

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
NELCI MARIA DE LARA

Complainant

v.

Docket No. 06-BEM-01042

GILBERTO DA SILVA D/B/A
SAMBA CLEANING SERVICE

Respondent

Appearances: Dennis M. Bottone, Esq. for Complainant
Michael M. Harrington, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 18, 2006, Complainant, Nelci deLara, filed a complaint with this Commission alleging that she had been sexually harassed in the course of her employment and fired from her position as a house cleaner, by Respondent, Gilberto DaSilva, owner of Respondent Samba Cleaning Service. 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 a public hearing on April 8, 2008 and a public hearing was held before the undersigned hearing officer on November 12 & 13, 2008. A Portuguese language translator was present throughout the public hearing to translate for both Complainant and Respondent and was

duly sworn. The parties submitted post-hearing briefs in January and March of 2009.

Having considered the entire record in this matter and the post-hearing submissions of the parties, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Nelci de Lara, is a 43 year old woman who was born and raised and educated in Brazil. Complainant has the Brazilian equivalent of a high school education and speaks Portuguese as her primary language. She resides in Brighton, MA with her husband Jair Moura. Complainant has lived in the U.S. since November of 2002.
2. Respondent, Samba Cleaning Service is owned and managed by Respondent, Gilberto DaSilva. DaSilva acted as the exclusive manager of Samba Cleaning, with some assistance from his wife, at all times relevant to this case. During Complainant's employment Respondent had at least six employees.
3. Prior to working for Respondent in 2003 and 2004, Complainant was simultaneously employed as a cleaning woman and at Dunkin' Donuts. Complainant learned about the potential of employment with Respondents at the immigrant center where she was taking English classes. She contacted DaSilva and began working for Respondents in February of 2004 as a cleaner. Complainant stated that on her first day of work for Respondents she met DaSilva and his family and thought they were a nice family.
4. Complainant worked for Respondents from February 2, 2004 until August 9, 2005. At the time she began working for Respondents Complainant was paid \$350 per week if she cleaned four houses.

5. Complainant had a short training period during which she was shown the methods of cleaning Respondent used and customer preferences. Complainant testified that she felt uncomfortable at times during this training period because DaSilva got too close to her and touched her too much. She told him she was there to work and that he needed to respect her. She claims to have asked a female co-worker if DaSilva's behavior was normal and if he did this to other employees and the response was that he was like that and she should be careful around him. I credit Complainant's testimony about DaSilva's behavior and that she felt uncomfortable around him in those first few weeks and relayed this to a co-worker.
6. Upon Completion of her training, Complainant was assigned to work with Rita Rios, who was also Brazilian, cleaning homes as one of a two person team. Complainant and Rios worked well together and became friends. During the time period that Complainant worked for Respondents, DaSilva hired almost exclusively Brazilian women to work for Samba Cleaning. DaSilva supervised their work and sometimes he cleaned if necessary.
7. On March 18, 2004 Complainant was assigned to clean the home of a physician in Newton with DaSilva, a departure from normal operations as Complainant usually cleaned this residence with Rita Rios. Since Rios was assigned to clean another home that day, Complainant rode to the job with DaSilva. Complainant testified that she was surprised when DaSilva asked her about the alarm code, because she believed the owners would be at home, and thought it strange that DaSilva asked if she knew if there were cameras in the house. Respondent asserts that DaSilva

would have never have asked such a question since he was intimately familiar with the home. However, I credit Complainant's account.

8. Complainant testified that on March 18, 2004 while cleaning this home with DaSilva, he told her he wanted to show her some martial arts movements he had been practicing. He then closed the door to the second floor bedroom they were in and sexually assaulted her. Complainant testified that he forcibly pushed her to the floor, sat on her legs as she was face down, pulled her pants to her knees and ejaculated on her buttocks. Complainant stated that he tried to remove her underwear and place his hands beneath her, but she kept her legs tightly closed.
9. Complainant testified that immediately afterward DaSilva released her and she locked herself in the bathroom adjacent to the bedroom. She sat on the bathroom floor sobbing and praying and attempting to regain her composure. She stated that these were some of the worse moments of her life. After 30 minutes or so, DaSilva banged on the bathroom door stating that she needed to finish cleaning and that he wasn't paying her to cry in the bathroom. DaSilva then told her that it would be better for everyone if what happened stayed between them. At the time, DaSilva knew that Complainant was not legally in the United States, because she had overstayed her visa. Complainant stated that she was frightened to talk to her husband or anyone else about what had happened because DaSilva had warned her not to and because she was afraid she would have problems with in her words "the American justice system."

10. Complainant returned to work the next day, and when DaSilva paid her, he reiterated that what happened was just between them, that she should not tell her husband and that it was good that she came back to work.
11. In early April of 2004, some two weeks after DaSilva's assault of Complainant at the home in Newton, she was cleaning the residence again with Rita Rios, when DaSilva asked her to go the home next door ostensibly to water the indoor flowers and to familiarize herself with the layout of the home, which she would be cleaning when the owners returned from Florida. Complainant stated that after she watered the plants on the first floor, DaSilva called her upstairs to the second floor office, where he was laying on a couch completely nude with a pillow in front of him. Complainant stated that he was looking at a pornographic movie and asked her to watch with him and perform some of the sexual acts being displayed in the movie. Complainant immediately left the premises and went back to the other home where Rios was cleaning and told Rios what had just happened. Rios told Complainant that he was crazy. She then drove Complainant home.
12. Complainant did not tell anyone except Rios what had happened because she believed that DaSilva had threatened her and she feared her immigration status would be investigated. Complainant understood that DaSilva knew how the legal system in the United States worked because he had been in the country much longer than she had and was a legal resident. Complainant stated that she did not have the courage to tell her husband about the incidents with DaSilva, but that the harassment affected her relationship with her husband, including their sexual

relations. She stated that she experienced fear, anxiety and sadness and suffered from headaches.

13. On or before July 9, 2004, DaSilva informed Complainant that he needed her to help clean an office in Charlestown with him after 5 p.m. DaSilva drove Complainant to Charlestown. Complainant understood that another employee was to be working with them, but that person never arrived. When most of the office cleaning had been completed, DaSilva called Complainant to an office at the far end of the building. When Complainant entered the office she was confronted by DaSilva sitting naked in front of a computer and holding a drawing which he said was for her. Complainant turned and ran from that office toward the reception area and the glass front entrance to the building which was locked from the inside. Complainant testified that she began to bang on the glass and eventually caught the attention of a male passing by, but as he neared the door, DaSilva appeared fully clothed, unlocked the door and told the man that everything was alright, and the man left. Complainant then left the office and hailed a cab to take her home.

14. Subsequent to the incident in Charlestown, sometime in July of 2004, Complainant told her mother in Brazil about what was happening to her on the job. She also told a friend that she was unhappy at her job and with her boss and that she didn't know how she would ever be able to tell her husband about what was happening. In August of 2004, DaSilva told Complainant that she was the only woman in 10 years, other than his wife, who had the privilege of seeing him naked. Complainant knew that she needed her job and after talking with her

mother, she made every attempt to avoid working alone with DaSilva and to not ride in his car with him. Complainant testified that this strategy worked for a period of time and that for several months things seemed to return to normal. In February of 2005, Complainant received a pay raise to \$400 per week for cleaning four houses.

15. In June of 2005, Complainant had a doctor's appointment late one afternoon. She notified DaSilva and he told her that her cleaning partner Rita Rios would take her to the appointment when they finished cleaning. That afternoon DaSilva told Rios to finish cleaning and told Complainant that he would drive her to the appointment. Complainant testified that during the ride, DaSilva told her that he was unhappy with her work and that he had hired a new employee. He stated that Complainant was not doing what he needed and wanted and that if she did not do what he wanted, he would keep the new girl. During this conversation, he took her hand and placed it on his genitals. Complainant stated that this upset her and she got out of the car and walked 30 to 40 minutes to get home. After that incident, DaSilva continued to tell her that he was unhappy with her work, and she stated that she felt fearful and unsafe at work.

16. On August 9, 2005, while cleaning a home in Arlington with Rita Rios, DaSilva came to check their work, and called Complainant to come to an upstairs bathroom and bring cleaning materials. Complainant testified that when she bent down to re-do the area behind the toilet, DaSilva held her and groped her rear end. Complainant stated that she told him she would not slap him on the face, out of respect for the client who was present in the home that day. DaSilva then told

Complainant that he received a complaint that she did not clean the micro-wave oven at the home they cleaned previously. She told him that they routinely did not clean this oven, because the client stored food in it. When DaSilva ordered her to return with him to that home to clean the oven, Complainant refused to so and told DaSilva she would not ride alone with him in his car ever again because she could not trust him. He accused her of refusing to do her job.

17. Complainant testified that when she arrived home that evening there was a message on her phone from DaSilva telling her that she need not come to work the next day and to come back on Friday to receive pay for the two days she had worked. Complainant interpreted this message to mean that she was terminated and she called DaSilva's home to confirm this. Complainant spoke to DaSilva's wife Theresa, who told her that DaSilva had come home very upset and that she was not to come to work the next day. Complainant never returned to work and when DaSilva called to ask about how to deliver her last pay check, he spoke to her husband who told DaSilva to mail the check. I find credible Complainant's testimony that she did not return to work because she believed that she was fired.
18. DaSilva denied all of Complainant's allegations of sexual harassment and claims that Complainant fabricated the allegations of sexual harassment out of revenge against him and to secure a financial windfall. According to DaSilva, when he asked Complainant to return to the client's home to clean the micro-wave oven, Complainant threw a tantrum and refused to return to with him to the home. He testified that an argument ensued about whether Complainant should return to work the next day and he then told her not to come to work for the remainder of

the week. DaSilva testified that he told Complainant not to return to work the next day because of her insubordinate attitude. He denied terminating Complainant's employment but testified that she complained about everything, was aggressive toward him, was taking a lot of days off and that these issues had been building up. He testified that Complainant was slow at work and liked to talk and was not as "smart" or as "tough" as his other employees. Respondent's employment records do not reflect excessive absenteeism by Complainant. (Ex. R-5) While I believe that Complainant and DaSilva likely had an altercation over her refusal to ride in the car with him to a client's home, I do not find the remainder of Respondent's testimony regarding her separation from the company to be credible.

19. Complainant testified that she felt sad that she lost her job, but felt relieved to be free of DaSilva. She stated that the memories of what he did kept coming back and she felt like her world was collapsing. A week or so later, when she saw a notice at the Massachusetts Association of Portuguese Speakers (MAPS) about help for abused women she discussed her situation with the receptionist Marcello, who was her teacher and a friend. Marcello told her that the harassment she had suffered was very serious and that she needed to seek medical and legal assistance and tell her husband. He also gave her a list of attorneys.
20. Shortly thereafter Complainant sought legal assistance and on August 17, 2005, she relayed the details of her situation to a physician. She was referred to a social worker named Laura Baltzell, with whom she began treating on August 24, 2005. Ms. Baltzell encouraged her to discuss the harassment with her husband.

Complainant testified that it was “horrible” to tell him and that he was very shocked and saddened, but offered her a great deal of support which has given her the strength to continue.

21. During an August 31, 2005 therapy session with Ms. Baltzell, Complainant told her that as a result of what she had suffered at the hands of DaSilva over a period of seventeen months, she cried almost daily, felt worry and anxiety that was characterized by a feeling of being suffocated, woke up at night crying and sweating and could not fall back to sleep. (Ex. C-1) She took the medication Celexa to help her sleep. Complainant testified that this went on for about a year and as she was relaying events to Ms. Baltzell, memories were coming back and she was reliving everything. She testified that she was very depressed, was so fearful she did not want to leave the house and could not work, because she was “completely sick and feared everything.” She felt fear every time she saw a van that looked like DaSilva’s or a man that looked like him on the street. Her relationship with her husband, including their sexual relationship has suffered as a result of the trauma she has undergone.

22. Complainant’s husband, Jair Moura, testified that he had been living with Complainant in Brighton since she arrived from Brazil in 2002. He noticed changes in Complainant after she began working for Respondents in 2004. He stated that she would come home from work nervous and would be unable to sleep at night and that he would have to calm her down in the middle of the night. She would say that she was frightened or had a bad dream. He believed her stress to be related to the job but when he asked her about this she would not say

specifically what was causing her distress, and would be closed up and not talk to him. He stated that Complainant was upset on the day DaSilva told her not to return to work and she believed she was fired. Moura confirmed that after her termination Complainant just wanted to stay at home and not leave the house. He tried to get her to take short walks outside and said that her therapist encouraged him to get her out of the house, but she was afraid to leave home. Moura testified that he attended Complainant's therapy sessions with Ms. Baltzell and he felt that these sessions helped her. After Complainant lost her job he took on additional hours at his restaurant jobs to cover their expenses and he had less time to spend with Complainant. He testified that he became more angry and aggressive at work, that he also suffered from insomnia and that their relationship suffered. He stated that every aspect of their life together has been affected.

23. Complainant continued therapy with Baltzell weekly from August 31, 2005 until November 29, 2005 and monthly thereafter until August of 2006. (Ex. C-1) She met with Baltzell again in January and April of 2007 and testified that she saw her again shortly before the hearing. In her April 12, 2007 notes, Baltzell observed that Complainant's experience of being "physically/sexually attacked" by her former employer had had an effect on Complainant's "sense of safety in the world" so that she no longer trusted others like she used to and in Complainant's words, "a part of her has died." Complainant testified that treatment has helped her a lot and she's trying to turn the page, but she has suffered a great deal, is not back to normal and will never forget what happened to her. The experience has changed her and how she looks at the world.

24. Complainant did not work from August of 2005 until May or June of 2006. In November of 2005 Complainant met with Dr. Marcia Zukerman, a psychopharmacologist, who opined that it was not advisable for Complainant return to work at that time and that she needed some time to recover from the trauma of her previous employment. Complainant she was finally able to work and got another job in June of 2006 as a babysitter earning \$300 per week. She worked at this job until October of 2006 and worked again as a housekeeper for a family beginning in January of 2007 until August of 2008 when the family moved. In 2007 she earned \$350 to \$400 per week and in 2008, she earned \$500 to \$550 per week. As of the hearing she had not worked since August of 2008.
25. Complainant's average weekly wages when working for Respondents were \$360 per week. She lost approximately \$13,500 in lost wages for the weeks between August 9, 2005 and May of 2006. From May of 2006 until October of 2006, her lost wages were approximately \$1,200, the difference between the \$360 weekly rate she was earning at Respondent and the \$300 she earned babysitting.
26. After securing legal counsel, Complainant met with a police officer of the Newton Massachusetts police department on September 21, 2005, to report what had happened to her while employed by Respondents. (Ex. R-3) Complainant met with a female detective from the Newton Police Department and with the Middlesex County Assistant District Attorney on December 6, 2005. (Ex. R-2) On both occasions a Portuguese translator was present. She testified before a Grand Jury. Respondent asserts that the District Attorney did not seek an indictment. The matter was closed on December 14, 2005. (Ex. R-7)

III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 151B § 4(16A) prohibits sexual harassment in employment.¹ The Complainant in this case has alleged actions by her employer that constitute both quid pro quo sexual harassment and hostile work environment sexual harassment. As defined below, quid pro quo sexual harassment occurs when a term or condition of employment, or remaining employed, is conditioned upon the granting of sexual favors. A hostile work environment occurs when unwelcome or offensive conduct is so pervasive that it creates a barrier to Complainant's full and untrammelled participation in the workplace, alters the terms and conditions of her employment or unreasonably interferes with her work performance. See *Ramsdell v. Western Mass. Bus Lines, Inc.*, 415 Mass. 673, 677 (1993).

The determination of whether conduct constitutes sexual harassment depends upon the severity and frequency of the conduct, and whether it is unwelcome and offensive to the reasonable person. The conduct must be sufficiently severe and pervasive to interfere with a reasonable person's work performance. *Muzzy v. Cahillane Motors, Inc.* 434 Mass. 409 (2001). The alleged conduct must be both objectively and subjectively offensive from the perspective of a reasonable person. *Ramsdell, supra.* at 677. The objective standard means that evidence of gender harassment is to be considered from the "view of the reasonable person in plaintiff's position." *Muzzy, supra.* at 411-412.

¹ Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) 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; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or sexually offensive work environment." *Collegetown Division of Interco v. Massachusetts Commission Against Discrimination*, 400 Mass. 156, 165 (1987). See also *Massachusetts Commission Against Discrimination Sexual Harassment in the Workplace Guidelines*, pp.4-6 (2002)

Complainant has alleged that she was sexually assaulted by Gilberto DaSilva, the owner and manager of Samba Cleaning, her employer, on at least one occasion, and that on a number of other occasions DaSilva made unwelcome sexual advances in the form of inappropriate touching, presenting himself to her naked and in a lewd manner, asking her to perform sexual acts with him, and otherwise behaving in a sexually offensive manner in the workplace. Complainant alleges that on at least two of those occasions, DaSilva trapped her in a room or office building and that she felt great concern and fear for her safety. Twice she escaped from his clutches to make her own way home from a job by taxi or on foot. She asserts that this conduct was not welcome, that it caused her great anxiety and fear, and that she made it clear to DaSilva at the outset that she was not interested in having a sexual relationship with him, but was there to work and wished to be respected by him.

Furthermore she alleges that DaSilva implicitly threatened her by stating that it would be better for everyone if she did not tell anyone about what he had done and that she should continue coming to work. Complainant understood his admonition as a threat related to her immigration status, because DaSilva knew she had overstayed her visa and was in the country illegally. She testified that this made her fearful and that moreover, she needed the income from her employment and could not face telling her husband about the harassment, the reason she would be leaving the job.

Finally, Complainant asserts that when she refused to comply with DaSilva's sexual requests and refused to be alone with him in his car or on the job site, he became angry and fired her for her refusal to comply with his requests.

Respondent DaSilva denies all the allegations of sexual harassment and asserts that Complainant fabricated the incidents of alleged harassment as revenge against Respondents and to secure a financial windfall. However, DaSilva contends that he did not fire Complainant but just told her to take a few days off. This assertion renders hollow his claim that Complainant filed a charge of discrimination as revenge for her termination. I find it incredulous that Complainant would fabricate such stunningly detailed accounts of egregious harassment, put herself and her husband through the excruciating exercise of pursuing both criminal and civil complaints, and deceive her social worker about her emotional state for over a two year period, merely as pay back for being told her work was not satisfactory and she should take a few days off for being insubordinate.

Notwithstanding the above, even if reasonable minds could differ about whether DaSilva intended to terminate Complainant's employment by his phone message of August 9, 2005, or whether Complainant correctly interpreted his message, I conclude that Complainant's working conditions had become so intolerable, that even if she were not terminated, she was, in effect, constructively discharged. A constructive discharge occurs when "the employer's conduct effectively forces an employee to resign." *GTE Products Corp. v. Stewart*, 421 Mass. 22, 35 (1995) The employee can prove a constructive discharge by showing that the conditions under which she was expected to work could be considered so difficult as to be intolerable. *Id.* at 34. DaSilva's conduct on August 9, 2005 demonstrated that his sexual assaults on Complainant's person were not going to cease, and that she would have to accede to his requests and be alone with him at

work, as a condition of retaining her employment. She was left with no recourse but to leave such an abusive work situation.

Respondent's defense rests on its assertion that Complainant is simply not credible. Respondent challenges her credibility by making much of the fact that Complainant refused to acknowledge being in litigation against her dentists in Brazil, denied knowing her immigration status at the hearing, and exhibited some memory lapses or confusion about incidents that had occurred four years previously. Respondent asserts that her testimony is inconsistent and contradictory with respect to certain dates, and about such things as the exact location of a residence or what room she was in just prior to the harassment occurring. Respondent also makes much of the fact that some details cited in Complainant's prior accounts of events, including a police report and a report to the Middlesex D.A.'s office, were contradictory or not testified to at the hearing. I found these inconsistencies or lapses of memory to be relatively insignificant and not fatal to Complainant's credibility. Given my observations of Complainant and her demeanor as a witness, these inconsistencies appear to be more the product of the passage of time and the fact that she was called upon to recount the traumatic events numerous times. I do not believe these inconsistencies resulted from any intent of Complainant to mislead or fabricate. Moreover, every account of the events in question had to be translated and I cannot discount the language barrier and the fact that errors in translation may have occurred or that a particular nuance may have been lost in translation. Contrary to Respondent's assertion, I found Complainant's testimony to be remarkably consistent and detailed given the time that had passed, the various translations of events, and the trauma she suffered as a result of the horrific acts of harassment.

The only person who was near by when at least one of the alleged acts occurred was Rita Rios, Complainant's co-worker, who has since returned to Brazil and was unavailable to testify at the hearing. Respondent submitted an affidavit from Rios made in August of 2006 when she still worked for Samba Cleaning, in which she states that Complainant never told her about any sexual harassment at the time it is alleged to have occurred, and that she never witnessed any harassment. Rios continued to work for Respondent until January or February of 2008, when she returned to Brazil. I assign very little weight to this statement, as Complainant was not able to confront Rios, and I am unable to assess her credibility or her understanding of what conduct constitutes sexual harassment in the workplace.

Respondent insists that it is not credible that Complainant would have waited over a year and a half to report such serious sexual harassment. This ignores the fact that Complainant felt intimidated and threatened by DaSilva and fearful that he would disclose her immigration status to the authorities. Complainant also believed that she could mitigate the situation by avoiding being alone with DaSilva, and she testified that this approach worked for awhile. She believed for brief periods of time at least, that her work situation might not be hopeless. Given these factors, I conclude that her delay in complaining was not unreasonable. *See Cuddyer v. Stop & Shop Supermarket Co.*, 434 Mass. 521, 540 (2001) (discussing the reasonableness of notice in context of continuing violation).

Finally Respondent argues the fact that the District Attorney did not seek an indictment from the grand jury on Complainant's criminal charges is dispositive of whether the sexual harassment occurred. I do not accept this argument, as the prosecutor

may have made such decision for any number of reasons and the charges were dismissed without a finding having been made by the jury or any other fact finder.

Given all of the above, I conclude that Complainant was the victim of both quid pro quo and hostile work environment sexual harassment, and that Respondents are liable for these unlawful actions that violated G.L. c. 151B, § 4(16A).

IV. REMEDY

The Commission is authorized to award damages and such other relief that will make an injured Complainant whole. Pursuant to G.L. c. 151B §5, the Commission may award damages for lost wages and benefits and for emotional distress. *See Stonehill College v. MCAD*, 441 Mass. 549 (2004). An award of damages for emotional distress must be fair and reasonable and proportionate to the harm caused. There must be substantial evidence that the damages are causally connected to the unlawful acts of discrimination and of the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant suffered or expects to suffer, and whether the Complainant has attempted to mitigate the harm. *Id.* at 576.

Having determined that Complainant was terminated from her employment with Respondent, I conclude that she is entitled to an award of damages for lost wages in the amount of \$14,700. She was unable to work for a period of time after she was terminated from Respondent. Complainant testified that she tried to get another job, but that she couldn't get past the trauma of what had happened at Samba Cleaning. There was evidence that a treating psychopharmacologist advised her in November of 2005 that she was not psychologically ready to return to work. Complainant is entitled to \$13,500 for the period from August 2005 until June of 2006, when she was able to return to work and

secured another job. When Complainant returned to work in June of 2006, she was earning less money per week and is entitled to the difference in what she was earning and what she would have earned had she continued to work for Respondent. This amount is approximately \$1200.

I also conclude that Complainant is entitled to damages for the significant amount of emotional distress she suffered as a result of being sexually assaulted at work and subjected to a hostile work environment. Complainant testified that DaSilva's conduct made her fearful and anxious at work. She was terrified to tell her husband or anyone else about his conduct because of his threats and her vulnerable immigration status. Complainant testified that she carried this secret for over a year and once she was no longer employed by Respondents and began therapy she relived the trauma of having been sexually assaulted. She testified that she cried almost daily and was depressed; she felt suffocated, couldn't sleep, wouldn't leave her house and was fearful of encountering DaSilva on the street. With some support, she mustered the courage to go to the police and file criminal charges against DaSilva. Complainant's husband Jair Moura also testified that Complainant was fearful, moody and suffered from insomnia after she began working for Respondents. He testified about how their relationship suffered and how their life changed after Complainant revealed the harassment and began coping with its effects. He confirmed that Complainant was extremely anxious and did not want to leave the house. Complainant remained in therapy regularly for over a year and continued to see her therapist thereafter sporadically. She was unable to return to work for over 10 months because she was in no condition to work and in her words was "completely sick, scared and feared everything." As a witness, Complainant presented as

being depressed and worn down by the ordeal of confronting DaSilva once again. I conclude that Respondents actions caused Complainant an enormous amount stress and emotional pain and suffering and that she is entitled to an award of damages in the amount of \$150,000 to compensate her for the distress she suffered.

V. ORDER

Respondent is hereby ordered to:

- (1) Cease and desist from any future conduct in the course of his business that constitutes sexual harassment;
- (2) Pay to Complainant the sum of \$14,700 for lost wages with interest thereon at the statutory rate of 12% per annum from the date of the filing of the complaint until such time as payment is made, or until this order is reduced to a court judgment and post judgment interest begins to accrue.
- (3) Pay to Complainant the sum of \$150,000 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum until such time as payment is made or until this order is reduced to a court judgment and post judgment interest begins to accrue.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission pursuant to 804 C.M.R. 1.23 by filing a Notice of Appeal of this decision with the Clerk of the Commission within ten days after receipt of this Order and a Petition for Review within thirty days of receipt of this Order.

So Ordered this 7th day of October, 2009

Eugenia M. Guastaferr
Hearing Officer

