

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION
and PAUL D'AGOSTINO,

Complainant

v.

DOCKET NO. 90-BEM-1129

SALVATION ARMY,

Respondent

DECISION OF THE FULL COMMISSION

This matter came before us following a decision of Hearing Officer Betty Waxman in favor of Complainant. Following an evidentiary hearing, the Hearing Officer concluded that Respondent subjected Complainant to discrimination on the basis of sexual orientation in violation of M.G.L. c. 151B, § 4(1). Respondent 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 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. 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 the findings of fact and conclusions of law of the Hearing Officer and issue the following order of the Full Commission:

1. Respondent shall pay Complainant the sum of \$10,000.00 in damages for emotional distress, plus interest on the award of emotional distress damages at the statutory rate of 12% per annum from the date the complaint was filed until such date judgment is made or this order is reduced to a court judgment and post-judgment interest begins to accrue. Respondent shall pay this sum to Complainant within 60 days of its receipt of this decision.

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 8th day of October, 2003.

Dorca I. Gomez, Chairwoman

Cynthia A. Tucker, Commissioner

Walter J. Sullivan Jr., Commissioner