

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

PATRICIA KEALY
Complainant

v.

DOCKET NO. 95-BEM-O335

CITY OF LOWELL, DEPT.
OF PUBLIC SCHOOLS
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a remand decision of Hearing Officer Eugenia Guastaferrri in which she reaffirmed her original award of \$200,000 in damages for emotional distress suffered by Complainant. In her original decision, the Hearing Officer concluded that Respondent subjected Complainant to discrimination on the basis of sex in violation of M.G.L. c. 151B, § 4(1) and retaliated against her in violation of M.G.L. c. 151B, § 4(4). In that decision, the Hearing Officer awarded Complainant, *inter alia*, \$200,000 in emotional distress damages. The Full Commission affirmed this decision; however, the Superior Court remanded the case with the instruction that the Hearing Officer reconsider the award of emotional distress damages in light of: 1) the Massachusetts Supreme Judicial Court's decision in Stonehill College v. MCAD, 441 Mass. 549 (2004); and 2) a suggestion in the decision "that the hearing officer may have increased the amount of the award based on the finding that the City had unlawfully retaliated against the plaintiff." The Hearing Officer has done so in her latest Order and Respondent has filed a timely Petition for Review.

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 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 responsibility of the Hearing Officer to evaluate the credibility of witnesses and 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 1.23(1)(h).

We have carefully reviewed the petition for review and the full record in this matter and have weighed all the objections to the remand decision in accordance with the standard of review articulated herein. As a result of that 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. We therefore deny Respondent's appeal and affirm the decision below in its entirety.

ORDER

For the reasons set forth above, we hereby affirm in its entirety Order of the Hearing Officer on Remand from the Superior Court.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Failure to comply with this Order will result in the Commission's initiation of enforcement proceedings, pursuant to 804 CMR 1.25, which may subject the non-complying party to both civil and criminal penalties as provided in M.G.L. c. 151B, s. 8.

Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint seeking judicial review within 30 days of receipt of this decision and 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 25th day of May, 2005.

Cynthia A. Tucker, Commissioner

Walter J. Sullivan Jr., Commissioner

