

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

SHELLY NEUMANN, ALYSSA PATRYN,  
and MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION,  
Complainants

v.

Docket Nos. 99-SEM-0322

RED ROCKS PIZZA, EFTHIMIOS RIZOS,  
and ANTONIOS RIZOS,  
Respondents

**ORDER OF THE HEARING OFFICER UPON REMAND FROM SUPERIOR  
COURT**

This matter comes before me upon a remand from the Superior Court (Rup, J.) with the instruction that I reconsider the award of damages for emotional distress and make findings of fact consistent with decision of the Supreme Judicial Court in Stonehill College v. MCAD, 441 Mass. 549, 575-577 (2004).

By way of background, on April 25, 1999, Complainant Shelly Neumann (“Neumann”) filed a complaint with the Massachusetts Commission Against Discrimination (the “Commission”) claiming that her former employers, Red Rocks Pizza,<sup>1</sup> Efthimios Rizos, and Antonios Rizos, subjected her to unlawful sexual harassment and retaliation in violation of M.G.L. c. 151B, §§ 4(1), (4), and (16A).<sup>2</sup>

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<sup>1</sup> The parties stipulated that Complainants were employed by A.E.K. Enterprises, Inc., doing business as “Red Rocks Pizza.” To maintain consistency with the pleadings, A.E.K Enterprises, Inc., shall be referred to as “Red Rocks” or “Respondent”, for purposes of this decision. Red Rocks, Efthimios Rizos, and Antonios Rizos shall be referred to collectively as “Respondents.”

<sup>2</sup> Neumann’s case was consolidated with the claim of Alyssa Patryn (“Patryn”), who filed a similar complaint against Respondents (MCAD No. 992300278) that likewise alleged Respondents had engaged in unlawful sexual harassment and retaliation. The cases were consolidated for investigatory and evidentiary purposes as well as for public hearing. *See, Neumann v. Red Rocks Pizza*, 25 MDLR 268, 268 (2003).

On January 23, 2003, the parties appeared before me for a Public Hearing. On August 22, 2003, I concluded that Respondents engaged in unlawful retaliation in violation of M.G.L. c. 151B, § 4(4); and, ordered Respondents to pay Neumann the amount of \$4,800.00 in back pay, and the amount of \$15,000.00 in emotional distress damages. 25 MDLR at 276-277. On December 10, 2003, the Full Commission affirmed the findings of fact, conclusions of law and order of the Hearing Officer. 25 MDLR 455, 455-256.

Respondents appealed the decision of the Commission to the Superior Court.<sup>3</sup> On September 29, 2005, upon [Respondent's] Motion for Judgment on the Pleadings, the Superior Court affirmed the decision of the Commission with respect to the compensatory damages awarded to Neumann; and, remanded the case back to the Commission solely to address the issue of the emotional distress damages award. In particular, the Superior Court found that under the standard for emotional distress awards enunciated in Stonehill, 441, Mass. at 565, the Hearing Officer's decision failed to provide specific evidence of any emotional injury caused to Neumann by the Respondents' actions. Consequently, the Superior Court remanded this portion of Neumann's case "for further findings of fact regarding Neumann's emotional distress damages with specific attention to the factors set forth in Stonehill."

In addressing the concerns of the Superior Court, I have considered the entire record, including the testimony and exhibits introduced at hearing, and the stipulations of

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With respect to Patryn's claim, the Commission found that Respondents had engaged in both unlawful sexual harassment and retaliation and awarded Patryn \$3,000 in back pay and \$30,000 in emotional distress damages. On Appeal, the Superior Court affirmed all aspects of Commission's decision with respect to Patryn's claim.

<sup>3</sup> Efthimios Rizos, Antonios Rizos, A.E.K. Enterprises, Inc. d/b/a Red Rock Pizza v. Shelly Neumann, Alyssa Patryn, Massachusetts Commission Against Discrimination, Hampshire County, civil docket no. HSCV2004-00004.

the parties. I have likewise considered the proposed Findings of Fact and Conclusions of Law submitted by the parties after the Public Hearing. After reviewing this matter, and for the reasons stated below, I believe the award of \$15,000 in emotional distress damages was appropriate.

In Stonehill, the court listed the following factors that should be considered in determining an appropriate award for emotional distress 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).” 441 Mass. at 576. Additionally, the court in Stonehill emphasized:

Emotional distress damage awards, when made, should be fair and reasonable, and proportionate to the distress suffered. Each award should be case specific and should not be determined by formula or by precise reference points. While evidence in the form of some physical manifestation of the emotional distress, or evidence in the form of expert testimony, is not necessary to obtain an award, such evidence certainly would be beneficial. An award must rest on substantial evidence and its factual basis must be made clear on the record... In addition, complainants must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress... Emotional distress existing from circumstances other than the actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable.

As described in detail in my initial decision, I found that Respondents engaged in unlawful retaliation when they terminated Neumann shortly after she complained to the Commission and the Southampton Police Department about both the alleged assault upon her by Efthimios Rizos and her belief that Respondents subjected her to unlawful sexual harassment. However, I also concluded that Neumann had failed to establish her underlying claims of quid pro quo or hostile work environment sexual harassment. Thus, for purposes of assessing an appropriate award of emotional distress damages related to

the unlawful retaliation, the distress attributable to unsuccessful harassment claims must be separated and distinguished from the distress directly and probably caused by the unlawful termination.<sup>4</sup>

With respect to the emotional distress directly and probably caused by the unlawful retaliation, I credited Neumann's testimony that she became extremely upset over the loss of her job. As stated in my initial decision, Respondents wrongfully terminated her employment in a demeaning and obviously retaliatory fashion in response to her filing her own claim as well as for defending and protecting her young co-complainant, Alyssa Patryn. Although Neumann did not provide any specific evidence regarding the duration of her distress or her attempts to mitigate the harm by, for example, seeking counseling, she testified credibly that Respondents actions made her feel particularly degraded and hurtful. She also testified credibly regarding the significant financial strain she suffered after Respondent's wrongfully terminated her employment. I credited her testimony that it took her a substantial amount of time to find a comparable job because she needed to take care of her two children and, thus, had limited time to look for work. She also testified credibly that she went to six or seven prospective employers, but they would not hire her because they heard she had been fired from Red Rocks. She stated that to make ends meet, she started doing side jobs, such as painting, pruning, or day care. I also credited Neumann's testimony that she made significantly less in wages until approximately nine months later when she started to earn wages comparable to those she received at Red Rocks. Under these circumstances, I believe Neumann is entitled to an award of \$15,000 in emotional distress damages.

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<sup>4</sup> For example, Neumann testified that immediately after the alleged sexual assault, she was extremely upset and shaking.

For the aforementioned reasons, it is hereby ORDERED, that the award dated August 22, 2003 shall remain in full force and effect.

So Ordered this 13<sup>th</sup> day of March 2006.

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Edward R. Mitnick  
Hearing Officer