

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MICHAEL MADERA,
Complainant

v.

Docket No. 99-BEM-2629

NARATOONE SECURITY
CORPORATION,
Respondent

ORDER OF THE FULL COMMISISON

By Order of the Superior Court (Sikora, J.) dated October 26, 2005, this matter has been remanded to the Commission, pursuant to G.L.c. 30A (14)(6), for the taking of additional evidence on the issue of Complainant's damages and mitigation of damages.¹ The Court's Order states in part: "The hearing officer shall reopen the evidence upon the finding of economic damages or lost wages discussed in Section IV at pp. 54-55 of his Decision." Futhermore, pursuant to the Court's Order: "Naratoone is entitled to (1) discover and to introduce evidence of Madera's business income; and (2) to offer evidence upon the question of mitigation of lost wages, including information of (i) the availability of security services work in the eastern Massachusetts market during the span of March, 1999, through November 2001, and (ii) the wage levels available for such

¹ The Commission sought further appellate review from a Single Justice of the Appeals Court, but said motion was denied. In its Motion, the Commission took the position, and still believes, that the remand order constitutes an abuse of discretion by the Superior Court because the Court did not find that the employer met the standard of proof (good cause) for its failure to meet the burden of proof on mitigation of damages. By complying with the Judges order, the Commission does not waive its right to pursue this issue should the matter proceed for further appellate review.

work.” The court did not issue any opinion on the remaining issues in the case, including the Commission’s findings of liability with respect to Naratoone.

The matter is hereby assigned matter to Hearing Officer Betty Waxman² to hold a status conference on this matter, to issue a discovery order pursuant to the Court’s order, to set a firm schedule for the completion of any relevant discovery, and to set a public hearing date for presentation of evidence on the issue of lost wages and income and mitigation of damages only.

So Ordered this 6th day of February, 2006.

Walter J. Sullivan, Jr.
Commissioner

Cynthia Tucker
Commissioner

² Kenneth B. Grooms is no longer a hearing officer with the Commission.