

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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ROCHELLE JOHNSON,  
Complainant  
v.  
ECONOLOGDE OF STURBRIDGE  
and GEORGE CROMPTON,  
Respondent  
\_\_\_\_\_

DOCKET NO. 96-BPA-3908

DECISION OF THE FULL COMMISSION

This matter comes before us on appeal by the Respondents following a decision of Hearing Officer Judith E. Kaplan in favor of Complainant. After an evidentiary hearing, the Hearing Officer concluded that Respondents violated M.G.L. c. 272, Sec. 98 and c. 151B by refusing to rent a motel room to Complainant because of her race and color. Respondents filed a timely appeal.

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, s. 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 to weigh the evidence when deciding disputed questions of fact. 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 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).

Respondents' contend that the decision of the Hearing Officer was not based on substantial evidence and was erroneous as a matter of law. Further, Respondents argue that the Hearing Officer's emotional distress award was error. We have carefully reviewed Respondents' 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 \$22,900.00 and costs in the amount of \$543.00. M.G.L. c. 151B allows a prevailing Complainant to recover attorneys' fees. 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 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 \$22,900.00, an amount representing 114.5 hours at an hourly fee of \$200.00. To support her claim for attorneys' fees, Complainant's counsel submitted contemporaneous time records outlining the work performed. 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 claim.

Complainant's counsel charged an hourly rate of \$200.00 over the course of this litigation. The rate charged by Complainant's counsel is consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases. They are also well within the rates charged 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 \$22,900.

## COSTS

Complainant's counsel also seeks costs in the amount of \$543.00. 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) Respondents shall immediately cease and desist from discriminating on the basis of race and color.
- (2) Within forty-five (45) days of receipt of this Order, Respondents shall pay the Complainant \$25,000.00 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.
- (3) Within forty-five (45) days of receipt of this Order, Respondents shall pay Complainant's attorney's fees in the amount of \$22,900.00 and costs in the amount of \$543.00.
- (4) 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