

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION
and NAOMI WILLIAMS
Complainant

v.

96-BEM-1411

EASTON-LINCOLN NURSING
AND REHABILITATION CENTER,
Respondent

DECISION OF THE FULL COMMISSION

This matter came before us following a decision of Hearing Commissioner Walter J. Sullivan, Jr. in favor of Respondent. Following an evidentiary hearing, the Hearing Commissioner concluded that Complainant was not subjected to discrimination in employment in violation of M.G.L. c. 151B. The Complainant then filed a timely Petition for Review.¹

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 commissioner or officer. M.G.L. c. 151B §5. The Hearing Commissioner'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 responsibility of the Hearing Commissioner to evaluate the credibility of witnesses and/or

¹ Though represented by counsel at the hearing, Complainant files this appeal *pro se*.

to weigh the evidence when deciding disputed questions of fact, and the Full Commission defers to these determinations. See e.g. School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The role of the Full Commission 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(8)(f).

Complainant contends that the Hearing Commissioner was biased against her due to personal ties with the employer of Respondent's attorney, Alfred Gray.² Complainant further contends that the Hearing Commissioner erred in not admitting certain evidence offered by Complainant at the hearing.

First, we note that the Hearing Commissioner informed the parties prior to the hearing that he had a personal acquaintance with two members of Greenberg Traurig, the firm that employs Mr. Gray, but did not know and had not had any contact with Mr. Gray prior to the public hearing. The Hearing Commissioner offered both parties the opportunity to request recusal and both parties declined. Therefore, Complainant waived her right to appeal this issue. Notwithstanding Complainant's waiver, the Complainant offers no evidence on appeal of bias at the hearing or in the decision and we find that there was none. See Fetterman v. University of Massachusetts, 18 MDLR 126 (1996)(Complaining party must offer evidence of bias toward her). Finally, we find that the Hearing Commissioner's evidentiary rulings were not erroneous.

² Complainant also contends as part of her bias argument that Mr. Gray worked with the Hearing Commissioner at the Commission, an assertion that is erroneous and, therefore, need not be addressed.

We have carefully reviewed the petition for appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated herein. 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 Commissioner. We affirm the Hearing Commissioner's conclusions that Complainant was not subjected to discrimination on the basis of race or unlawful retaliation in employment in violation of M.G.L. c. 151B. 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 the Order of the Hearing Commissioner and incorporate herein the findings of fact, the conclusions of law and the Orders of the Hearing Commissioner.

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 seeking judicial review pursuant to M.G.L. c. 30A and c. 151B §6 in the Superior Court within thirty (30) days of receipt of this decision.

SO ORDERED this 31st day of October, 2003.

Dorca I. Gomez, Chairwoman³

Cynthia A. Tucker, Commissioner

³ Commissioner Sullivan has elected to recuse himself from this appeal. Therefore, Chairwoman Gomez, who was the Investigating Commissioner, is necessary to decide the appeal. See M.G.L. c.151B §5.