as a woodworker, until June 9, 1997. Her job was to strip and prepare furniture for restoration, and she became

proficient in this work. Her work was satisfactory. (Testimony of Burke, Neronha, and Hurley; Exhibit A [Joint Stipulation].)

5. During Complainant's employment, Gannon Hurley was her immediate supervisor. Mr. Neronha also acted as a supervisor over both employees. (Testimony of Burke and Neronha)

6. Prior to her employment, Complainant knew Gannon Hurley. Their families lived in the same neighborhood in Somerset, Massachusetts. They knew each other through mutual friends and siblings. However, Hurley was at least ten years older than Complainant, and they were not close friends but acquaintances. (Testimony of Burke and Hurley)

7. It was Hurley who told Complainant about the job opening at Respondent Neronha Finishing Co. She applied and was hired by Joseph Neronha in 1996. (Testimony of Burke and Hurley)

8. Complainant regularly worked alone with Hurley in the same area, as he did the same type of work. Complainant stated that initially they worked in a separate room and other employees worked in other areas doing different work for the employer. There was one other female employee. (Testimony of Burke, Neronha, and Hurley.)

9. After she was hired by the Respondents, Complainant had regular contact with Hurley. He often drove Complainant to work, and he sometimes did favors for her in the neighborhood, such as taking her to buy cigarettes. (Testimony of Burke and Hurley.)

10. On or about April 16, 1997, Hurley and Complainant had

a conversation outside of work. He had come by her house and Complainant asked him to take her to buy cigarettes. On that occasion, Hurley asked Complainant to have a closer personal relationship with him. Prior to that time, Complainant had only a friendly relationship with Hurley based on occasional contacts in their neighborhood and on working together for over eight months. Complainant understood this overture to be a request for a sexual relationship and she told Hurley that she already had a boyfriend and that she was not interested in a closer relationship with him. Hurley persisted with his request for a closer relationship, and Complainant asked him to take her home.

(Testimony of Burke)

11. Complainant's sister, Alysh Burke testified that she was friends with Hurley and that Hurley always talked about Complainant, indicated to her that he wanted to date Complainant, and asked about whether she had a boyfriend. She said that it seemed to her that Hurley was obsessed with Complainant, but Complainant just wanted a friendship. (Testimony of Alysh Burke)

12. Hurley testified that he felt very hurt and rejected by Complainant's refusal to date him and at her response to his request to have a closer personal relationship. He testified that he had wanted to date Complainant. (Testimony of Hurley)

13. Based on the testimony of Complainant, her sister and Hurley, it is reasonable to find that Hurley's request was

sexual in nature and intent and could have reasonably been interpreted in that vein.

14. Approximately two days after Complainant rejected Hurley's advances, on or about April 18, 1997, Hurley intentionally broke and destroyed parts of an antique rocking chair that Complainant had been working on at the Respondents' place of employment. (Testimony of Hurley and Burke)

15. The chair that Complainant was repairing belonged to her mother, and Complainant had obtained Mr. Neronha's permission to repair and refinish the chair on her own time at the workplace. Hurley knew that the chair was important to Complainant and that it was being repaired for her mother. (Testimony of Hurley and Burke)

16. Hurley put pieces of the broken chair into a brown paper bag, sealed the bag, and took the bag and the broken pieces from the workplace to the home of Complainant. At the Burke home, Hurley gave the brown paper bag with broken pieces of the chair to Complainant's brother, Daniel Burke. Hurley told him to put the bag in Complainant's bedroom without telling her who left it. (Testimony of Burke and Hurley; Deposition of Daniel Burke)

17. Daniel Burke put the bag on Complainant's bed. He told his sister that there was a bag on her bed, but he did not tell her who brought it. After Complainant opened the bag, Daniel Burke saw that Complainant was very upset. He saw that the bag contained broken pieces of wood. He told Complainant that Hurley

had left it for her. (Testimony of Burke and Deposition of Daniel Burke)

18. Hurley told Complainant's sister that he had broken the rocking chair that Complainant was repairing. Based on the testimony of Complainant, her sister and Hurley, I find that Hurley broke the chair and brought the broken pieces to Complainant's home in retaliation for her having rejected his request to have a closer personal relationship with her.

19. On the day after Hurley brought the bag with broken chair parts to her home, Complainant confronted him at work about this incident. She stated that she was so upset she swore at him and told him to stay away from her. When she asked him why he had destroyed her mother's chair, Hurley's only reply was, "It hurts, doesn't it?" (Testimony of Burke)

20. Complainant brought the pieces of the broken rocker to work to show Neronha and informed him about what Hurley had done. Neronha said that he had seen Hurley leaving work the previous night with a brown bag that appeared to be similar to the one that she was showing him. When Neronha asked Complainant why Hurley would do such a thing, Complainant told him that Hurley had said that he liked her and wanted a closer relationship and that she had rejected him. (Testimony of Burke and Neronha; Exhibit A)

21. Neronha agreed with Complainant that what Hurley had done was crazy and he told Complainant he sensed there was

tension in the air. Other than this he took no action in response to Complainant's revelations. (Testimony of Neronha and Burke)

22. Complainant testified that after this incident, her relationship with Hurley at work changed dramatically. She stated that he became rude and cocky and treated her badly. He would move a piece of furniture she was working on for no reason and he threw her wire brushes on the floor. She believed he gave her instructions that were inaccurate or inconsistent with Neronha's instructions so she began going to Neronha to get work for the day. Complainant also heard that Hurley spoke badly about her to other employees. Complainant felt frightened and upset by Hurley's conduct towards her. (Testimony of Burke)

23. Complainant testified that she complained to Neronha about Hurley's conduct towards her, including him throwing her brushes on the floor, giving her the wrong instructions on how to use the wire brushes and being rude to her. Neronha said that he would talk with Hurley. (Testimony of Burke and Neronha)

24. Neronha testified that Complainant complained to him on three occasions about conduct by Hurley during the period of April through June 1997, but that these complaints were not about sexual harassment or sex discrimination. One of the complaints was that Hurley had instructed her not to use a wire brush on certain refinishing work. When he questioned Hurley about this, Hurley told him Complainant was using a wire brush improperly. Hurley denied that he had thrown the brushes or given improper

instructions. Neronha took no further action on this complaint because he thought Hurley's instructions were appropriate. Neronha testified that he believed the issue between Complainant and Hurley was a communications problem and he instructed Hurley to work it out with Complainant. Although Neronha seemed not to understand that there was a connection between Hurley's treatment of Complainant and her rejection of his romantic overtures, he was on notice that Hurley had approached Complainant for a dating relationship prior to these problems commencing. (Testimony of Neronha and Hurley)

25. Complainant testified that on one occasion when she complained about Hurley to Neronha, he told her that he would hate to lose Hurley because Hurley did such good work.

26. After Complainant spoke with Neronha, Hurley approached her and asked if they could talk. He said that they had to get along. Complainant asked him why he had been treating her badly, and he responded, "Because I am a psychopath." Complainant believed that they agreed that there would be no more incidents. (Testimony of Burke)

27. A few days later, Complainant was told by a friend that Hurley had admitted to poking holes in her stripping gloves at work. Complainant checked her stripping gloves and found that they had numerous small holes in them. The holes could have allowed caustic stripping fluid to come into contact with her hands while she worked, possibly causing injuries. Complainant

testified that she had started wearing two gloves on each hand because her hands had become irritated before she discovered the holes. Complainant's sister also testified that Hurley admitted to her that he had done this and that she relayed this information to Complainant. (Testimony of Burkes)

28. Complainant reported the damaged stripping gloves and the allegations that Hurley had done this to Neronha. She testified that Neronha did not examine the gloves, but told her to throw the gloves away. He then spoke to Hurley about the allegation and Hurley denied that he had done it. No other action was taken by Neronha regarding these allegations. (Testimony of Neronha and Burke)

29. On or about June 7, 1997, Complainant's boyfriend of some four years, Billy Enos, drove to the parking lot adjacent to the Respondent's place of employment in order to pick Complainant up from work. He had done this on previous occasions. While in the parking lot, Hurley confronted him stating Enos did not belong there and would have to leave. The two men shouted and argued with each other and made threatening gestures and Enos stated that Hurley threw a two-by-four at him. Neronha observed their confrontation from the building. Complainant approached the men in the parking lot and broke up the fight, telling them to stop, and yelling at Enos to get back in his truck. Enos returned to his truck and she left with him. (Testimony of Enos, Burke and Hurley)

30. The following morning, June 9, 1997, at the start of the work day, Hurley told Complainant that "his friends would get Billy" referring to her boyfriend and he told her "to get the hell out of here." Complainant continued to work, trying to ignore Hurley's statements and he began playing with a nail gun which was run on compressed air, shooting it in her direction from the other end of the room. The air gun made a very loud noise and several nails landed within a few feet of where Complainant was working. That same day, Hurley also threw a roll of tape at Complainant when she was gluing a surface and told her to tape it. She believed Hurley's intent was to frighten her and she did become frightened and upset by his conduct that morning. These incidents occurred before Neronha had come to work.

(Testimony of Burke)

31. As Neronha entered the workplace on the morning of June 9, 1997, Complainant approached him and asked to speak with him about Hurley. Neronha then directed Complainant and Hurley to meet with him together in his office. At this meeting, Complainant complained about Hurley's actions and harassment of her. Hurley denied some of the complaints. Hurley testified that he complained to Neronha that Complainant did not follow his instructions. Neronha did not meet with Complainant alone or otherwise investigate her allegations. (Testimony of Burke; Neronha; Hurley Exhibit A)

32. At this same meeting, Neronha told Complainant and

Hurley that one of them had to go. After Neronha had issued his ultimatum that one of them had to go, no one responded for some time. To Complainant, it felt like several minutes. (Testimony of Burke, Neronha and Hurley) Complainant believed that she was being forced out because Neronha was not going to take steps to end the harassment Hurley was subjecting her to. She believed she had no choice but to go and she testified that she felt very upset, angry and emotional and had tears in her eyes. In her words she "couldn't believe what was happening." Complainant left the employment of the Respondents at that time. (Testimony of Burke)

33. Neronha testified that it was his intent to pressure the two employees to resolve their problem themselves because he thought there was a communications problem between them. He was never concerned about the quality of Complainant's work.

34. During Complainant's employment, the Respondents had no policy against sexual harassment and no policy governing complaints of sexual harassment. There were no postings about sexual harassment. Neronha testified that he subsequently adopted the Commission's standard policy and procedures for sexual harassment. (Testimony of Neronha)

35. At the time of her termination by the Respondent, Complainant was earning \$6.50 per hour. (Exhibit A, Burke)

36. Complainant collected unemployment compensation for a

period of some six months after her employment with Respondent ceased. Her tax return for 1997 indicates that she received \$715.00 in unemployment compensation for that year. (Ex. C-3) She claimed to have looked for other work during this time, but stated the nature of her problem at Respondent affected how and where she looked for work. She stated that she no longer wished to work in the male dominated furniture re-finishing business or other places where the workforce was primarily comprised of men, and instead sought to find a job in a better environment with women where she hoped to be treated better.

37. Complainant obtained part-time employment with Bristol Community College in 1997 and 1998, where she earned a total of \$426.25. (Testimony of Burke; Exhibits C-3 and C-4.) She also secured part-time employment with Ruby Tuesday from June 21, 1998, to September 4, 1999, where she earned a total of \$8,728.92. Although her hourly wage at Ruby Tuesday was equal to the hourly wage with the Respondent, *i.e.*, \$6.50 per hour, the employment with Ruby Tuesday was not comparable or better because it was part-time. (Testimony of Burke; Exhibit R-2.)

38. On September 5, 1999, Complainant obtained employment at equal or better compensation with her current employer, Fitz, Vogt and Associates, where she has been earning \$360.00 per week as a chef. (Testimony of Burke; Exhibit C-6.)

39. Complainant claims to have been deeply upset by

her experience at the Neronha Finishing Co. She did not want to work in the same industry locally because of its connections with the Respondents, and she did not want to work in a male-dominated place of employment for fear of having a similar experience. She is currently working as a chef in a convent. (Testimony of Burke.)

40. The period between Complainant's termination on June 9, 1997, to the starting date of her current job on September 5, 1999, was 116 weeks. Complainant seeks back pay from the Respondents in the amount of \$260.00 per week for 116 weeks of full time work for a total of \$30,766.00. However, Complainant testified that from January through May of 1997 she worked only approximately 27 hours per week at Respondent, and not 40 hours, because she was taking a course. She worked only one 40-hour week in her last nine weeks on the job. Furthermore, I am not persuaded that for a period in excess of two years Complainant was unable to find comparable full time employment at a rate of pay equal to or greater than what she was earning at Respondent. She managed to secure part-time work at a comparable rate of pay. I find that Complainant is entitled to back pay for a period of six months only.

41. The value of the rocking chair destroyed by the supervisor at the Respondent's place of employment was approximately \$300.00. (Testimony of Burke; Exhibits C7, C-8 and C-9.)

42. Complainant suffered emotional distress as a result of the threatening acts and statements of Hurley that occurred at the workplace which she believed were motivated by her rejection of his advances. She was fearful of working with Hurley and often would not speak with him there. She also felt isolated and humiliated by his conduct. She also was distressed by the failure of Respondents to take reasonably effective actions to prevent Hurley's harassment of her, particularly where she had complained to Neronha and confided in him what she believed the reasons were. She felt let down, isolated and degraded. (Testimony of Burke.)

43. Complainant also was distressed as a result of her constructive discharge by the Respondents. She testified that she felt humiliated and frustrated and thereafter she had difficulty seeking work in a male dominated environment. (Testimony of Burke.)

III. CONCLUSIONS OF LAW

A. The Complainant has established that she was the victim of *quid pro quo* sexual harassment in the workplace.

M.G.L. c. 151B, §4, p. 1, prohibits discrimination in the workplace on the basis of sex and §4, p. 16A, prohibits sexual harassment. *Quid pro quo* sexual harassment is defined as:

Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when ... submission to or rejection of such advances, requests or

conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions. G.L. c. 151B s. 1(18)(a) 1996

To prove a claim for *quid pro quo* harassment Complainant must establish that:

- 1) The alleged harasser made sexual advances or sexual requests or otherwise engaged in conduct of a sexual nature;
- 2) the sexual conduct was unwelcome;
- 3) she rejected such advances or conduct; and
- 4) the terms or conditions of her employment were then adversely affected. See, MCAD Sexual Harassment in the Workplace Guidelines, p.2(2002)

The Complainant, Micaela Burke, has shown by a preponderance of the evidence that she was subjected to *quid pro quo* sexual harassment in the workplace by her supervisor, Gannon Hurley. Hurley made advances of a sexual nature to Complainant when he asked her for a more personal relationship implying that he wanted to date her. The argument that Mr. Hurley did not ask directly for "sex" does not mean that his advance to her was not a request for a sexual favor. The request for a sexual relationship was communicated and understood by Complainant. Even if one could argue that the request was only for a date, asking for a date generally is understood to show sexual interest or

attraction.

Shortly after he had been rejected by Complainant in his request for a closer personal relationship, Hurley engaged in a series of acts that altered the terms and conditions of Complainant's employment, and made her fearful, intimidated and uncomfortable on the job. Complainant reported these incidents to Neronha, the owner of the company, and when he questioned her about possible motives, she informed him that Hurley had indicated that he liked her and wanted a closer relationship, but that she had rejected his advances telling him she already had a boyfriend.

Hurley destroyed Complainant's mother's antique rocking chair that she was attempting to restore in the workplace and delivered pieces to her home to show how it "hurt" to lose something important. In further retaliation for her rejecting his advances, Hurley gave Complainant inappropriate instructions at work, moved her work for no reason, was abusive and rude to her, threw her work brushes to the floor, and poked holes in her protective gloves, creating a potentially unsafe working condition for her. When asked by Complainant why he had behaved in this manner, he told her that he was a "psychopath." He confronted Complainant's boyfriend in the company parking lot, and on the next workday on June 9, 1997, he yelled at Complainant to leave her job and to get out of the workplace. He threw a roll of tape at her and shot a nail gun in her direction.

There is little doubt surrounding the motivation behind Hurley's workplace conduct toward Complainant. His actions were clearly in retaliation for her rejection of him. The terms and conditions of Complainant's employment were adversely impacted by Hurley's abusive and threatening conduct. While the events were occurring, Complainant told Neronha that she believed that the reason Hurley was harassing her was her rejection of his request for a closer personal relationship. At some point her working conditions under Hurley became so hostile and intimidating that she began going directly to Neronha for assignments. Hurley, himself, testified that he was very hurt by Complainant's rejection, and the timing of his hostile acts (starting right after the rejection) and Hurley's own statements (linking his hostile acts to his hurt feelings) demonstrate that his actions were *quid pro quo* sexual harassment.

The fact that Hurley made his first unwelcome sexual request outside of work and that he and Complainant had known each other prior to their employment by the Respondents does not alter the conclusion that Hurley's subsequent workplace conduct toward Complainant is actionable as unlawful sexual harassment in the workplace. See, *Beaupre v. Cliff Smith & Assoc.*, 50 Mass. App. Ct. 480, 489 (2000). Conduct resulting in sexual harassment need not occur in the workplace to be actionable. One of the factors to consider whether conduct occurring outside the workplace constitutes actionable workplace harassment is the work

relationship of the complainant and the alleged harasser, which includes whether the alleged harasser is a supervisor and whether the alleged harasser and the complainant come into contact with one another on the job. MCAD Guidelines on Sexual Harassment p.7.; Johnson v. Boston Edison, 19 MDLR 162 at 166-167 (1997). In this case, Hurley was Complainant's direct supervisor and they worked alone together in close quarters on a daily basis. The fact that the initial sexual request occurred outside the workplace does not give the supervisor *carte blanche* to harass the employee at the workplace with impunity.

Respondents are strictly liable for the sexual harassment committed by their supervisor against the Complainant. College-Town Div.of Interco v. MCAD, 400 Mass. 156, 165-167 (1987). An employer is liable for the actions of its managers and supervisors because they are conferred with substantial authority over subordinates and thus are considered agents of the employer. MCAD Guidelines on Sexual Harassment p. 8. In this case, the Complainant also has established by a preponderance of the evidence Respondents' liability for the sexual harassment on an alternate theory, *i.e.*, that Respondent, Neronha, owner of the company, knew or should have known of the harassment and failed to take prompt remedial action. College-Town, supra.

The testimony has established that Complainant informed Neronha on several occasions about the harassing conduct against her by Hurley. By June 9, 1997, Neronha clearly knew that

Complainant charged Hurley with a series of hostile acts against her carried out in the workplace over an eight week period, including destroying her property, giving inappropriate work instructions, treating her in a rude and abusive manner, moving her work, throwing her brushes to the ground, poking holes in her protective gloves, throwing tape at her, and shooting a nail gun in her direction. Neronha also witnessed an altercation in the company parking lot between Hurley and Complainant's boyfriend. He knew that Complainant attributed the harassment to the fact that Hurley had expressed a romantic interest in her and her having rejected Hurley's request for a closer personal relationship. Given these circumstances, Neronha should have understood that the problems between Complainant and Hurley went beyond a mere personality dispute. Neronha testified that he believed that the two employees had a communications problem and that he wanted to force them to work it out between themselves. While I do not doubt his feeling of frustration that he was not able to resolve what he viewed to be a personal dispute between the parties, his failure to take remedial action to prevent Hurley's continuing abusive treatment of Complainant renders him liable for unlawful harassment. The Respondents' failure to have a sexual harassment policy at the time supports the conclusion that Neronha lacked the necessary understanding of the law and his potential liability for such conduct.

The evidence established that Neronha did not take

prompt remedial action to investigate Complainant's allegations and to prevent the sexual harassment. He did nothing after Complainant complained about Hurley's damaging her property at work. He instructed Hurley to work out the problem, after the complaint about the wire brushes and rudeness. This action was not remedial or effective, since it did not prevent subsequent harassment by Hurley who went on to poke holes in Complainant's protective gloves, throw tape at her, tell her to get out, and to shoot nails at her.

Neronha admitted that did not investigate the allegation that nails had been shot at Complainant or that Hurley had poked holes in her gloves. He was not aware that Hurley had yelled at Complainant to leave the job on the morning she was let go. By bringing the two employees together in his office on that day, Complainant had no opportunity to make her allegations in a private and safe environment. See MCAD Sexual Harassment Guidelines.

(requiring confidentiality and adequate investigation when a complaint of sexual harassment is made). Neronha's final action of telling the two employees that one of them had to go was clearly not in the nature of a remedial action and ultimately resulted in Complainant's constructive discharge by forcing her to quit.

Complainant has established that Joseph Neronha is

individually and personally liable for the unlawful discrimination against Complainant. At the time of the unlawful discrimination, Neronha was the employer, doing business as the Neronha Finishing Company. As the employer, Neronha is individually and personally liable to Complainant for the discrimination against her. M.G.L. c. 151B, §4(1). Neronha was aware from the outset that he was potentially liable personally and individually. The original complaint named him, and he signed the answer individually. On the Complainant's motion, the Commission amended the complaint to formally name Neronha as a Respondent on May 15, 2000. The motion specifically recited the Respondent's potential liability under M.G.L. c. 151B. Therefore I conclude that Neronha is liable personally and individually for sexual harassment of the Complainant.

The Commission may properly consider evidence of sexual harassment and related conduct falling outside the six-month limitations period in this case. The Respondents contend that the allegations of sexual harassment that occurred prior to the six months preceding the filing of her charge on November 3, 1997 were barred by M.G.L. c. 151B, §5. While the first alleged act of harassment began on April 18, 1997, the date Hurley destroyed Complainant's property in retaliation for his rejection, his subsequent actions in the workplace constituted a continuing violation which culminated in Complainant's constructive discharge on June 9, 1997. In instances where a continuing violation is

comprised of a series of related actions or an ongoing pattern of discrimination, conduct occurring prior to the six month limitation period is actionable, if there is a discreet violation within the six month limitation period to anchor the earlier claims. Cuddyer v. Stop and Shop Supermarket Co., 434 Mass. 521 (2001). That violation must also be substantially related to the earlier conduct. In this case the anchoring event, which is Complainant's termination, is substantially related to and arose directly out of Hurley's harassment of her. Finally the test for whether Complainant may litigate otherwise time-barred acts of sexual harassment focuses on the plaintiff's knowledge of the hopelessness of her work environment and whether her delay in initiating suit considered under an objective standard, was unreasonable. Cuddyer, supra. at 540. In this case, Complainant had reason to believe that her work environment would improve after Hurley came to her and said they had to get along. She believed they had agreed there would be no more incidents. Indeed it did not become crystal clear to Complainant until the day of her termination that the situation with Hurley would not improve and that Neronha was not going to take steps to remedy the situation.

Finally, I conclude that the termination of the Complainant's employment with the Respondents was the result of a constructive discharge. To prove a constructive discharge, the Complainant must show that her working

conditions became sufficiently intolerable that a reasonable person would have felt compelled to resign. G.T.E. Products v. Stewart, 421 Mass. 22, 34 (1995); Holt v. Minuteman Flames, 22 MDLR 373 (2000); Choukas v. Ocean Kai Restaurant, 19 MDLR 169, 171 (1997).

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. Complainant was subject to a continuous and unabated pattern of harassment over an eight-week period despite her complaints to Neronha about Hurley's conduct. The ultimatum issued by Neronha that "one of you has to go" conveyed to the Complainant that she had no option but to resign. Complainant was hearing this ultimatum just minutes after her supervisor yelled at her to leave work. Neronha's ultimatum is what she got in return for complaining about Hurley's abusive treatment. Neronha had also expressed to Complainant previously that he hated to lose Hurley who was an experienced worker. Complainant testified that she left because she could not take the harassment any longer and she felt she had no other option. I find that a reasonable person in her position would have felt compelled to quit her employment.

IV. REMEDY

General Laws c. 151B, s.5 authorizes the Commission to

grant remedies to make Complainants whole, including back pay and emotional distress damages. College-Town Div. of Interco v. MCAD, 400 Mass. 156, 168-69 (1987); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 181-182 (1985).

Complainant seeks damages for back pay in the amount of \$21,610.83, for the lost value of her mother's antique rocking chair and for emotional distress. Since Complainant was constructively discharged she is entitled to damages for lost wages. However, I also conclude that she did not make significant efforts to mitigate her damages during the two-year period following her termination. Complainant did not work for the six months that she collected unemployment in 1997 and it is apparent that she did not actively seek work during this period. In fact, she did not engage in any full time employment for a period of more than two years after her termination. While she did work part-time at a restaurant and at a community college, her earnings were minimal. I conclude that Complainant failed in her duty to mitigate damages by not seeking full-time work for a significant period of time. While I do believe that Complainant was emotionally affected by what occurred at Respondent and could not bring herself to seek comparable jobs in the furniture re-finishing industry, I am not persuaded that she is entitled to back pay for in excess of a two-year period. I conclude that she is entitled to back pay for the first six months following her termination. This is a period of approximately 30 weeks at

an average of 30 hours per week (Complainant's reduced hours) at \$195.00 per week for a total of \$5850.00. This amount should be further reduced by the amount of employment compensation Complainant received during this time period which totaled \$715.00. She is therefore entitled to damages for back pay in the amount of \$4,135.00.

I also conclude that Complainant is entitled to damages for the emotional distress she suffered as a result of Respondent's failure to remedy Hurley's abusive treatment of her on the job and for being constructively discharged. I find that she is entitled to emotional distress damages in the amount of \$25,000.00. Finally, Complainant is entitled to recoup the value of her mothers' rocking chair estimated to be \$300.00.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that Respondents:

- 1) 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.
- 2) 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 until such time as payment is made or this order is reduced to a court judgment and post-judgment interest begins to accrue.

- 3) Pay to Complainant the sum of \$300 for the loss of personal property.

The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made. If Respondents fail to comply with the terms of this Order within the time periods allotted, Complainant should notify the Clerk of the Commission.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 27th day of February, 2003.

Eugenia M. Guastaferrri
Hearing Officer