

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

PATRICIA KEALY
Complainant

v.

DOCKET NO. 95-BEM-O335

CITY OF LOWELL, DEPT.
OF PUBLIC SCHOOLS
Respondent

ORDER OF THE HEARING OFFICER UPON
REMAND FROM SUPERIOR COURT

This matter comes before me upon a remand from the Superior Court (Locke, J.) with the instruction that I reconsider the award of damages for emotional distress and make findings of fact consistent with the factors enumerated in Stonehill College v. MCAD, 441 Mass. 549, 575-577 (2004). The Court has also instructed me to assess whether the award of emotional distress damages was inappropriately punitive given my statement that: “When an independent claim of retaliation is involved, the amount of emotional distress should reflect this factor.” Given that the Court stated that no further hearings or evidence need be taken, I have thoroughly reviewed the record in this matter and address the Court’s concerns as follows.

In Stonehill, supra., the Supreme Judicial Court upheld the authority of the Commission to award damages for emotional distress to plaintiffs who prevail in discrimination complaints before the Agency. The Court went on to enumerate the standards that should be applied in rendering such awards. The Court stated that such

awards should be “fair and reasonable and proportionate to the distress suffered.” Id. at 576. The Court went on to state that some factors that should be considered in rendering such awards include: “(1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant attempted to mitigate the harm...” Id. at 576.

The above considerations were addressed in the Findings of Fact of my initial decision and were enumerated at Finding no. 35. The finding was based on considerable testimony from Complainant, her husband and daughter. I re-iterate those findings with additional support from the record to satisfy the Court’s concern that the criteria in Stonehill were considered and satisfied.

Complainant testified and I find that she was embarrassed and humiliated when she was not selected for the job of Master of Lowell High School in 1994. She became depressed, lost interest in family life and her social life diminished. She did not want to be in situations where Lowell school politics, administration politics, or the situation at the High School or her law suit would be brought up and discussed. She stated that she was raised in Lowell, has a lot of pride in the City and was active in Scouting and church affairs and had a lot of friends in Lowell on various boards. It was clear from her testimony that Complainant felt it was extremely difficult to go out and face friends, colleagues, peers and students after she was rejected for promotion for the third time. She cried frequently while testifying about the emotional pain she suffered. I found Complainant’s testimony to be extremely compelling and was persuaded that her distress was severe and ongoing.

Complainant's husband and daughter testified and I find that Complainant was depressed and humiliated after not being chosen for the Master's job in 1994. Complainant's husband stated that just deciding to apply for the job was a wrenching and fearful process for her, given her past rejections. He stated when she received the news that she was rejected in 1994, she broke down hysterically, was in tremendous pain and was crying. He also testified that the rejection affected her self-esteem, sapped her strength, made her more cynical and very depressed. Her emotional distress continued to manifest itself in the following ways: Complainant cried frequently and uncontrollably and still cried about the situation at the time of hearing when they talked about it; she wouldn't talk to friends who called on the phone because she couldn't face talking to people about not getting the job; she lost interest in domestic activities such as cooking, shopping, housekeeping and entertaining; she sharply curtailed her social activities in the Lowell Community.

There was further credible and very compelling testimony from Complainant's husband and daughter that she had been very active in the community prior to the events in question, but that she ceased wanting to go out and avoided social activities and that these feelings persisted up to the time of the hearing in 1997. Complainant's daughter testified at the hearing that her mother continued to be very unhappy and that her stress had not diminished. She stated that her mother no longer goes shopping in Lowell, refuses to go out to restaurants in Lowell and they no longer have faculty parties at Complainant's house as they did in the past. Complainant's daughter testified further that she and her father assumed many household tasks her mother had done in the past.

Complainant's husband stated that because of her emotional state, Complainant found tasks she had performed in the past such as preparing holiday meals, overwhelming.

Complainant had lived her entire life in Lowell, had graduated from Lowell High School and had been employed at Lowell High School since 1964, a period of some twenty years. Complainant's husband had been a teacher at Lowell High School for 36 years. The record in this matter reflects that Complainant was deeply involved in and connected to her school, the students, her colleagues and peers and her community. She was well known and respected by students, teachers and peers at the High School. After Respondent failed to select her for promotion in 1994, Complainant did not want to see friends and colleagues or discuss the matter of her non-selection in public for fear of suffering greater emotional pain, humiliation and embarrassment. As evidence of this, the family ceased hosting their annual Christmas party, a large event held at their home and has not held this event since 1994. The testimony of Complainant's husband and daughter demonstrated that, as of September 1997, when the hearing in this matter was held, Complainant still felt unable to socialize normally and would not host even small gatherings of family and friends at her home, because of her emotional fragility. Her husband testified they stopped entertaining friends from school and old friends from the community they had grown up with. It was quite apparent that Complainant's emotional suffering was sufficiently significant to have a deep impact on her family, their daily life, and their social activities as a family unit. Her husband testified that her depression permeates the whole family, has been like a cloud over them for years and has not diminished. He stated that colleagues have told him they have witnessed Complainant crying at work.

I find that the nature of Complainant's emotional distress was severe and lasting and that it persisted up to the time of the public hearing. It was clear to me in observing Complainant testify that the emotional pain of her non-selection for the Master's position was still affecting her very deeply at that time, and that she would continue to suffer the effects of feeling unfairly and discriminatorily rejected for the remainder of her career at Lowell High School. She testified that her relationship with the Headmaster of the High School remained strained.

Thus, I find that the emotional distress suffered by Complainant as a direct result of Respondent's discriminatory conduct was significant, severe, and persistent. I was persuaded at the time of hearing that Complainant continued to suffer the repercussions of her non-selection as Master and that her career at Lowell High School would never cease to be impacted by the pain and sting of these events. I concluded in my initial decision that Respondent's failure to promote Complainant to the Master's position in 1994 was "devastating to Complainant and impacted her entire life," and that "she suffered great personal and professional embarrassment and humiliation." I remain convinced that Complainant suffered severe, persistent and lasting emotional distress that supports an award of \$200,000. I find that this award is fair and reasonable and commensurate with the emotional pain she suffered and comports with the criteria enunciated in Stonehill, supra. In addition, I feel compelled to state that in the thirteen plus years that I have conducted administrative hearings and assessed emotional distress claims at the MCAD, Complainant's evidence on the issue of emotional distress is by far some of the most compelling and persuasive I have heard and observed to date.

Finally, I concluded in my initial decision that Complainant had not only been the victim of discrimination on account of her gender when she was not selected for the Master's position in 1994, but that her non-selection was also in retaliation for her having filed a discrimination complaint surrounding her previous non-selection for promotions in 1991 and 1992. While I stated in my conclusions that the amount of emotional distress should reflect the fact that there was an independent claim of retaliation involved, this comment does not reflect an intent to impose punitive damages on Respondent nor does it in actuality, render the amount of the emotional distress award punitive. The statement was intended to convey, albeit in-artfully, my conclusion that retaliation was a factor contributing to Complainant's emotional distress. I determined that Complainant's distress was exacerbated by the fact that Respondent's decision was retaliatory and that she perceived her non-selection, as not only discriminatory, but as vindictive on account of her having challenged early decisions of the administration. I continue to believe that Complainant suffered more deeply because she believed that she was, in part, being paid back for having had the audacity to challenge the administration on the wisdom and lawfulness of its previous selections. To the extent my statement may be perceived as intending to impose punitive damages, it has been misinterpreted. It is merely intended to state the fact that acts of retaliation may contribute to, or exacerbate, emotional distress, or be an independent cause of emotional distress. I cited the case of Bournemouth Hospital v. MCAD for the proposition that consistent with "the delegation of a broad discretion and authority to the MCAD to fashion remedies for violations of the statute that the MCAD may, *especially where retaliation for filing a complaint is shown*, (emphasis added) award damages for the natural and probable consequences of such

retaliation.” 371 Mass. 303, 315 (1976). In no way did I mean to suggest that the mere finding of retaliation alone, without more, is a reason to augment damages for emotional pain and suffering.

In accordance with the Superior Court remand order, I have reviewed and assessed my earlier findings in light of the decision in Stonehill and conclude that the award of \$200,000 in damages for emotional distress is supported by more than ample evidence in the record, meets the standards articulated in Stonehill and is fair and reasonable. I decline to reduce the award as I am convinced that the record evidence supports that it is appropriate compensation for Complainant’s suffering and is not excessive or punitive to Respondent. Therefore I hereby Order that the award of \$200,000 remain in effect.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within 10 days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 11th day of March, 2005

Eugenia M. Guastaferr
Hearing Officer