

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
PATRICIA LUBOLD,
Complainants

v.

DOCKET NO. 98-BEM-3943

MASSACHUSETTS TRIAL COURT,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Commissioner Walter J. Sullivan, Jr., in favor of Respondent, Massachusetts Trial Court. Following an evidentiary hearing, the Hearing Commissioner concluded that Respondent was not liable for sexual harassment or retaliation in violation of M.G.L. c. 151B. Commission Counsel filed a Notice of Appeal on Complainant's behalf and both Counsel and Complainant, proceeding pro se, filed Petitions for Review to the Full Commission.

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 Officer. M.G.L. c. 151B, Section 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 Hearing Officer's responsibility to evaluate the credibility of witnesses or to weigh the evidence when deciding disputed issues of fact. The Full Commission

defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role 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.

Complainant's counsel has appealed the decision on the ground that the Hearing Commissioner committed an error of law by failing to consider the "opposition clause" of M.G.L. 151B, § 4(4) in deciding that Complainant's conduct did not constitute protected activity, and by not taking into account the time frame in which these activities occurred. Complainant also asserts in her pro se petition on appeal that the Hearing Commissioner had a conflict of interest arising from his family relationships with employees of the State Court. She asserts that the Hearing Officer had an obligation to disclose that members of his family are employed by the Court system, including his uncle who was Clerk of Courts in Middlesex County, at the time of the hearing, and to recuse himself as the fact finder, on account of this alleged conflict, neither of which he did. Complainant also asserts that because the Hearing Commissioner also had some relationship through marriage to the State Trooper who conducted an investigation in this matter, that a conflict of interest existed. The Hearing Commissioner disclosed this relationship prior to the hearing, but assured the parties he knew nothing of the matter.

We have carefully reviewed both the Complainant and her counsel's petitions and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our review, we

find no material errors of fact or law with respect to the Hearing Commissioner's due consideration of the standards governing retaliation articulated in c. 151B § 4(4), and we further conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Commissioner.

With regard to Complainant's claim of conflict of interest, there is a presumption that the Hearing Commissioner conducted the hearing honestly and fairly absent some showing of personal or financial interest or evidence of misconduct on his part, either in the conduct of the hearing, or in the decision making process. Absent any such evidence in this case, the presumption that the fact-finder acted honestly and fairly is not overcome. Complainant's allegations that a conflict of interest existed because the Hearing Commissioner has relatives who are employed by the Trial Court, and because of his relation by marriage to the State Trooper involved in the case, are not supported by any evidence that he stood to gain anything, either personally, or financially from his decision in this matter or that he conducted the proceedings in anything but a fair and honest manner. Accordingly, the allegations of bias and conflict of interest arising from the Hearing Commissioner's familial relationships have no merit and we conclude that he had no obligation to recuse himself. We find that the Hearing Commissioner's decision was supported by substantial evidence and therefore ought not to be disturbed. 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 Order of the Hearing Commissioner. Complainant and Complainant's counsel's appeals to the Full Commission are hereby dismissed.

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, § 8.

Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in Superior Court seeking judicial review within 30 days of receipt of this decision 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 9th day of August, 2007.

Walter J. Sullivan, Jr.
Chairman

Martin S. Ebel
Commissioner

