

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MICHELLE VANN &
MCAD,
Complainants

v.

DOCKET NO. 02-BPA-02954

WALCARE, INC. d/b/a
DIAMANTE SPORTS RESTAURANT, INC.
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty E. Waxman in favor of Respondent Diamante Sports Restaurant, Inc. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discrimination in a place of publication accommodation based on Complainant's ancestry, in violation of M.G.L. c. 272, § 98. Complainant, proceeding pro se, appealed 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, § 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 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. Colonade 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 1.23.

Complainant has appealed on the ground that the Hearing Officer was biased against her, failed to credit her testimony and unfairly questioned her credibility.

We have carefully reviewed both the Complainant's petition and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our review, we find no material errors of fact or law and conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Officer. Absent some showing of personal or financial interest on the part of the hearing officer, or evidence of misconduct on the hearing officer's part, the presumption that the hearing officer behaved impartially and fairly and in the conduct of the hearing and in the decision making process is not overcome. As Complainant's appeal offers no evidence of actual bias in the conduct of hearing or in the rendering of the decision, other than a general unsupported allegation, the decision of the hearing officer should not be disturbed.

We therefore, deny the appeal and affirm the decision below in its entirety.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact, conclusions of law and Order of the Hearing Officer. Complainant's appeal to the Full Commission is hereby dismissed.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in Superior Court seeking judicial review within 30 days of receipt of this decision in accordance with M.G.L. c. 30A, c. 151B, § 6, and the 1996 Superior Court 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 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, § 6.

SO ORDERED this 21st day of August, 2007.

Walter J. Sullivan, Jr.¹
Commissioner

Martin S. Ebel
Commissioner

¹ Investigating Commissioner sitting by necessity to establish a quorum. See M.G.L. c. 6 § 56. M.G.L. c. 151B, § 5.

