

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

PAULA MINDEL,  
Complainant

v.

DOCKET NO. 96-BEM-0760

CHELSEA CLOCK CO.,  
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Complainant, Paula Mindel. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for unlawful retaliatory discharge in violation of M.G.L. c. 151B, section 4. The Respondent filed a timely appeal 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 and/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. Colonnade 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, or was otherwise not in accordance with the law. See 804 CMR 1.16(f).

### RESPONDENT'S PETITION FOR REVIEW

Respondent contends on appeal that the Hearing Officer erred as a matter of fact and law when she found that Respondent retaliated against Complainant for complaining about sexual harassment. Specifically, Respondent contends that because a decision to terminate Complainant's employment on December 29 had been made on December 27, but Respondent did not have notice of her sexual harassment allegations until December 28, there can be no causal connection between Complainant's allegations and her termination.

Respondent is correct in its assertion that causation between the Complainant's protected activity and the Respondent's retaliatory conduct is required to establish a case of retaliation. In this matter, the Hearing Officer found such causation. She specifically found that Complainant's termination was not the culmination of a long-range plan Respondent had in place before December 28 and decided upon, ultimately, on December 27. The Hearing Officer specifically credited Complainant's testimony that Mauch was genuinely surprised about and unaware of Complainant's termination when she informed him of it on December 29. This testimony directly contradicted the testimony of Mauch and Brunault that they had decided two days earlier to set December 29 as the "date certain" for Complainant's termination. This testimony, together with Brunault's testimony that he did not inform Young, Complainant's direct supervisor, of her termination until "December 28 or 29," belies Respondent's assertion that the decision to

terminate Complainant was made before it had notice of Complainant's sexual harassment allegations. While she accepted Respondent's contention that Complainant had performance problems, the Hearing Officer found that they did not cause Complainant's termination. The Hearing Officer specifically found that "Complainant's complaint about Otero was a consideration in making the decision to terminate Complainant's employment." The Hearing Officer, in reaching her findings of fact, made credibility determinations wholly within her province and we defer to them.

We find that there was substantial evidence to support the Hearing Officer's findings of fact and conclusions of law with respect to Complainant's retaliation claim. We have carefully reviewed all of Respondent's contentions and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law. We find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them. On the above grounds, we deny the appeal and affirm the Hearing Officer's Decision.

#### COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS

Complainant has filed a Petition seeking attorneys' fees in the amount of \$70,610.00 and costs in the amount of \$7,358.27. Respondent has filed an Opposition thereto.

#### FEES

M.G.L. c. 151B allows prevailing complainants to recover attorneys' fees. While Complainant did not prevail on all of her claims in this case, she is a "prevailing complainant" because she succeeded in proving her retaliation claim. See, e.g., Sanderson v. Town of Wellfleet, 19 MDLR 60 (1997). Since Complainant did not prevail on her sexual harassment claim, the starting point in reviewing her petition for attorneys' fees is that the amount must be reduced to reflect the partial success of

Complainant's claims before the Commission.

The determination of whether a fee sought is reasonable is subject to the Commission's discretion. The Commission has adopted the lodestar methodology for fee computation. By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by a reasonable hourly rate. See Samuelson v. Sunguard Financial Systems and Fraser Chambers, 23 MDLR, 121 (2001); Baker v. Winchester School Committee, 14 MDLR 1097 (1992).

Only those hours that were reasonably expended to litigate Complainant's retaliation claim are subject to compensation under M.G.L. c. 151B. In addition, the calculation of hours reasonably expended includes eliminating time beyond that consistent with a standard of reasonable efficiency and productivity; subtracting hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim; and eliminating hours insufficiently documented. See Harley v. Costco Wholesale Corp., 23 MDLR 140 (2001); Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir. 1984). In determining whether the requested hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved.

Complainant's counsel seeks reimbursement of \$70,610.00, an amount representing the work of three attorneys who worked 348.40 hours and charged hourly fees ranging from \$175.00 to \$250.00

To support her claim for attorneys' fees, Complainant's counsel submitted a detailed listing of dates, time allocations, and a description of activities performed relating to this matter. This listing includes, but is not limited to, legal research, discovery activities, deposition preparation, witness preparation, preliminary Commission matters, attendance and presentation of Complainant's claims at the public hearing, and submission of a post-hearing brief.

Since Complainant's billing information is not specified by a "claim" or "cause of

action,” the Commission will exercise its discretion to reduce Complainant’s overall attorneys’ fees request by an amount it determines was reasonably expended in pursuit of Complainant’s unsuccessful sexual harassment claim. Marathas v. Holiday Inn, 22 MDLR 391 (2000). Based on a review of Complainant’s Petition for attorneys’ fees and costs, the Commission will reduce the listed hours of the lodestar equation by 50%. The Commission finds that the interconnectedness of Complainant’s sexual harassment claim and her retaliation claim is not significant. The proof a retaliation claim is substantially different from that of the sexual harassment claim. See, e.g., Kelley v. Plymouth County Sheriff’s Department, 22 MDLR 208 (2000); Hudson v. Pembroke/Hanover Elks Lodge et al., 22 MDLR 45 (2000) (citing Langford v. Massachusetts Department of Employment and Training, 17 MDLR 1043 (1995)). Each claim requires separate evidentiary proofs with little overlap. That was true in this case. Accordingly, we reduce the listed hours of the lodestar equation by a factor of 50%, or 174.20 hours (\$35,305.00), to reflect the fact that Complainant did not prevail on her sexual harassment claim.

After making the above-described reduction, the Commission concludes that the amount of time spent by Complainant’s counsel on preparation and litigation of this matter is reasonable. There is no evidence that the hours spent were duplicative, unproductive, excessive, or otherwise unnecessary to successful prosecution of Complainant’s retaliation claim. Accordingly, we conclude that the remaining hours for which Complainant’s counsel seeks reimbursement are reasonable.

Complainant’s counsel (three attorneys) charged hourly rates ranging from \$175.00 to \$250.00 over the course of this litigation. The hourly rates are supported by documentation of their legal experience and expertise in the area of employment discrimination law. The rates charged by Complainant’s counsel are consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases. They are also well within the rates charges by attorneys in the market in which Complainant sought counsel with comparable experience. See, e.g., Baker v. Town of

Winchester School Committee, supra. Accordingly, the Commission concludes that Complainant is entitled to an award of attorneys' fees in the amount of \$35,305.00

### COSTS

Complainant's counsel also seeks costs in the amount of \$7,358.27. We find that this amount represents a reasonable figure of costs incurred incident to the litigation of this matter.

### **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 immediately cease and desist from discriminating on the basis of retaliation.

(2) Within sixty (60) days of receipt of this Order, Respondent shall pay the Complainant \$12,620.10 in damages for lost wages plus interest thereon at the statutory rate of 12% per annum from the date of the filing of the complaint until payment is made or the obligation is reduced to a court judgment and post-judgment interest begins to accrue.

(3) Within sixty (60) days of receipt of this Order, Respondent shall pay the Complainant \$20,000.00 in damages for emotional distress plus interest thereon at the statutory rate of 12% per annum from the date of the filing of the complaint until payment is made or this obligation is reduced to a court judgment and post-judgment interest begins to accrue.

(4) Within sixty (60) days of receipt of this Order, Respondent shall pay Complainant's attorneys' fees in the amount of \$35,305.00 and costs in the amount of \$7,358.27.

(5) The parties shall notify the Clerk of the Commission as soon as the

ordered payments have been made.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint seeking judicial review, together with a copy of the transcript of proceedings before the Hearing Officer or Commissioner (See M.G.L. c. 151B, s.6) in the Superior Court within thirty (30) days of receipt of this decision.

Failure to file a petition in court within 30 days of the receipt of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, section 6. The filing of a petition pursuant to M.G.L. c. 30A does not automatically stay enforcement of this Order. 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 noncomplying party to both civil and criminal penalties as provided in M.G.L. c. 151B, section 8.

SO ORDERED this            day of November, 2002.

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Walter J. Sullivan, Jr.  
Commissioner

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Cynthia A. Tucker  
Commissioner