

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

RAYMOND BERNARD, TAMARA MORRELL,
SHEILA COOPER, and, MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION,
Complainants

v.

Docket Nos. 97-BEM-3358
97-BEM-3361
97-BEM-3363

HILLSIDE RESOURCES MANAGEMENT CORPORATION
AND F. MICHAEL JONES,
Respondents

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER OF THE HEARING OFFICER**

I. PROCEDURAL HISTORY

On September 19, 1997, Complainants Raymond Bernard (“Bernard”), Tamara Morrell (“Morrell”), and Sheila Cooper (“Cooper”),¹ each filed a complaint with the Massachusetts Commission Against Discrimination, (the “Commission” or “MCAD”), against their former employer, Hillside Resources Management Corporation (“Respondent” or “Hillside”) and against F. Michael Jones (“Jones”) in his individual capacity.² Complainants Morrell and Cooper alleged that Respondents engaged in unlawful sexual harassment and racial discrimination in violation of Massachusetts General Laws, c. 151B, §§ 4(1) and 4(16A). Bernard alleged that Respondents engaged in unlawful racial harassment and discrimination in violation of M.G.L. c. 151B, § 4(1).

¹ Bernard, Morrell and Cooper shall be referred to collectively as “Complainants.”

² Hillside and Jones shall be referred to collectively as “Respondents.”

On August 27, 2004, the Commission certified each of the Complainants' cases for public hearing. A public hearing was held before me in Boston, MA, on June 7, 8, 9 and 21, 2005. In deciding this matter, I have considered the entire record, including the testimony and exhibits introduced at the public hearing, and the stipulations of the parties. I have likewise considered the Proposed Findings of Fact and Conclusions of Law submitted by the parties after the public hearing. To the extent that the proposed findings and conclusions are in accord with the findings herein, they are accepted; to the extent that they are not, they are rejected. Certain proposed findings have been omitted as not relevant or necessary to a proper determination of the material issues presented.

II. FINDINGS OF FACT

A. Parties

1. Complainant Raymond Bernard is an African-American male who lives in Roxbury, MA. On February 3, 1994, Respondent hired Bernard as a relief worker. Respondent subsequently promoted Bernard to the positions, respectively, of child-care worker, assistant shift supervisor, shift supervisor, and then to director of client services. On November 13, 2002, Respondent terminated Bernard for reasons unrelated to the matters at hand.
2. Complainant Tamara Morrell is an African-American female. On June 7, 1993, Respondent hired Morrell as a clinical case worker. Respondent subsequently promoted Morrell on numerous occasions, most recently in 1995 to the supervisory position of service/training coordinator. On July 1, 1999, Morrell resigned her employment with Respondent for reasons unrelated to the matters at hand.

3. Complainant Sheila Cooper is an African-American female who lives in Roxbury, MA. On July 31, 1995, Respondent hired Cooper as a recreational coordinator.

Respondent subsequently promoted Cooper to the positions, respectively, of clinical caseworker and then clinical coordinator. On September 25, 1999, Cooper resigned her employment with Respondent for reasons unrelated to the matters at hand.

4. Respondent, Hillside Management Corp., is a Massachusetts Corporation that contracts with the Commonwealth of Massachusetts Department of Youth Services (“DYS”) to provide shelter, education, and other services to youths awaiting adjudication in the juvenile justice system. Respondent maintains a facility at 1542A Columbus Avenue in Roxbury, MA. Respondent initially had a corporate office located at 186 Lincoln Street in Boston, MA, but then moved its offices to its main facility at 1542A Columbus Avenue. Respondent was founded by Fred Hamlett and Reginald Sapp in the 1970’s. Hamlett served as the Executive Director from the inception of the company until October 1996, at which time Sapp became Executive Director, a position he still held as of the date of the Public Hearing. After Hamlett stepped aside as Executive Director, he continued to serve on the Board of Directors. Respondent is an employer within the meaning of M.G.L. c. 151B, § 1(5).

5. On March 3, 1995, Respondent hired F. Michael Jones as Program Director. It is undisputed that Jones’ duties and responsibilities included supervising the three Complainants.³ At the time of hiring, Jones was married to Mary Seeto Jones (“Seeto”), who served as Respondent’s Assistant Executive Director. Fred Hamlett testified that

³ At the time of Jones’ hiring, Bernard and Morrell already worked for Respondent. Cooper was hired approximately three months later.

due to the nature of the relationship between Jones and Seeto, he directed Jones to report directly to him instead of Seeto. Jones and Seeto corroborated Hamlett's testimony. Jones served as Program Director until he effectively resigned in October 1997. Jones and Seeto subsequently divorced. Seeto continues to work for Respondent as the Assistant Executive Director.

6. The evidence in the record reflects that Respondent, with the possible exception of Jones, considered the Complainants very good employees. In addition, neither Jones nor Guy Munn, who worked for Respondent as Assistant Program Director, observed or heard any of the Complainants engage in sexual joking.

7. At all times pertinent hereto, approximately 90% of the employees working for Respondent were African-American, including Sapp, Hamlett, Munn, Ray Thompson and the three Complainants. Jones and Mary Seeto are, respectively, Caucasian and Asian-American.

B. Allegations of Sexual Harassment

8. Cooper testified that Jones frequently made inappropriate sexual comments and engaged in offensive physical touching. In particular, Cooper stated that on a daily basis Jones would greet her in the morning by putting his arm around her. She also claimed that he would regularly rub her back. Additionally, Cooper testified that Jones would press his thumb or knuckle into the middle of her back and then say, "It's nice to see you." She claimed this happened so many times she could not remember how often it actually occurred. According to Cooper, on one occasion after Jones pressed his knuckle or finger into her back, he asked her whether she knew what that meant. After Cooper

responded that she did not know, Jones said it meant he had a “hard on.” Cooper claimed that she was shocked and embarrassed by Jones’ conduct. I credit Cooper’s testimony.

9. Morrell likewise testified that Jones inappropriately touched her. She claimed that he put his hand on her shoulder and often attempted to massage her back. Morrell claimed that she told Jones to stop and, as a result, he would cease for a while; however, he would eventually start touching her again. Morrell also stated that Jones put his knuckle into her back. According to Morrell, the first time Jones put his knuckle into her back, she told him it was “nasty” and “don’t do it.” Morrell testified that despite her objections, Jones continued to put his thumb or knuckle into her back. She testified that Judy Swan, a co-worker who witnessed Jones’ behavior, subsequently told her that a knuckle on the back referred to an erection.⁴ Furthermore, Morrell testified that she had witnessed Jones put his knuckle into Swan’s back and saw Swan respond by “cursing him out.” In addition, Morrell claimed that Jones would rub her back all the time, sometimes as often as a couple of times a day. She testified that she told him it wasn’t appreciated and “it was nasty.” I credit Morrell’s testimony.

10. In addition to the inappropriate physical touching, Cooper testified that Jones constantly made sexually offensive remarks to her. For example, she claimed that Jones would comment how pretty she was on a daily basis and remark, “You’re good enough to eat.” According to Cooper, Jones also stated that he would marry her if he was not already married. Furthermore, Cooper testified that if Jones noticed she was in a happy mood, he would ask her if she had good sex the previous night. Morrell likewise stated that Jones would remark to her if she appeared happy, “You got some”; and if she

⁴ Judy Swan died prior to the public hearing.

appeared unhappy, he would remark, “You didn’t [get some].” Morrell similarly believed that Jones’ comments referred to sex. I credit Cooper and Morrell’s testimony.

11. In addition, Cooper and Morrell claimed that Jones joked about catching his wife in bed with his son’s best friend. They testified that Jones also commented that his son’s best friend had a bigger penis than his own. Cooper claimed that Jones then remarked he had to engage in oral sex in order to compensate for his smaller penis. Additionally, Cooper stated that Jones would comment about the breasts of various female employees’. Specifically, he would remark about which females had bigger breasts and needed breast reduction surgery. Morrell likewise testified the Jones would regularly make references to her body by, for example, comparing the size of her breasts with Judy Swan’s. Morrell testified that these comments made her feel belittled. According to Morrell, she told Jones to leave her alone or shut up, but nothing made him stop; “He felt he had the right to do whatever he wanted to do.” Raymond Bernard largely corroborated Cooper and Morrell’s testimony. In particular, Bernard claimed that shortly after Jones started working for Respondent, Jones began making sexually explicit jokes on an everyday basis. I credit Cooper, Morrell and Bernard’s testimony.

12. Respondent F. Michael Jones admitted that he may have told some sexual jokes in the workplace, but “only rarely.” He also acknowledged that he did not frequently hear jokes of a sexual nature among the staff. Jones commented that he recalled telling Shelia Cooper that she looked nice, but denied saying anything offensive. In addition, Jones acknowledged touching female employees in an inoffensive manner, such as “maybe a pat on the back”, but denied ever trying to give massages or putting his knuckle into their backs. Jones also denied having any discussion with anyone at work regarding his sex

life. I found Jones' testimony with respect to the severity and pervasiveness of his physical touching of Cooper and Morrell, and with respect to his sexual jokes and remarks, to be totally lacking in credibility.

13. Cooper also testified that when Jones suspected that she had become pregnant, Jones pulled her into his office and questioned her about whether she was pregnant and asked her, "Who was the father?" Cooper testified that Jones further told her that she could not get maternity leave. I credit Cooper's testimony.

C. Allegations of Racial Harassment

14. In addition to the sexually related remarks, each of the Complainants claimed that Jones made numerous racially hostile remarks. Specifically, all of the Complainants testified that Jones stated he was from the "south" and a member of the KKK. In addition, they claimed that Jones had remarked that his brother was a "grand dragon" in the KKK and his parents were racist. According to Bernard, Jones actually admitted to him that he was a racist. He also recalled Jones' stating that his parents were racist and, therefore, he was brought up that way. Bernard and Cooper also claimed that Jones frequently made references to "taking staff out to the woods." Bernard and Cooper believed that Jones' comment referred to lynching. Bernard testified that Jones often made this remark in his presence whenever an issue arose. Although Bernard claimed that Jones never directed this remark directly to him, he believed Jones only made these remarks toward other black employees. Morrell similarly said she heard Jones say on a couple of occasions, "Where I'm from, we would take you into the woods and be whipped." I credit Cooper, Bernard and Morrell's testimony.

15. Bernard also stated that Jones repeatedly referred to him and other black staff as being stupid, incompetent, and having their heads up their ass. Bernard claimed that Jones made these types of comments “probably once a week”, and “anytime an issue occurred with me or my staff.” Cooper and Morrell corroborated Bernard’s testimony and further indicated that they never heard Jones make these remarks to white staff. Moreover, Cooper and Morrell both testified that Jones would regularly greet African-American men with the comment, “Hey boy.” Bernard likewise testified that Jones referred to him and other black staff on a daily basis as “boys”, “good old’ boys”, or “son.” On the other hand, Bernard claimed that Jones would refer to white staff by the person’s first name. I credit Morrell, Bernard and Cooper’s testimony.

16. Jones denied telling anyone that he was a former member of the Klan or using the phrase, “Hey boy”, toward any black male staff. Although Jones did not remember using the phrase “Good ol’ boys”, he described the remark as a term of friendship or respect. I decline to credit Jones’ testimony regarding these matters.

17. Complainants further testified that Jones got very upset and angry when he found literature in the workplace related to black identity. Specifically, they claimed that when he found a book on the unit entitled, “How To Survive In America Without Being White”, Jones said he would fire the person that brought it into the unit because he believed the book to be racist. In addition, when Jones discovered a copy of the “Final Call”, a newspaper printed by Nation of Islam, he likewise got upset and angry and said he would terminate whoever brought the newspaper into the unit.

18. Morrell also indicated that Jones was more critical of black employees than white employees. For example, she claimed that when Jones would return incident reports back to her, the reports prepared by black employees would contain many comments and criticisms, but Jones would never return reports from white employees. Although I credit Morrell's testimony on this matter, I note that very few white employees worked for Respondent.

19. According to Cooper, Jones bragged that he had formerly been head of security for Trump Airlines, a sheriff, and a former agent for the FBI; and, as a result of his connections, he said he could "take care of people." Similarly, Bernard testified that Jones had mentioned that he was a former state trooper, FBI agent, and Navy Seal, and if he needed information or wanted to discredit someone, he could do it. All of the Complainants testified that these comments made them fearful of Jones. I credit Morrell, Bernard and Cooper's testimony on these matters.

D. Complaints to Management.

20. Cooper acknowledged that she did not tell Jones to cease his inappropriate conduct, because she feared he would seek to harm her. However, Cooper claimed she regularly complained to Munn about Jones' conduct. Cooper testified that Munn would remark that he likewise heard Jones make some of the offensive comments. According to Cooper, Munn kept telling her, "Don't worry about it; I will take care of it." Bernard testified that he likewise complained about Jones' conduct to Munn and Morrell. Bernard claimed that Munn would respond to him by commenting, "I hear what you're saying, and I'll address it." Morrell likewise testified that people she supervised, including Bernard, Cooper and Ray Thompson, would come to her with problems regarding Jones'

conduct on nearly on a daily basis. Morrell stated that she similarly brought these issues to the attention of Munn. According to Morrell, Munn always responded, "I'll handle it." I credit Cooper, Morrell, and Bernard's testimony.

21. Guy Munn reported directly to Jones after Respondent hired Jones as Program Director. Munn also directly supervised Morrell and indirectly supervised Bernard and Cooper. Munn admitted that the staff at Hillside, including the Complainants, regularly complained to him about Jones' conduct. Munn claimed that when he brought these issues to Jones attention, Jones would respond, "I did not mean anything by it." With respect to Jones' management style, Munn testified that Jones had "good and bad points." According to Munn, on the one hand, Jones was partially instrumental in improving the physical conditions of the unit. On the other hand, Munn admitted that Jones had an abrasive management style that reflected his military background. Moreover, Munn stated that Jones "said things that were not appropriate." In particular, Munn testified that Jones made sexual jokes, which were "in bad taste." Although Munn could not recall any specific jokes, he recalled Jones making inappropriate comments at management meetings. Munn did not recall hearing anyone, including the Complainants, make any similar sexual comments. Although Munn testified that he observed Jones put his hands on shoulders of female employees, he claimed he did not think it was anything offensive. I credit Munn's testimony.

22. Munn also overheard Jones make racially inappropriate comments. In particular, he recalled Jones commenting that a member of his family was a member of the Klan. But Munn distinctly recalled Jones saying, "I didn't believe in that." He also heard Jones call people "stupid" and state, "People have their head up their ass"; but Munn believed

these comments referred to the entire staff and not just to African-Americans. Munn noted that 95% of the staff was African-American and that a white supervisor, Alex Kant, regularly attended the management meetings where Jones' made these offensive statements. Although Munn never directly heard Jones make any other derogatory remarks, he heard from staff that Jones had made other racially offensive comments. I credit Munn's testimony.

23. Morrell testified that aside from speaking with Munn, she did not feel free to complain about Jones' conduct to upper levels of management. First, she claimed that Jones had stated he would fire her if she ever went above his head. In addition, Morrell stated that she was intimidated by Jones' comments about being a former state trooper and navy seal. Moreover, Jones immediate supervisor, Mary Seeto, was his wife. Morrell also believed that Sapp and Jones had a close relationship. Notwithstanding her trepidations, on May 9, 1996, Morrell sent a memorandum to Munn, Jones, Seeto, and Hamlet regarding Jones' abrasive management style. In the memo, Morrell stated that Jones would criticize the intelligence and work ethic of staffers. Morrell also wrote that Jones would tell staff that he was a former member of the KKK and that his brother was a high-ranking member of the KKK. She further added that Jones referred to staff with the comment, "Hey boy!" Although the memo did not contain any reference to Jones making any sexual remarks or engaging in sexually offensive conduct, Morrell testified that it was not her intention to inform management of every complaint and problem. She also claimed that she feared she would be fired if she put everything, including his sexually offensive actions, in the memo. I credit Morrell's testimony.

24. Jones recalled that Fred Hamlett gave him a copy of Tammy Morrell's memo. Jones claimed he told Hamlett that the allegations were ridiculous and he denied making any racial slur. He claimed that that he told a youth at the facility that a member of his family was in the KKK and he believed the youth then spread a rumor that he was likewise a member of the Klan. I decline to credit Jones' testimony.

25. In May 1996, Sapp, Hamlett, Munn, and Jones met on a number of occasions to discuss Morrell's memo. Morrell and perhaps Bernard attended some of these meetings. According to Jones, Hamlett suggested that he write an apology to staff regarding the comments he had made. Consequently, on July 2, 1996, Jones sent a memorandum to Seeto with copies to Hamlett, Munn, Morrell, Thompson, and Bernard in which he apologized for the mistakes he made in his dealings with staff. Munn testified that after Jones' apology, the atmosphere in the unit improved. However, Munn claimed that by the end of July 1996, employees started to raise the same complaints about Jones' conduct. Munn stated that he then spoke to Jones again and Jones gave a "yeah, okay, I hear you" type of response. I credit Munn's testimony.

26. The Complainants testified that in addition to his inappropriate sexual and racial comments and conduct, Jones insisted that he did not want his employees to have sexual relationships with each other. Cooper claimed that when Jones found out she was having a relationship with Bernard, Jones stated to her, "I told you I did not want my employees seeing each other." Subsequently, on July 29, 1997, during a staff meeting in Jones' office, he announced in front of Cooper, Bernard, Morrell and others that Cooper and Bernard were having a relationship and that he did not approve of it. Cooper claimed she was terribly embarrassed by Jones' remarks, particularly since her fiancé (not Bernard)

also worked for Respondent. Cooper then stormed out of the meeting. Bernard likewise testified that he was appalled that Jones would make this comment at a staff meeting. Morrell corroborated Cooper and Bernard's testimony about Jones' remarks. On July 31, 1997, Bernard sent a memorandum to Morrell with copies to Munn and Jones, in which he complained about Jones' conduct at the July 29, 1997 meeting. Jones testified that he made the statement at the staff meeting because he wanted to put an end to the rumors and gossip about the matter. Jones admitted that his comments were "stupid" and that "it was not the appropriate forum to deal with this matter." I decline to credit Jones' testimony and credit Cooper, Morrell, and Bernard's testimony regarding this matter.

E. Jones' Attempt to Terminate the Complainants' Employment

27. On August 1, 1997, Bernard, Morrell and Ray Thompson⁵ came to see Munn and told him they would be putting their complaints against Jones in writing. Munn recalled them stating, "We're tired of this and we want to know if you're going to do something with it." Munn claimed that he told them he was prepared to take the written complaints to Jones. On Saturday, August 2, 1997, Cooper, Bernard, Morrell, and Thompson came to the workplace to prepare a written grievance against Jones. Cooper explained that "they had had enough" with Jones and together they would prepare a statement describing the situation. None of the Complainants were scheduled to work that Saturday. Jones subsequently showed up and stated, "What are you all doing here?" Jones then called the Complainants and Thompson into his office. According to the

⁵ Ray Thompson worked with the Complainants and participated with them in their internal complaints against Jones. Thompson likewise filed an MCAD complainant against Respondent as a result of Jones' conduct. Shortly after Jones resigned, Respondent promoted Thompson to Jones' former position of Program Director. Approximately one year after the promotion, on October 8, 1998, Thompson withdrew his complaint at the Commission.

Complainants, Jones stated, “What did I tell you guys about if you tried to go over my head and tried to complain about me?” When Morrell began to explain what they were doing, Jones then cut her off and said, “What did I tell you guys?” Cooper responded, “We would be fired.” Jones then stated, “You are all fired.” Jones then called for someone to escort the Complainants and Thompson out of building.

28. Later that day, Reggie Sapp called each of the Complainants. Sapp told each of them that he had heard what had happened and that Jones had no authority to fire them. Sapp then asked them if they would come back to the office the next day to discuss the matter. At the meeting the next day, Sapp apologized for what had happened and stated he would like the Complainants and Thompson to return to work. Morrell and Cooper then spoke up and told him about their grievances against Jones. Sapp responded that he did not want to hear them at this time because he was going on trip, but he would sit down with them and discuss the grievances when he returned. Sapp also stated that they could have the next two days off and when they returned to work they should report to Guy Munn instead of Jones. I credit Cooper, Bernard and Morrell’s testimony on this matter.

29. With respect to the incident on August 2, 1997, Jones largely corroborated the Complainants’ testimony. Jones claimed that while at home, he received a call from his son, who also worked for Respondent. According to Jones, his son informed him that a staff meeting was taking place and “they are talking about you.” Jones stated that when he arrived at the unit, he found the Complainants and Ray Thompson in Tammi Morrell’s office. Morrell then told him that they were meeting to discuss their issues against him and they were putting their concerns in writing. Jones admitted that he became furious

because he thought they had resolved these issues. He further acknowledged firing the Complainants and Thompson on the spot. Jones stated that he then called Sapp. Jones claimed that when he told Sapp that he had fired four staff, Sapp was shocked and stated, “You can’t do that.” Jones testified he responded, “Yes, I can, because the employees were all employed at will.” Although Jones believed he had the authority to terminate the Complainants’ employment, he later regretted the decision. He claimed that at the time, he was undergoing a lot of pressure including difficulties with his marriage and unhappiness with Sapp’s leadership. According to Jones, prior to this incident he had never threatened to fire staff if they complained about him, but he admitted to threatening employees with termination if they violated the “chain of command” by criticizing Hillside to an outside entity, such as DYS. I decline to credit Jones’ testimony.

30. A few days later, Sapp met with Jones to discuss the reinstatement of the Complainants. Jones claimed that he told Sapp he intended to resign because he was going through some personal problems and he “had had it with Hillside.” According to Jones, at this meeting, Sapp stated that Complainants would probably file discrimination complaints. Jones testified that he offered to stay and help Respondent fight the charges. According to Jones, Sapp remarked, “If they file a discrimination complaint, the Board and I will have no other choice but to fire you.” Jones claimed that Sapp then said it would be a good idea if he resigned. Jones and Sapp then agreed that Jones would work and get paid through the end of August.

31. Although Sapp admitted to discussing the attempted termination of the Complainants with Jones, he did not recall the reasons Jones gave him for firing them. Sapp claimed that he asked Jones to provide him with a written rationale for his actions,

which would be included in an investigation of the incident. According to Sapp, a couple of days later he received Jones' resignation. Sapp admitted that he never took any disciplinary action taken against Jones, claiming, "I had nothing to go on." I decline to credit Sapp's testimony.

32. Sapp claimed that following his meeting with the Complainants and Thompson, he met with John Cunningham, a member of the Board of Directors, and asked Cunningham to conduct an investigation. Sapp claimed that Cunningham did an investigation and reported his results back to him on a weekly basis. But Sapp stated that he never received a written report from Cunningham regarding his investigation. Sapp implied that Cunningham's death, a few years later, prevented his getting a written report of the investigation. However, on cross-examination, Sapp testified that his receipt of Jones' resignation halted the investigation. I decline to credit Sapp's testimony with respect to these matters.

33. On August 6, 1997, Complainants returned to work. The next day Morrell sent a memorandum to Sapp that summarized their grievances against Jones. Although the memo did not contain any specific allegations of racial or sexual harassment, Morrell claimed she wrote the memo with the other Complainants to remind Sapp that they still had issues that needed to be addressed. On August 11, Jones returned to work. Cooper testified that upon his return, Jones demeanor was different and he seemed unhappy, upset, arrogant, and short tempered. In addition, Jones imposed additional job duties on staff including the requirement that staff had to punch in and out when arriving and leaving the workplace. He also issued a "no closed doors" directive because he believed the staff was conspiring against him. Moreover, Jones ironically issued a memorandum

to staff that stated he did not appreciate the hostile work environment. Bernard corroborated Cooper's testimony regarding the closed-door policy and Jones' memo regarding the "hostile work environment." Bernard similarly testified that Jones' behavior changed after he returned, noting that Jones seemed "pissed." However, Bernard also claimed that Jones had "toned down" the racial and sexual comments and daily jokes, but only for a couple of weeks. According to Bernard, Jones gradually began making the same offensive sexual and racial remarks until he returned to the "same pitch" as before the incident of August 2. I credit Cooper and Bernard's testimony.

34. On August 19, 1998, the Complainants sent another memo to Sapp, which stated, "Working conditions seem to be going back to the way they were, due to inconsistencies in information given by Program Director Michael Jones. Mr. Jones has made working at HSCC a very hostile and uneasy environment." After not getting a response, on September 5, 1998, the Complainants sent a memo to John Cunningham requesting a meeting. In the memo to Cunningham, Complainants complained that they had not received any response to their previous memos to Sapp or received an apology from Jones regarding the incident of August 2. Neither Cunningham nor anyone else on behalf of Hillside responded. I credit Complainants' testimony regarding these matters.

35. On September 19, 1997, Complainants filed their complaints with the Commission. After receiving the complaints, Sapp summoned the Complainants to his office. Complainants described Sapp as irate and upset. They claimed Sapp stated, "What is this?", "I told you guys I was going to handle this", and "Why do we have to go down to MCAD?" Sapp then stated, "What would you guys say if I had Jones' resignation letter?" Cooper claimed she and the other Complainants were shocked to

hear that Jones had resigned. Sapp then stated, "Give me some time and I will handle it." Cooper further testified that Sapp commented that the MCAD proceedings will "drag on for 10 years." Morrell recalled Sapp saying, "I can drag this out for ten years." Sapp claimed he had no recollection of any meeting with Complainants regarding their MCAD complaints. I credit Cooper, Morrell and Bernard's testimony on this matter. In addition, I find Sapp's testimony regarding his actions after he received Complainants' MCAD complaints to be totally lacking in any credibility.

36. Kamian ("Kami") Hamlett has worked for Respondent from 1986 to the present. She is the daughter of Fred Hamlett and a relative of Raymond Bernard. During the period of March 1995 to October 1997, Kami held the position of Administrative Assistant to the Executive Director and essentially served as Sapp's secretary. Although Kami Hamlett did not personally witness Jones engage in any inappropriate behavior, she claimed that Morrell and Judy Swan had mentioned to her that Jones had made inappropriate sexual and racial comments and had engaged in offensive touching, including putting his knuckle into their backs. Kami testified that she never brought this information to Sapp's attention, however, she claimed she did bring these matters to the attention of her father who was on the Board of Directors at that time. I credit Kami Hamlett's testimony regarding these matters.

37. For reasons not entirely explained at the Public Hearing, Respondent failed to promptly respond to Complainant's complaints or file a timely position statement. After Sapp received a letter from the Commission dated April 23, 1998, regarding the lack of any response from Respondent to the complaints, Sapp instructed Kami Hamlett to prepare position statements on the Respondent's behalf. She admitted that prior to

drafting the position statements, she did not conduct an investigation into Complainant's allegations. Kami Hamlett further claimed that neither Sapp nor anyone else at Respondent provided her with any information regarding what should be included in the documents. With respect to the lack of any thorough investigation being conducted by Respondent, Kami wrote in the position statements, "[B]efore a thorough investigation could take place, Mr. Michael Jones resigned from the corporation." Kami testified that after she completed the position statements, she read one of them to Sapp and John Cunningham and neither made or proposed any changes.⁶ At Sapp's instruction, Kami then signed the documents on Sapp's behalf. Contrary to Kami Hamlett's testimony, Sapp claimed that he had substantial input into the position statements, although he admitted that he had not done any investigation into the matter other than to talk to Cunningham. I credit Kami Hamlett's testimony regarding this matter. I also find Sapp's testimony regarding this matter completely lacking in credibility.

38. Sapp testified that as a result to the issues between Jones and the Complainants, he arranged for Dr. Barbara Deck to conduct training sessions on developing and establishing effective communication between management and staff. Sapp claimed that the training included the issues of harassment and communication of personal problems, although Sapp admitted that racial and sexual harassment was not the focus of Deck's workshop. However, according to Cooper, the subjects of racial or sexual harassment never came up during the training. Cooper also claimed that since she began working for Respondent, she has never attended any training on racial or sexual harassment. I credit Cooper's testimony on this matter.

⁶ The position statements filed by Respondent to each of the Complainants complaints are nearly identical.

F. Complainants' Emotional Distress

39. Cooper testified that Jones' racially and sexually offensive conduct impacted her emotional well being and caused her significant emotional distress. Cooper stated that Jones conduct made her feel miserable, anxious, and nauseous. She testified credibly that as a result of this stress, her hair started falling out, she began to experience migraine headaches, and ceased being able to breast feed her son. The stress also adversely effected her menstrual cycle and caused her blood pressure to soar, necessitating treatment at a clinic. As a result of these physical symptoms, Cooper sought medical treatment. Cooper detailed the treatment in a statement dated September 22, 1997:

Due to the amount of stress that I have been under, I have been forced to seek medical attention on the following dates:

8/13, initial visit w/(Nurse Practitioner) Tuitt, my blood pressure was extremely high 150/100, I had not received a menstruation since June 1997, suffering from chronic headaches and I saw a social work regarding stress, whom recommended that I enlist in (three) stress classes, I was also referred to see a medical doctor regarding my high blood pressure, I was prescribed 800 mg Motrin.

8/15, I was seen by Dr. Rivers regarding my high blood pressure which was recorded as 146/100.

9/3, I saw NP Tuitt again and the blood pressure was normal at this time.

Cooper also testified that she treated with a social worker/therapist who she saw weekly over a period of two months. Cooper claimed that she had to stop seeing her therapist because she had to drop her health insurance and could not afford further treatment. I credit Cooper's testimony.

40. Cooper claimed that, in addition to having to endure Jones' repeated sexual and racial comments, his frequent remarks to other employees about their lousy and

incompetent work performance made her fearful and nervous about making a mistake. When asked at the public hearing why didn't she just leave, Cooper replied that she was scared of Jones and she believed he would make her life miserable if she left by, for example, preventing her from getting other employment. Cooper also testified that Jones' public comments about her and Bernard having a relationship were particularly harmful and ultimately resulted in the end of her relationship with her fiancé. She added that the stress caused by Jones' conduct caused her to frequently lose patience with her children and hindered her from getting up and out of bed in the morning. I credit Cooper's testimony about the adverse effects of Jones' conduct on her emotional well being.

41. Bernard likewise testified that Jones' actions caused him significant emotional distress. He claimed that prior to Jones being hired, he enjoyed working at Respondent and looked forward to arriving at work early. However, after Respondent hired Jones, he no longer wanted to come to work and purposefully avoided getting to work early. Bernard further stated that the stress related to Jones' conduct caused him to develop headaches, lose weight, and impacted his ability to sleep. He also testified that the stress caused by Jones' behavior impacted his ability to relate to clients. Bernard stated that Jones made him feel that he was always "walking on egg shells" and he feared Jones would fire him for doing anything wrong. Additionally, he claimed Jones' conduct affected his personal life. Bernard stated that he stayed home more often and no longer wanted to hang with his friends. He also claimed that as a result of the stress he endured from working with Jones, he became short-tempered with his daughters and constantly bickered with his girlfriend. He testified that he obtained medical treatment for his

headaches and sleeping difficulties. Bernard stated that he never sought treatment with a mental health professional regarding the stress he endured because he did not believe in such treatment. I credit Bernard's testimony.

42. Morrell similarly testified that she enjoyed working at Respondent before Jones was hired. However, she claimed that Jones constant intimidation and harassment greatly affected her emotional well being. Morrell claimed that as a result of Jones' conduct, she started getting sick. As examples, she testified that as she approached the worksite in the morning, she would experience a pain in her stomach, her hair began to fall out, she experienced headaches, and suffered uncontrollable outbreaks of crying. She claimed she broke down in tears "all the time" on her way home from work. Morrell testified that as a result of Jones' harassment, she became "a total wreck." The stress also affected her relationship with her husband, causing her to argue with him more often. She claimed that she was constantly nervous and scared she would lose her job. Morrell believed that the stress affected her job performance by causing her ability to work with her co-workers to deteriorate. She testified that she did not consult a mental health professional regarding her stress because she was raised in the south and "we deal with problems ourselves and within the family." I credit Morrell's testimony.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

Massachusetts General Laws, c. 151B, § 4(16A) prohibits sexual harassment in employment. Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or

rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.” M.G.L. c. 151B, § 1(18); College-Town Division of Interco v. MCAD, 400 Mass. 156, 165 (1987).

In this case, Complainants Sheila Cooper and Tammi Morrell have alleged that Respondents created a hostile work environment within the meaning of § 1(18)(a) as a result of Jones' unwelcome and offensive conduct. In order to establish a case of hostile work environment sexual harassment, each Complainant must establish by a preponderance of the evidence that (a) she was subject to gender-based unwelcome verbal or physical sexual conduct; (b) the words or acts were sufficiently severe or pervasive to alter her conditions of employment and create an abusive working environment; and (c) the harassment was carried out by an employee with a supervisory relationship to her or Respondent knew or should have known of the harassment and failed to take prompt remedial action. College-Town, 400 Mass. at 162.

I conclude that Complainants Cooper and Morrell have established an un rebutted prima facie claim of hostile work environment sexual harassment. Both Cooper and Morrell testified credibly that Jones engaged in verbal and physical conduct that was sexual in nature and directed at them. Specifically, they claimed that he would regularly engage in offensive and highly inappropriate physical touching. Morrell stated that Jones would rub her back all the time, sometimes as often as a couple of times a day despite having told him it wasn't appreciated and "it was nasty." In addition, both

Cooper and Morrell testified credibly that he would press his thumb or knuckle against the middle of their backs in what was admitted by him to be a sexual gesture. Cooper claimed this happened so many times she could not remember how often it actually occurred, and she testified credibly that Jones told her it meant he had a “hard on.” According to Morrell, the first time Jones put his knuckle into her back, she told him to stop, but he nevertheless repeated this behavior.

Additionally, Cooper testified credibly that on daily basis Jones would comment regarding how pretty she was or tell her, “You’re good enough to eat.” Furthermore, both Cooper and Morrell claimed that if Jones noticed they were in a happy mood, he would suggest that they must have had sex the night before by commenting, “You got some”; and if they appeared unhappy, he would remark, “You didn’t [get some].” In addition, Cooper and Morrell claimed that Jones made jokes about his penis size and remarked that because he had to compensate for a smaller penis, by engaging in oral sex. Cooper and Morrell also testified credibly that Jones would compare the breasts of female employees’ and comment about which females needed breast reduction surgery. Cooper further claimed that when Jones suspected she was pregnant, he pulled her into his office and questioned her about the matter and asked her, “Who was the father?” Raymond Bernard largely corroborated Cooper and Morrell’s testimony. In particular, Bernard claimed that shortly after Jones started working for Respondent, Jones began making sexual explicit jokes everyday. I further credited Cooper and Morrell’s testimony that they found Jones’ conduct highly offensive. Although Jones adamantly denied engaging in such conduct, I found his testimony on these matters to be completely lacking in credibility.

I conclude that Jones' conduct was sufficiently severe and pervasive as to alter the conditions of Cooper and Morrell's workplace, thereby creating a sexually hostile work environment. Moreover, Complainants have provided substantial and credible evidence that Jones exercised supervisory authority over their work. While Respondent emphasized that Complainants did not complain directly to Jones' superiors regarding these matters or take prompt advantage of the grievance process, Respondent is nonetheless strictly liable for Jones' creation of a hostile work environment. College-Town, 400 Mass at 162, 164-165, n. 5 ("the Legislature intended that an employer... be liable for discrimination committed by those on whom it confers authority without additional notice requirement"); *see*, Meritor Savings Bank v. Vinson, 477 U.S. 57 (1987) (hostile work environment occurs where offensive conduct is so pervasive that it alters conditions of Complainant's employment and creates a barrier to full participation in the workplace). Moreover, once members of senior management became aware of Complainant's concerns, they failed to take adequate measures to ensure that Jones' conduct ceased. Under these circumstances, I conclude that Complainants Shelia Cooper and Tammi Morrell have established that Respondent, Hillside is liable for unlawful sexual harassment in violation of M.G.L. c. 151B, § 4(16A).

B. Racial Harassment

Massachusetts General Laws c. 151B similarly prohibits harassment and discrimination in employment on account of race. All three Complainants have alleged that Respondent subjected them to a racially hostile work environment as a result of Jones' comments and disparate treatment. In order to prevail on a claim of racial harassment under c. 151B, § 4(1), each Complainant must establish that (1) he or she is a

member of a racially protected class; (2) he or she was a target of speech or conduct based on membership in that class; (3) the speech or conduct was sufficiently pervasive or severe to alter the terms and conditions of his or her employment and create an abusive working environment; (4) the harassment was carried out by an employee with a supervisory relationship or Respondent knew or should have known of the harassment and failed to take prompt remedial action. College-Town, Div. of Interco, 400 Mass at 162; Beldo v. University of Massachusetts, 20 MDLR 105 (1998); Richards v. Bull H. N. Information Systems, Inc., 16 MDLR 1639, 1669 (1994);

Similar to the above-described charges of sexual harassment, all three Complainants have established un rebutted claims of racial harassment. Specifically, Complainants testified credibly that Jones made many highly offensive racial comments. They claimed that Jones said he was from south and a member of the KKK. Jones further stated that his brother was a “grand dragon” in the KKK and that his parents were racist. Bernard also testified credibly that Jones admitted to being a racist. In particular, he recalled Jones’ stating that his parents were racist and that’s the way he was brought up. Bernard and Cooper also claimed that Jones made references to “taking staff out to the woods.” They testified credibly that they believed Jones was referring to lynching. Bernard testified that Jones frequently made these remarks in his presence whenever an issue arose. Although Bernard claimed that Jones never directed this remark to him, he heard Jones make these comments toward other black employees. Morrell similarly said she heard Jones say on a couple of occasions, “Where I’m from, we would take you into the woods and be whipped.” Additionally, Bernard stated that Jones repeatedly referred to him and other black staff as being stupid, incompetent, and having their heads up their

ass. Bernard claimed that Jones made these types of comments “probably once a week”, and “anytime an issue occurred with me or my staff.” Cooper and Morrell corroborated Bernard’s testimony and further indicated that Jones never made these remarks to white staff. Moreover, Cooper and Morrell both testified that he would regularly greet African-American men with the comment, “Hey boy.” Bernard likewise testified that Jones referred to him and other black staff on a daily basis as “boys”, “good old’ boys”, or “son.” On the other hand, Bernard testified credibly that Jones would refer to white staff by the person’s first name. Morrell also testified credibly that Jones was more critical of black employees than white employees. For example, she claimed that Jones would return incident reports written by black employees with many comments and criticisms, but Jones would never return reports from white employees. Although Jones denied treating anyone differently on account of race, I found this assertion to be totally lacking in credibility.

I conclude find that Jones’ racially offensive conduct was sufficiently severe and pervasive as to alter the conditions of the Complainants’ workplace and to create a racially hostile work environment. Additionally, I conclude that Jones’ comments were especially insensitive and disturbing given that most of Respondent’s employees were African-American. As noted earlier, Complainants have provided unrebutted credible evidence that Jones exercised supervisory authority over their work. Moreover, senior managers, when made aware of Jones’ conduct failed to take adequate measures to ensure the conduct ceased. Therefore, all three Complainants have established that Respondent, Hillside, is liable for unlawful racial harassment in violation of M.G.L. c. 151B, § 4(1).

C. Individual Liability

In addition to the charges filed against Hillside, each of the Complainants named Jones as an individual Respondent. As described in detail above, they alleged that Jones engaged in unwelcome severe and pervasive physical and verbal conduct that was threatening, intimidating and interfered with their rights to be free of sexual and racial harassment in the workplace.

The Commission and the Courts have recognized that supervisors can be held individually liable under G.L. c. 151B1, § 4(4A). Beaupre v. Cliff Smith & Associates, 50 Mass. App. Ct. 480, 491 (2000); Rodriguez v. Nationwide Warehouse & Storage, LLC, et al., 25 MDLR 233 (2003) (two supervisors were individually and jointly liable for the unlawful sexual harassment that was sufficiently severe and pervasive to alter the terms and conditions of the complainant's work environment); Deeter v. Bravo's Pizzeria and Restaurant, 23 MDLR 167, 170 (2001) (individual respondent was jointly and severally liable with employer where he supervised complainant's work, owned part of the business and engaged in particularly odious and loathsome unwelcome verbal or physical conduct). In order for an individual to be held liable for a violation of M.G.L. c. 151 B, there must be some showing of his or her intent to discriminate, through an action or inaction in deliberate disregard of the Complainants' rights. Woodason v. Norton School Committee, 25 MDLR 62, 64 (2003), *affirming*, 24 MDLR 21 (2002).

The evidence in this record establishes that Jones harbored and exhibited the requisite intent to discriminate which would justify a finding that he is individually liable for unlawful harassment. Woodason, 25 MDLR at 64 (where there is direct evidence of discrimination and the alleged perpetrator of discrimination was in a supervisory position

in which he or she had direct control over complainant's employment, the individual may be named as acting in deliberate disregard of complainant's rights.). In particular, Jones told Complainants they were fired after he discovered that they intended to complain to his superiors about his repugnant and detestable behavior.⁷ Accordingly, F. Michael Jones is individually and jointly liable with Hillside Resources Management Corporation for the unlawful sexual and racial harassment established under the facts of this case.

IV. **REMEDY**

Upon a finding of unlawful discrimination, the Commission has broad discretion to fashion remedies to best effectuate the goals of G. L. c. 151B. Conway v. Electro Switch Corp., 825 F.2d 593, 601 (1st Cir. 1987). College-Town, Div. of Interco, Inc. v. MCAD, 400 Mass. 156, 170 (1987). In particular, Complainants are entitled to monetary damages in compensation for the emotional distress they suffered as a direct and probable result of Respondent's unlawful conduct. Stonehill College, 441 Mass. at 575-576; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 181-182 (1985). "Emotional distress damage awards, when made, should be fair and reasonable, and proportionate to the distress suffered." Stonehill College, 441 Mass. at 576. In Stonehill College, the court listed the following factors that should be considered when making awards of such damages: "(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 has attempted to mitigate the harm (e.g., by counseling or by taking medication)." *Id.*

⁷ Based on the evidence in the record, it appears reasonably certain that Complainants would have been able to establish a claim for unlawful retaliation in violation of M.G.L. c. 151B, § 4(4) against both Hillside and Jones a result of Jones' purported termination of the Complainants employment. However, Complainants did not assert such a claim.

a. Sheila Cooper

I credited Cooper's testimony that the hostile work environment created by Jones' unlawful harassment directly impacted her emotional well being and caused her significant emotional distress. As stated above, I found that Jones engaged in particularly loathsome physical and verbal conduct of a sexual nature and made frequent highly offensive racial remarks. He also threatened Cooper and the other Complainants with termination if they complained about his conduct and actually told them they were fired, when he discovered they were meeting to discuss his conduct. Cooper testified credibly that Jones conduct made her feel miserable, anxious, and nauseous. She testified that she suffered physical symptoms resulting from her work related stress such as her hair falling out and developing migraine headaches. She was unable to continue to breast feed her son, and the stress adversely effected her menstrual cycle. The work-related stress Cooper endured also caused her blood pressure to soar, requiring her to seek medical treatment. Although Cooper did not specifically address the duration of her distress, she did attempt to mitigate the harm by seeking counseling for a period of time and appropriate medical treatment for her physical symptoms. She sought treatment from a social worker/therapist, who she saw weekly over a period of two months. Cooper claimed that she stopped seeing a therapist because she no longer had health insurance and could not afford to pay on her own for further treatment. With respect to the impact on her family life and daily routines, Cooper testified credibly that the stress of a hostile work environment caused her to frequently lose patience with her children and made it extremely difficult for her to get out of bed in the morning and face going to work.

Based on her credible testimony, I conclude that Sheila Cooper is entitled to an award of damages for emotional distress in the amount of \$75,000.

b. Tammi Morrell

As with Cooper, I credited Morrell's testimony that she suffered significant emotional distress as a direct and probable result of Jones' severe and pervasive sexual and racial harassment. Morrell claimed that as a result of Jones' conduct, she became ill. For example, she testified that as she approached the worksite in the morning, she began experiencing stomach pains. Morrell also testified that stress caused by Jones' conduct, caused her hair to fall out, caused her to develop headaches, and resulted in uncontrollable bouts of crying. She claimed she broke down in tears "all the time" on her way home from work and became "a total wreck". Since Jones threatened the Complainants with termination if they ever went "above his head," she was afraid to complain and was constantly nervous and scared she would lose her job. She testified that the stress affected her family life causing her to argue with her husband more frequently. Morrell did not provide specific evidence regarding the duration of her emotional distress. Additionally, Morrell made no apparent attempt to mitigate her physical and emotional distress by obtaining appropriate medical treatment or counseling. Based on her credible testimony, I conclude that Tammi Morrell is entitled to an award of \$50,000 in emotional distress damages.

c. Raymond Bernard

I likewise credited Bernard's testimony that Jones' frequent racially offensive remarks caused him significant emotional distress. He claimed that prior to Jones being hired; he enjoyed working at Respondent and looked forward to arriving at work. After

Jones was hired, he no longer wanted to come to work and purposefully avoided getting to work early. Bernard stated that Jones made him feel that he was always “walking on egg shells” and that he could be fired for anything he did wrong. Bernard claimed the stress related to Jones’ racist and offensive conduct caused him to develop headaches, to lose weight, and impacted his ability to sleep. He testified that being stressed at work adversely impacted his ability to relate to clients. With respect to the impact on his personal life, Bernard stated that he stayed home more often and no longer wanted to socialize with his friends. He also claimed that the stress of a hostile work environment, caused him to become short-tempered with his daughters, and constantly bicker with his girlfriend. Bernard similarly did not provide any evidence regarding the duration of his emotional distress. Moreover, he did not attempt to mitigate his emotional distress by seeking appropriate treatment with a mental health profession, although he did seek medical treatment for his headaches and sleeping difficulties. Based on these findings, I find that Bernard Cooper is entitled to an award of \$40,000 in emotional distress damages.

V. CIVIL PENALTY

M.G.L. c. 151B, § 5 provides that in the event the Commission finds a respondent has engaged in unlawful conduct prohibited by this chapter, “it may, in addition to any other action which it may take under this section, assess a civil penalty.” I believe a civil penalty is appropriate in this case given the egregious nature of Jones conduct and Hillside’s failure to address the conduct and ensure that it ceased. In particular, Hillside permitted Jones’ severe and pervasive harassment to continue even after it was on notice of Complainants’ concerns. Respondent failed to conduct an adequate investigation into

their complaints or take any appropriate remedial action against Jones. Moreover, the record clearly reflects that from the outset of these proceedings, Respondent failed to take Complainants' charges seriously. I credited the Complainants' testimony that after Sapp received the MCAD complaints, he threatened on behalf of Respondent to drag these matters out for 10 years.⁸ Subsequently, after a considerable period of time had elapsed, Respondent had a secretary prepare its position statements without conducting any investigation into the factual allegations raised in the complaints. Thus, the evidence in the record strongly supports the conclusion that Respondent purposefully ignored, frustrated or delayed the processing of this case by the Commission. For these reasons, I hereby assess a civil penalty against Respondent in the amount of \$10,000.

VI. ORDER

Based on the foregoing findings of fact and conclusions of law, I hereby issue the following order:

1. Respondents Hillside Resources Management Corp. and F. Michael Jones shall pay Complainant, Sheila Cooper, within 60 days of receipt of this decision, the sum of \$75,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
2. Respondents Hillside Resources Management Corp. and F. Michael Jones shall pay Complainant, Tammi Morrell within 60 days of receipt of this

⁸ Ironically and unfortunately, Sapp's forecast with respect to the duration of this matter turned out to be nearly correct.

decision, the sum of \$50,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

3. Respondents Hillside Resources Management Corp. and F. Michael Jones shall pay Complainant, Raymond Bernard within 60 days of receipt of this decision, the sum of \$40,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
4. Respondent Hillside Resources Management Corp. shall pay the Commission, within 60 days of receipt of this decision, a civil penalty in the amount of \$10,000.00.
5. Respondent Hillside Resources Management Corp. shall conduct annual training sessions on unlawful sexual and racial harassment for all employees, managers, and supervisors employed by Respondent. With respect to such training:
 - a. Each training session for employees must be at least three (3) hours in length; and each training session for managers and supervisors must be at least six (6) hours in length. All managers, supervisors, and employees, as of the date of the training session, are required to attend. No more than twenty-five (25) persons may attend each training session. Respondent

shall repeat this training, once each calendar year for the next five (5) years, for all new supervisors, managers, and employees who were hired or promoted after the date of the initial training session.

- b. Within thirty (30) days of the receipt of this decision, Respondent shall notify the Commission's Director of Training of its decision to select either the Commission or a private trainer to conduct the initial training sessions. If a private trainer is selected, the trainer must be selected from the list of trainers who have completed the Commission-certified discrimination prevention-training program, available from the Commission's Director of Training. Within one week of Respondent's selection of a trainer, a copy of this hearing decision must be forwarded to the trainer for his or her review.
 - i. If Respondent has selected a private trainer to conduct the initial training sessions, at least one month prior to the training date, Respondent must submit a draft training agenda to the Commission's Director of Training for approval; and, provide the Director of Training with one-month's advance notice of the training date(s) and location(s). If the Commission decides to send a representative to observe the training sessions, Respondent will provide the Commission representative with unfettered access to the training sessions. Within one month after the completion of the training, Respondent must submit documentation of compliance to the Commission's Director of Training, signed by the trainer,

identifying the training topic, the names of persons required to attend the training as identified in paragraph (a) above, the names of the persons who attended each training session, and the date and time of each training session.

- c. For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.

6. The parties shall notify the Clerk of the Commission as soon as the above-described ordered payments have been made. If Respondent fails to comply with the terms of this Order within the time periods allotted, Complainant is instructed to immediately notify the Clerk of the Commission.

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 ten (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 30th day of August, 2006.

EDWARD R. MITNICK
Hearing Officer