

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
ROBERT WELCH,  
Complainant

v.

DOCKET NO. 00-SEM-0256

TRANS-LEASE GROUP, INC.,  
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Edward R. Mitnick in favor of Complainant Robert Welch. Following an evidentiary hearing, the Hearing Officer concluded that Respondent Trans-Lease Group, Inc. was liable for unlawful discrimination on the basis of handicap in violation of M.G.L. Chapter 151B section 4(16). Respondent filed an 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 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 review 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.

#### ATTORNEYS' FEES AND COSTS

Having affirmed the Hearing Officer's decision, we conclude that Complainant is entitled to an award of reasonable attorneys' fees and costs. See M.G.L. Chapter 151B, section 5. Complainant has filed a petition seeking attorneys' fees and costs supported by detailed contemporaneous time records. Complainant requests reimbursement for fees in the amount of \$16,125.00 and costs in the amount of \$232.18.

##### A. FEES

Having affirmed the Hearing Officer's decision in favor of the Complainant, we conclude that the Complainant has prevailed in this matter and is entitled to an award of reasonable attorneys' fees and costs. See M.G.L. c. 151B, Section 5. The determination of what is a reasonable fee is one that the Commission approaches utilizing its discretion and its

understanding of the litigation of a claim of discrimination in the administrative forum of the Commission Against Discrimination.

In reaching a determination of what is a reasonable fee, the Commission has adopted the lodestar method for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). This method requires the Commission to undertake a two-step analysis. First, the Commission will calculate the number of hours reasonably expended to litigate the claim and then multiply that number by an hourly rate considered to be reasonable. Second, the Commission will examine the resulting figure, known as the “lodestar”, and adjust it either upward or downward or not at all depending on various factors.

A calculation of the hours reasonably expended involves separating out work done in relation to the individual doing the work (e.g., senior partner, junior associates, and paralegal). Time beyond that consistent with a standard of reasonable efficiency and productivity is eliminated. Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours that are insufficiently documented. Grendel’s Den v. Larkin, 749 F.2d 945 (1<sup>st</sup> Cir.); Miles v. Samson, 675 F. 2d5 (1<sup>st</sup> Cir. 1982); Brown v. City of Salem, 14 MDLR 1365 (1992)

The Commission’s efforts to determine the number of hours reasonably expended will involve more than simply adding all hours expended by all personnel. The Commission carefully reviews the Complainant’s submission and will not simply accept the proffered number of hours as “reasonable.” *See e.g.*, Baird v. Belloti, 616 F. Supp. 6 (D. Mass. 1984).

Complainant seeks reimbursement for 64.5 hours of work performed by counsel at an hourly rate of \$250.00. Having reviewed the contemporaneous time records that support the attorneys' fees request, we conclude that the amount of time spent on preparation and litigation of this claim is reasonable. Our review points to no evidence that the hours spent

were duplicative, unproductive, excessive or otherwise unnecessary to the prosecution of this claim. Furthermore, all hours for work performed are sufficiently documented. We also conclude that the hourly rate of Complainant's counsel is consistent with rates customarily charged by individuals with comparable expertise and experience in employment law cases in the same geographic region. We therefore award Complainant reimbursement of fees in the amount of \$16,125.00, which is the amount requested.

**B. COSTS**

Having found that the request for costs is reasonable and adequately documented, we award Complainant costs in the amount of \$232.18.

**ORDER**

The Respondent's appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer is affirmed in its entirety. It is hereby ordered that:

1. Within forty-five (45) days of receipt of this decision, Respondent shall pay to Complainant the amount of \$64,691.00 in back pay with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made.

2. Within forty-five (45) days of receipt of this decision, Respondent shall pay to the Commonwealth of Massachusetts the sum of \$10,000.00 as a civil penalty. Payment shall be forwarded to the Clerk of the Commission.

3. Within forty-five (45) days of receipt of this decision, Respondent shall pay to Complainant the amount of \$16,125.00 in attorneys' fees and \$232.18 in costs.

4. Respondent shall conduct basic annual training sessions on unlawful disability discrimination for all managers and supervisors, including any employees vested with supervisory authority. The specific requirements of such training are outlined in detail in the Hearing Officer's Decision of October 12, 2004 and are hereby incorporated into this Order by reference.

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 noncomplying 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 in superior court seeking judicial review in accordance with M.G.L. c.30A, c.151B, s.6, and the 1996 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 thirty (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, s.6.

SO ORDERED this 31<sup>st</sup> day of May, 2005.

\_\_\_\_\_  
Walter J. Sullivan, Jr.  
Commissioner

\_\_\_\_\_  
Cynthia A. Tucker<sup>1</sup>  
Commissioner

\_\_\_\_\_  
<sup>1</sup> Investigating Commissioner sitting by necessity to establish a quorum. See G.L. c.6, s. 56 & G.L. c.151B, s.5.