

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and RAYMOND BERNARD,
TAMARA MORRELL and SHEILA
COOPER,
Complainants

v.

DOCKET NO. 97-BEM-3358
97-BEM-3361
97-BEM-3363

HILLSIDE RESOURCES
MANAGEMENT CORP. &
F. MICHAEL JONES

Respondents

ORDER OF THE FULL COMMISSION

On August 30, 2006, Hearing Officer, Edward Mitnick, issued a decision in favor of the Complainants in the above-entitled matter, awarding a total of \$165,000 in damages to the three Complainants with interest thereon at the rate of 12% per annum from the date the complaints were filed. The Hearing Officer also assessed a civil penalty against Respondents in the amount of \$10,000, and ordered Respondents to conduct comprehensive training. Respondents were duly notified of the decision and their right of appeal to the Full Commission. On September 8, 2006, Respondents filed a notice of appeal to the Full Commission and a Motion to Stay.

The Commission's Rules of Procedure at 804 C.M.R. 1.23(1)(a) require that, in addition to a Notice of Appeal, an aggrieved party must file a Petition for Review within 30 days of receipt of the decision of the hearing officer, setting forth:

1. facts showing the appellant to be aggrieved;
2. all matters alleged to have been erroneously decided;
3. all other matters on which the appellant relies and;
4. the relief to which the appellant believes he is entitled, which relief may be requested in the alternative.

Respondents have failed to file a timely Petition for Review as required by 804 C.M.R. 1.23. As a result of this failure to perfect their appeal in accordance with Commission regulations, the appeal of Respondents is hereby dismissed. Accordingly, the decision of the hearing officer is final and binding.

ATTORNEY'S FEES

Having prevailed before the Commission, the Complainants are entitled to an award for attorney's fees. On September 8, 2006, Complainant's counsel, Daniel J. Finn, submitted a Petition for Fees and Costs which is supported by an affidavit and contemporaneous time records. Complainants seek \$66,324.50 in legal fees and \$1,945.42 in costs.

The determination of whether a fee sought is reasonable is one that the Commission approaches utilizing its discretion and its understanding of the litigation and of the time and resources required to litigate a claim of discrimination in the administrative forum. In reaching a determination of what is a reasonable fee, the Commission has adopted the lodestar methodology for fee computation. See Fontaine v. EBTEC Corp., 415 Mass. 309, 324 (1993). By this method, the Commission will first calculate the number of hours reasonable expended to litigate the claim and multiply that number by a reasonable hourly rate. Baker v. Winchester School Committee, 14 MDLR 1097 (1992).

The Commission's efforts to determine the number of hours reasonably expended will involve more than simply adding all hours expended by all identified personnel. The Commission carefully reviews the submission by Complainant's counsel and will not merely accept the proffered number of hours as "reasonable." See, e.g., Baird v. Bellotti, 616 F. Supp. 6 (D. Mass. 1984). Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to the prosecution of the claim are subtracted, as are hours that are insufficiently documented. See, e.g., Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir. 1984); Brown v. City of Salem, 14 MDLR 1365 (1992).

The Complainant's counsel is seeking reimbursement for 244.55 hours of legal time at the rates of \$175 per hour for the years of 1997 and 1998; \$200 per hour for the years 1999 and 2000; \$225 for the years 2001-2004; \$265 for the year 2004 and \$300 commencing in 2005 and thereafter. The Commission finds these hourly rates to be reasonable and well within the average hourly rate charged by Counsel's counterparts in the area with similar experience.

Only those hours that are reasonably expended are subject to compensation under M.G.L. c.151B. In determining whether hours are compensable, the Commission will consider the time records maintained by counsel and will review both the hours expended and tasks involved. The Complainant's petition notes that Counsel essentially had to try three separate cases, as material differences in the cases of each complainant had to be addressed, and each complainant had to be individually prepared for direct and cross examinations. In addition, these cases were initiated in 1997 and not completed until 2006, a period of nine years.

We have reviewed Counsel's contemporaneous time records and we find the amount of time spent in preparing and litigating these matters to be fair and reasonable and sufficiently documented. We find no hours that appear duplicative, unproductive, excessive or otherwise unnecessary to the prosecution of the claims. Therefore we award attorneys fees in the amount of \$66, 324.50.

We have also reviewed the request for costs and find the request to be sufficiently documented. We find that the costs sought are reasonable and award costs in the amount of \$1945.42.

ORDER

For the reasons set forth above, we hereby dismiss the appeal of Respondents to the Full Commission. The Order of the Hearing Officer shall stand as final and binding. In addition to the remedies and relief Ordered by the Hearing Officer, the Respondents are hereby ordered to:

(1) Pay to Complainants attorneys fees in the amount of \$66,324.50 within 60 days of receipt of this order.

(2) Pay to Complainants fees in the amount of \$1945.42 for costs within 60 days of receipt of this order.

So Ordered this 21st day of September, 2007,

Walter J. Sullivan, Jr.
Chairman

Martin S. Ebel
Commissioner

