

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and MONICA PITTS,
Complainants

v.

DOCKET NO. 98-BEM-3115

HORN HOME FOR
THE AGED,
Respondent

Appearances:

Jay P. Sheehan, Esquire for the Complainant
David M. O'Connor, Esquire for the Respondent

FINDINGS OF FACT CONCLUSIONS OF LAW
AND ORDER OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On September 29, 1998, Complainant, Monica Pitts, filed a complaint with this Commission charging Respondent, Horn Home for the Aged, with sexual harassment in employment and constructive discharge, in violation of M.G.L. c.151B, ss. 4(1)&(16A). The Investigating Commissioner found probable cause to credit the allegations of the Complaint and attempts to conciliate the matter were unsuccessful. The case was certified for Hearing on April 9, 2001 and a public hearing was held before me on October 29 and 30, 2001. After careful consideration of the entire

record in this matter and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant, Monica Pitts, is a 42-year-old, African American female who resides in Lowell, Massachusetts.

2. Respondent, Horn Home for the Aged, is a rest home located in Lowell, Massachusetts, which is licensed to care for 13 residents. The Horn Home has been in operation for seventy-five years and is a non-profit organization. Thomas Quinlan was the executive director of Horn Home in 1998. He testified that his family had a long association with the Home. His mother-in-law had worked there since the late 1970's, his wife, Helene Quinlan had been employed at the Horn Home since 1992 and both his daughters also worked there.

3. The Horn Home is located in a three-story building. The Quinlans lived on the third floor of the Home in 1998 and shared work space in the same office.

The first floor contained the residents' rooms and all the Home's common areas, and the executive director's office.

4. Complainant learned about the Horn Home from an acquaintance employed by the Home and she inquired about working there. She interviewed with Thomas Quinlan, who hired her to work as a part-time cook. Complainant began working at the Horn Home on May 25, 1998. After working as a cook for a short time, Complainant trained for the position of "responsible person" a job which involved more hours and duties such as assisting residents with medication.

5. On her job application, Complainant falsely claimed to be a high school graduate. She also stated on the application that she did not wish Respondent to contact her previous employer, Health South. She testified that that Health South had terminated her employment because of an injury. Complainant had filed two workers' compensation claims against Health South. One of those claims was denied May 8, 1998, just prior to Complainant commencing her employment at Respondent.

6. Complainant alleged that during the course of her employment at Respondent, Thomas Quinlan touched her inappropriately on several occasions. I do not credit her testimony that this behavior occurred. Thomas Quinlan credibly denied that he had ever engaged in any inappropriate behavior with Complainant. Quinlan also testified that he did not work on weekends when Complainant was usually scheduled to work.

7. Complainant testified that as a result of Thomas Quinlan's alleged inappropriate conduct, she attempted to avoid him, but that he would seek her out and make sexual comments or touch her inappropriately. I do not credit her testimony that Quinlan behaved in any such manner.

8. Complainant carried a beeper and she claimed that Thomas Quinlan constantly summoned her by beeper to tell her that he missed her and to say that he woke up crying because he missed her. I do not credit her testimony that Quinlan frequently contacted her by beeper or ever made such comments to her.

9. In the summer of 1998, Complainant referred two acquaintances, Jody Perrin and Laurie Camacho, for

employment at the Horn Home. She testified that she referred them to Respondent because she wanted to have witnesses to Quinlan's conduct. I find this notion entirely implausible and note that Camacho did not even work the same days as Complainant.

10. Camacho, who has worked at the Horn Home since July, 1998 testified that Complainant recommended the Respondent to her, telling her that it was a nice place to work and that the residents were nice. Camacho also testified that Complainant never complained to her about Quinlan nor did she ever witness any untoward behavior by him. Shortly before Complainant left the Horn Home, she told Camacho that she loved working there and that the work was easy.

11. Katherine Chilson has worked as a cook and "responsible person" at the Horn Home for nine years. Chilson testified that in mid-August of 1998, she arrived at work one morning to find a large quantity of food missing from the freezer. She informed the Quinlans about the missing food and noted that Complainant had recently purchased a new gas grill and had told Chilson and others that she was planning a big cookout.

12. Carol Goodwin worked as a "responsible person" at the Horn Home nights and Saturdays in 1998. Her duties included assisting residents with showers and changing beds. Goodwin testified that in late August 1998, she observed that the hall closet, where sheets and towels were stored, was half empty. Goodwin also observed that a large quantity of meat was missing from the Home's freezer and that two or three mattresses and laundry detergent were missing from the cellar. She testified that a few days later, she mentioned to Complainant that a number of supplies were missing from the Home, and that she would have to begin an investigation of this when the Quinlan's returned from vacation. Complainant left her employment at the home a day or two later.

13. The main entrance to the Horn Home in 1998 was located on the side of the facility. According to Goodwin, employees of the Home usually parked their cars on the side of the building and used the side entrance to enter and exit the Home. In front of the building there was a fire lane, where parking was prohibited. In August 1998 Goodwin observed Complainant parking her car in the fire lane and advised her that this was improper. Goodwin testified that

anyone parked in the front of the building could easily remove items from the building to their car without anyone noticing.

14. Thomas Quinlan testified that in mid-August 1998, after learning that a large quantity of meat was missing from the freezer, he approached Complainant and told her that they were missing a substantial amount of food and that when he returned from his vacation he would have to investigate. He did not directly accuse her of stealing. Complainant called Quinlan on August 30, 1998 to advise him she was quitting her job at the Home because of his inappropriate behavior. Quinlan credibly denied engaging in any inappropriate behavior toward Complainant. I credit his version of events leading up to Complainant's departure.

15. Complainant testified that during the last week of August 1998, she became fed up with Thomas Quinlan's conduct and decided to quit working at the Horn Home. She made this decision while the Quinlans were away from the Home on vacation. Her last day working for Respondent was August 26, 1998. I do not credit Complainant's testimony that she left her employment because of Quinlan's conduct.

16. Complainant visited the MCAD on August 28, 1998 two days after leaving Respondent's employ and she filed a formal complaint against Respondent on September 29, 1998. She also telephoned a rape crisis counselor on Sunday, August 30, 1998, the same day she phoned Quinlan to advise him she was leaving her employment. A counselor arranged to meet her at the Lowell Police Department, where she gave a statement to a police officer. The police interviewed Thomas Quinlan but did not pursue criminal charges against him.

17. Complainant saw a counselor through the Harvard Vanguard health program subsequent to leaving her employment with Respondent. She told her counselor Esther Silverman and others that she was unable to work as a result of the incidents with Quinlan. Complainant also disclosed to Silverman that her step-father, uncle and a family friend had all sexually assaulted her. Despite this disclosure, she claims to have moved to Massachusetts from the South to be near her step-father.

18. Complainant filed for relief pursuant to the Victims of Violent Crime Compensation Act claiming that she

was unable to work because of Quinlan's conduct. She received compensation from the Commonwealth's Victim Compensation and Assistance Division in the amount of \$3,477.62. Complainant's W-4 form for the relevant time period established that she had begun working for Diversified Staffing on August 7, 1998. She did not disclose this employment on her application for victim's compensation, even though she was required to certify under the pains and penalties of perjury that the information was true and accurate, including her claim that she was disabled from working.

19. Maureen Lynch is a physician's assistant who Complainant has seen since 1996. Complainant never informed Lynch of any sexual harassment by Quinlan. Lynch's notes of Complainant's appointment on August 20, 1996 state that Complainant's "outlook has never been brighter." This is at a time Complainant claims to have been so upset over Quinlan's alleged sexual harassment that she felt compelled to leave her employment at the Horn Home.

20. Deborah Reid testified that her mother was a resident of the Horn Home in 1998 and that she visited the

Home three to four times a week during the summer of 1998. Reid encountered Complainant at the Home frequently during that summer. Reid testified that Complainant shared rather personal information with her including that she was a former drug addict and that she had been raised in the South. Complainant never once mentioned to her any inappropriate behavior by Quinlan. Contrary to Complainant's assertions at the hearing, she told Reid that the Horn Home was a wonderful place to work. I credit Reid's testimony.

21. Reid also testified about a chance encounter she had with Complainant at the Harvard Vanguard office in Chelmsford shortly after Complainant quit her job at Respondent. During that encounter Complainant spent some forty-five minutes complaining about Quinlan and the Home. She claimed that Quinlan was going into the residents' rooms at night and that he was using sexually explicit language, and told Reid to get her mother out immediately.

22. Complainant's account of events was riddled with inconsistency and on cross-examination, the implausibility of her testimony was thoroughly exposed. She claimed that two co-workers witnessed inappropriate touching of her by

Quinlan in May of 1998 when they were not yet employed at the Home. She offered into evidence a monthly calendar for 1998 that purported to document all the events that occurred at the Horn Home. A photocopy of the calendar provided to the Commission during the investigation differs markedly in many respects from the original calendar kept by Complainant and introduced at hearing. (Exhibit R-11) Furthermore, at her deposition Complainant denied altering the calendar entries, but at the public hearing she acknowledged doing so. She admitted to making a notation that Quinlan exposed himself to her on August 20, 1998, long after the fact, an event she neglected to cite in her MCAD Complaint. When cross-examined about these inconsistencies, Complainant attempted to justify them by claiming she was intimidated at her deposition and merely told Respondent's counsel what he wanted to hear. I did not find this explanation at all credible.

23. The evidence demonstrated that the Quinlan's went out of their way to be supportive and helpful to Complainant. Thomas Quinlan testified that Complainant frequently sought his advice about personal matters. When she confided to him in June of 1998 that her daughter was

being molested at school, he advised her about how to proceed and gave her the name of an attorney to contact.

24. Complainant also confided to Quinlan that her son was having difficulties at school and that she was disappointed with her son's father who would have nothing to do with him. On one occasion at Complainant's request, Quinlan took her son along with his grandson to a minor league baseball game. Complainant claimed preposterously that before allowing her son to attend the game with Quinlan, she sought the advice of her son's therapist about whether it was likely that someone who inappropriately fondled grownups would behave in a similar manner with children. She claimed that he responded in the negative. In deposition testimony the therapist claimed that he did not recall ever being asked such a question by Complainant and denied that he would have responded in the manner she suggested.

25. Quinlan testified that Complainant's mother asked him for a job application at one point, but Complainant told him that she preferred her mother did not work there. Complainant also inquired about her brother working at the Home, and specifically asked if a CORI check would be

required prior to hiring him. Quinlan responded that a CORI check was required of all potential employees. Her brother did not pursue employment with the Horn Home.

III. CONCLUSIONS OF LAW

M.G.L. c. 151B §4(16A) prohibits sexual harassment in employment. To establish a prima facie case of sexual harassment, Complainant must prove that she was subjected to a supervisor's unwelcome sexual advances, that the terms and conditions of her employment were then adversely changed and the change was causally connected to her rejection of the sexual advances, or that she was subjected to conduct of a sexual nature that unreasonably interfered with her job performance by creating an intimidating, hostile, humiliating and sexually offensive work environment. G.L.c. 151B, §4(16A), Collegetown Division of Interco. v. MCAD, 400 Mass. 156, 165 (1987). Complainant has not alleged that any of her working conditions were contingent upon her submitting to alleged sexual advances by Quinlan. Complainant's allegations are that Quinlan created a sexually hostile work environment by his purported inappropriate sexual touching and comments

and that she was constructively discharged as a result of this behavior.

I conclude that Complainant has failed to establish a prima facie case of hostile work environment sexual harassment. In order to succeed in such a claim she must demonstrate that she was subjected to repeated and pervasive sexual conduct that is offensive and unwelcome and that created an impediment to her full participation in the workplace. See: MCAD Sexual Harassment in the Workplace Guidelines pp.4-6, October 2002.

There is no credible evidence that Quinlan directed any inappropriate behavior towards Complainant at any time during the course of her employment at the Horn Home. I conclude that Complainant's allegations of sexual harassment were fabricated and are untrue. At its best, her testimony was inconsistent and just plain not credible; at its worst, it was preposterous. Indeed, Complainant's penchant for mendacity was quite astounding. She, without a doubt, fabricated the tale of harassment after coworkers and Quinlan began to question her about items that had gone missing from the Horn Home on weekends. I conclude that Complainant wove this tale to deflect attention from the fact that she had stolen from the Home, and believing she

would benefit from a financial windfall if successful in her claim.

Respondent offered credible testimony by a number of witnesses who contradicted Complainant's allegations and who noted significant inconsistencies in her behavior and testimony. Thomas Quinlan proved to be the most credible of all in his denial of Complainant's allegations and his account of the personal pain and embarrassment inflicted upon him and his family by Complainant's lies.

A constructive discharge occurs when an employee's working conditions become so intolerable that a reasonable person in her position would be compelled to resign her employment. Holt v. Minuteman Flames 22 MDLR 373 (2000). Having found that Complainant was not the victim of a sexually hostile work environment and that she left her employment voluntarily, when it became apparent that her theft had been uncovered, her claim for constructive discharge is also dismissed. Given all of the above, I conclude that Respondent did not sexually harass Complainant, that she was not constructively discharged from her employment and that Respondent is not liable for unlawful discrimination. I hereby order that the Complaint be dismissed.

IV. ORDER

For the reasons stated above, this matter is hereby dismissed.

Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within 30 days of receipt of this order.

SO ORDERED, this 14th day of January, 2003.

EUGENIA GUASTAFERRI,
Hearing Officer