

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

TANYA E. MONTGOMERY &)	
MASSACHUSETTS COMMISSION)	
AGAINST DISCRIMINATION)	
Complainant)	
)	
v.)	Docket No. 99-BEM-2282
)	
)	
CITIZENS BANK)	
Respondent)	

Appearances:

Lewis S. Victor, Esq., for Complainant Tanya E. Montgomery
Brian H. Lamkin, Esq., and Mark B. Dubnoff, Esq., for
Respondent Citizens Bank

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 23, 1999, Complainant Tanya E. Montgomery filed a complaint with the Massachusetts Commission Against Discrimination (hereafter: the Commission). The complaint charged Citizens Bank (hereafter: "Respondent") with discrimination based on Complainant's race and color (African-American) in violation of Massachusetts General Laws, Chapter 151B, §4, paragraph 1. Complainant alleged that Respondent discriminated against her when it did not promote her to a manager position at its Quincy Star Market branch in or about June 1999. (Complaint, dated August 23, 1999).

Attempts to conciliate this matter were unsuccessful. On December 20, 2001, Investigating Commissioner Walter J. Sullivan, Jr., certified this case for a public hearing on the following issue: "Whether Respondent discriminated against Complainant on the basis of her race and/or color in violation of G.L. c. 151B, by failing to promote her to the position of Branch Manager."

I held a public hearing in this case on May 27 and 28, 2003. On August 1, 2003, Respondent filed its post-hearing brief with proposed findings of fact and conclusions of law with the Commission.¹

I have carefully reviewed and considered the entire record before me, including the testimony, all exhibits, proposed findings of fact, conclusions of law and supporting argument. To the extent the proposed findings and conclusions of law are not in accord with my findings and conclusions, they are rejected. I have omitted certain proposed findings and conclusions of law as not relevant or unnecessary to a proper determination of the material issues presented. I have modified other findings and conclusions of law to render them acceptable. Based on the credible evidence in the public hearing record and reasonable inferences drawn therefrom, I make the following findings of fact, conclusions of law and order.

¹Complainant did not file her proposed findings of fact and conclusions of law with the Commission by the date of this decision. On September 24, 2004, Complainant submitted two newspaper articles regarding another Commission case involving Respondent. These submissions are not part of the hearing record and I have not reviewed nor considered them as part of my decision.

II. Findings of Fact

1. Complainant lives in Brockton, Massachusetts, with her spouse and one child. Complainant is an African-American female.

(Joint Stipulation No. 1).

2. In December 1990, Complainant received an associate's degree in business from Allegheny Community College in Pittsburgh, Pennsylvania.

(Joint Exhibit No. 1).

3. Respondent Citizens Bank currently operates approximately 140 full-service bank branches that are typically located in the front or check-out areas of Shaw's, Star Market and Stop & Shop grocery stores. The in-store program began in the mid-1990s and had grown to approximately 48 in-store branches by 1999. At all

times relevant to the instant complaint, Respondent was an employer within the meaning of General Laws, Chapter 151B, §1, paragraph 5. (Joint Stipulation No. 2).

4. John A. Carney currently manages retail banking for Bank One in Dallas, Texas. During the time period relevant to the instant complaint, Carney was a regional manager who was assigned to Respondent's service region that included the Quincy branch. Carney voluntarily left his employment at Respondent in December 2001.

5. Maria Tedesco has worked for Respondent for the past nine years. During the time period relevant to the instant complaint, Tedesco served as Respondent's director of in-store banking.

6. Respondent's full-service in-store branches differed from its traditional bank branches because they are designed to market and sell bank products to customers who shopped in grocery stores. Tedesco testified that Respondent originally looked for individuals who had prior retail sales and banking experience to work at the in-store branches. Carney testified that the primary or preferred qualifications for branch manager positions included some management experience, leadership ability, supervisory experience handling customer service issues and a sales and retail background. By 1998 and 1999, Respondent had established an extensive internal training program to teach "banking" to employees who had prior retail experience but little or no banking experience. I credit the testimony of Carney and Tedesco.

7. Suzanne Howley is currently a branch manager for the Salem Five Cents Savings Bank in Swampscott, Massachusetts. Howley worked for Respondent as an assistant, branch and regional manager from 1994 until September 2002. During the time period relevant to the instant complaint, Howley was the Allston branch manager and reported directly to Carney.

Complainant's Work History at Respondent

8. On May 12, 1997, Respondent hired Complainant to work as a full-time, in-store sales associate-an entry-level position-in its Norwood branch office, effective on June 2, 1997. (Joint Stipulation No. 3; Joint Exhibit No. 2). Complainant's starting salary was \$10.82 an hour. (Joint Stipulation No. 4; Joint Exhibit Nos. 2 and 3).

9. As a sales associate, Complainant completed teller

transactions, opened new accounts, made equity loans, provided customer service and solicited new business. Complainant was also responsible for meeting her personal sales productivity and customer service standards. Immediately prior to working for Respondent, Complainant worked as a cashier and a financial assistant but had not worked in a retail banking position. Complainant did not have any management experience and had not supervised any employees prior to working for Respondent. (Joint Exhibit No. 1).

10. In early July 1997, Respondent transferred Complainant to its in-store branch at the Star Market in Quincy, Massachusetts (hereafter: the "Quincy branch"). (Joint Stipulation No. 5). When Complainant began working at the Quincy branch, there was no assigned branch manager. In August 1997, Respondent hired Tim Buckeridge as the Quincy branch manager and Charles Tucci as the assistant manager. At all times relevant to this complaint, Buckeridge reported directly to Carney.

11. Carney testified that the Quincy branch was similar to Respondent's other in-store branches except that it completed 20% more over-the-counter transactions such as deposits or check cashing than other branches. Respondent also hired bilingual employees in the Quincy branch because it had more Asian- and Spanish-speaking customers than other branches.

12. On July 27, 1998, Carney promoted Complainant to a salaried assistant manager position at the Quincy branch. (Joint Stipulation No. 6; Joint Exhibit No. 3). Based on her promotion, Respondent increased Complainant's annual salary by 18%, or \$4,095.00. (Joint Stipulation No. 3; Joint Exhibit No. 3).

13. When the assistant manager's position first became vacant in the Quincy branch, Complainant was not interested because it paid less than her sales' associate position and it was too stressful. Complainant testified that the Quincy branch "was like a revolving door." When Buckeridge offered the assistant manager position to Complainant, he and two other managers-- Nikki McCarthy and Tony Kepone--encouraged Complainant to accept it.

14. As an assistant manager, Complainant was responsible for the performance and goals of the entire branch and supervised branch employees. Complainant also handled the branch's operational and security issues, opened and closed the branch, managed money orders and ensured that the branch had a sufficient cash supply.

15. After Complainant had worked at the Quincy branch for approximately six to eight months, Buckeridge reported to Carney that she was motivated, a self-starter and a "real standout" on his team based on performance of her sales associates' duties and responsibilities. Buckeridge gave an overall rating of "1" or "consistently exceeds expectations" to Complainant on her annual performance review for the period covering October 1, 1997 to October 1, 1998. (Joint Exhibit No. 4). In the manager's comments, Buckeridge noted that, "Tanya is a candidate for promotion. She has exceeded performance expectations in every category. Tanya could have been hired as an assistant manager from the start and I believe will be a managers candidate in short order. Tanya leads by example as well as through expecting great performance from those around her." (Joint Exhibit No. 4).

16. In the fall of 1998, Respondent assigned Buckeridge to the branch manager position in its North Quincy Shaw's Market branch (hereafter: the "North Quincy Branch"). While Buckeridge served as the North Quincy branch manager, he remained ultimately responsible for overall management of the Quincy branch until approximately February 1999. During this time period, Buckeridge spent one day a week in the Quincy branch and was available to discuss office issues with Complainant. Carney also testified that he talked with Complainant several times during the spring of 1999 regarding branch issues such as understaffing.

17. Once Buckeridge assumed his full-time North Quincy branch manager duties, Respondent designated Complainant to be the acting Quincy branch manager. Complainant testified that she assumed additional duties as an acting branch manager such as supervising branch staff, opening and closing the Quincy branch, staff scheduling, assigning branch goals and attending branch managers' meetings. Complainant testified that she performed these additional duties until April 1999. I credit Complainant's testimony.

18. After Complainant assumed her assistant manager's position, Carney testified that Buckeridge told him that Complainant continued to meet or exceed her personal sales goals but that she was "challenged sometimes with leadership and with management of people and resolving things." Based on Buckeridge's feedback and his own observations, Carney determined that Complainant needed to develop her managerial and supervisory competencies to be considered for a promotion to a branch manager's position; specifically, Complainant had to improve her leadership skills and her ability to resolve

customer service and staff issues in a productive and professional manner. Carney also felt that Complainant had to improve her ability to effectively communicate, give direction and provide feedback to branch employees. Carney testified that, in March 1999, he considered Complainant to be a "promising employee with a lot of talent and ability" who lacked sufficient managerial skills at that time to handle the Quincy branch manager position on a permanent basis. I credit Carney's testimony.

19. Tedesco testified that, in 1998 and 1999, the typical career progression for managers was the sales associate, assistant manager and branch manager's positions. Tedesco also testified that some assistant managers participated in a customized management training program to improve their management and supervision skills. The assistant managers' program took six months to one year to complete depending on the assistant manager's experience and background. I credit Tedesco's testimony.

20. Tedesco and Carney testified that assistant managers were responsible for a branch's operations when the branch manager was unavailable. Tedesco also testified that, in 1998 and 1999, it was common for a branch manager to be out of a branch for an "appreciable" period of time because of growth in the in-store branches. Tedesco also testified that there were always a few branches that did not have a manager because of leaves of absence and resignations and a lack of suitable candidates "in the pipeline" for recruitment or training. I credit their testimony.

21. Tedesco testified that it was not Respondent's practice to

automatically promote an assistant manager when a branch manager position opened up. If there was no assistant manager who was "ready" to be a manager, Respondent trained one or assigned another manager to "oversee" the branch. Tedesco also testified that there were instances where Respondent held open a branch manager position with the expectation that an assistant manager would eventually fill it. Carney testified that, in 1998 and 1999, Respondent posted branch manager positions, looked for internal candidates and then considered external candidates. I credit the testimony of Tedesco and Carney.

22. On February 15, 1999, Respondent hired Scott Ross, a white male, for the Quincy branch manager's position. In May 1994, Ross graduated cum laude from the University of Connecticut, with a bachelor's degree in business administration. Prior to assuming the Quincy branch manager's position, Ross worked as a branch manager and loan officer for a little over one year at another Massachusetts bank and had three years of experience managing sports retail stores in Worcester, Massachusetts. (Joint Exhibit No. 11; Joint Stipulation No. 7). Tedesco did not have any involvement or role in hiring Ross.

23. Prior to February 1999, Buckeridge was the only employee of Respondent to whom Complainant had expressed an interest in being promoted to a branch manager's position. Complainant testified that Buckeridge told her that she should discuss her interest in a promotion with Carney. Complainant did not discuss a promotion with Carney at anytime prior to his hiring of Ross in February 1999. Rather than talking to Carney, Complainant testified that she chose to demonstrate her interest in a branch manager's position through her job performance. I credit Complainant's testimony.

24. Carney testified that Complainant approached him after a branch managers' meeting in May 1999 and told him that she was interested in the Quincy branch manager position. Complainant testified that Carney then told her that he could not give her a branch manager's position because she had not held her assistant manager's position for at least one year. Carney did not recall telling Complainant that she was not eligible for a branch manager's position because she had not held her assistant manager's position for at least one year. Complainant also testified that she asked Carney to be placed in a branch manager's position after two branch managers' meetings in May or June 1999. I credit Complainant's testimony.

25. Carney testified that, in 1998 and 1999, Respondent had an internal written policy that required employees to have at least one year of service time in their current positions before they were eligible for promotion within their departments or in an external department. Carney testified that Respondent occasionally made exceptions to its in-service policy based on an individual's prior management or industry experience or to address specific business-related needs of Respondent. I credit Carney's testimony.

26. On April 2, 1999, Ross voluntarily resigned from his employment at Respondent to return to his former employer. (Joint Stipulation No. 8). Ross' separation from Respondent was unrelated to his job performance.

27. Complainant reported directly to Carney after Ross left his position. Carney did not consider Complainant to replace Ross in April 1999 because he did not believe that Complainant had

made sufficient progress developing her management, supervisory and leadership skills.

28. In early 1999, Carney recommended Complainant for Respondent's training program that was designed for assistant managers who wanted to acquire additional skills and training. On April 2, 1999, Respondent selected Complainant to participate in this program along with 12 other assistant managers. The training program covered assistant managers from in-store and traditional branches. The program was scheduled to run 12 to 16 weeks, or from May 10, 1999 until September 15, 1999. (Joint Exhibit Nos. 6 and 9).

29. Sharon Marsh, a senior trainer, managed the assistant manager training program during the period that Complainant was enrolled in the program and conducted most of the training sessions. Marsh gave a monthly debriefing about the assistant manager training program during Tedesco's staff meetings with district and regional managers. Marsh gave very good feedback to Carney about the program and reported that most of the training participants were eager and willing to learn.

30. Carney testified that Marsh told him that she had difficulties with Complainant including two classes during which she seemed "frustrated, a little disgruntled" and challenged Marsh throughout the class. Carney also testified that Marsh reported to him that Complainant appeared unwilling to participate and made some unprofessional or inappropriate comments during classes.

31. Carney testified that he was surprised at Marsh's comments because she had authority, as Respondent's senior trainer, to

address such training issues directly with the participants. Carney also testified that he was concerned about Marsh's comments or observations because he recommended Complainant for the assistant manager training program to improve her leadership skills and ability to appropriately handle or resolve issues.

32. In or about June 1999, Carney hired Shakirudeen Adebimpe, an African-American male, for a branch manager's position following Adebimpe's interview with Tedesco and him. Prior to his employment with Respondent, Adebimpe worked as a sales associate, an assistant manager and a branch manager at Baybank, for approximately two years. In his Baybank branch manager's position, Adebimpe managed at least one traditional bank branch and two in-store bank branches. (Joint Stipulation Nos. 9 and 10). Adebimpe also completed a nine-month leadership development program while employed at Baybank.

33. Upon Adebimpe's hire, Carney offered him two options for placement: the Quincy or Dorchester in-store branches. Adebimpe chose the Dorchester branch because of travel time and he felt it would provide a more challenging career opportunity for him than the Quincy branch. (Joint Stipulation No. 10). Carney testified that he originally intended to place Adebimpe in the Quincy branch but decided that the Dorchester branch was a better fit. I credit Carney's testimony.

34. Adebimpe worked in the Dorchester branch until the end of December 1999 when Respondent selected him for the branch manager's position in the Easton branch. Adebimpe remained in the Easton branch until October 2001 when he assumed his current position as a regional manager for Respondent's south central region.

July 1999 Meeting at Bradford Village Inn

35. On July 21, 1999, Respondent held a regularly scheduled managers' meeting at the Bradford Village Inn. Complainant and Tedesco attended this meeting along with 30 to 60 other employees, including branch managers, "sales champions," and regional managers.² During the meeting, four selected managers shared their experiences with Respondent's sales' coaching program and discussed best management and operation practices at in-store branches.

36. Carney testified that it was not a common practice to invite assistant managers to the branch managers' meetings. Carney testified that he invited Complainant to attend these meetings because of her duties as acting Quincy branch manager and his belief that it would enhance her management development. I credit Carney's testimony.

37. During the "open forum" part of the managers' meeting, Complainant asked Tedesco various questions about her salary and position at the Quincy branch, including questions about why she did not receive certain pay and bonuses under Respondent's Ex\$Sell sales incentive program although she was an acting branch manager. Tedesco testified that she told Complainant to address her pay issues directly with Carney. Tedesco also testified that she felt that Complainant's questions were inappropriate, off the topic and out of context since she raised them during a general discussion of branch management issues. Tedesco also felt that Complainant's questions related solely to

² Sales champions are Respondent's employees who helped branch managers to become better sales managers.

her own situation. Immediately after the meeting, Tedesco told Carney that she felt Complainant's comments were inappropriate and that he should talk to her about her issues. I credit Tedesco's testimony.

38. Shortly after the conclusion of the managers' meeting, Carney met with Complainant in a private area for 20 minutes. Carney testified that he told Complainant that her questions or comments at the meeting were inappropriate and that she should have addressed her issues with him before the meeting. By the end of their meeting, Complainant became very upset, cried and told Carney that she was frustrated, disappointed and tired. Complainant also told Carney that she wanted to be a branch manager and that she deserved a branch manager's bonus, salary and incentives since she was working as a branch manager. Carney testified that he reminded Complainant that Respondent had worked with her to identify her performance areas that needed improvement and had enrolled her in the assistant managers' program to develop and improve her management skills. I credit Carney's testimony.

39. On the day after the Bedford Village meeting, Complainant left for a one week vacation in Pennsylvania. She did not speak with or attempt to speak with Carney about the branch manager's position until her performance review meeting on August 6, 1999.

40. On August 6, 1999, Carney met with Complainant for two hours to "deliver" her annual performance review for the period from July 1, 1998 to July 1, 1999. Carney testified that he gave the performance review to Complainant because Buckeridge had not given much direct supervision to Complainant during the prior three to five month period. Carney testified that he

prepared Complainant's annual and performance review based, in part, on Buckeridge's feedback and input, and that Buckeridge reviewed it before Carney gave it to Complainant. I credit Carney's testimony.

41. Carney gave Complainant an overall rating of "3" or "meets expectations" on her annual performance evaluation. Carney assigned a rating of "3" on Complainant's key responsibilities related to service, sales management, risk/operations management, accountability and community. He assigned Complainant a rating of "4" or "meets some expectations" on her key responsibility related to "people management." Carney also noted, in the appraisal, that he planned to assign Complainant to a strong mentoring manager to help her acquire and develop needed management skills. (Joint Exhibit No. 5). Based on Carney's evaluation, Complainant received a 3% merit salary increase. (Joint Exhibit No. 5).

42. Complainant disagreed with Carney's evaluation and did not sign it during their meeting. Complainant did not submit written comments or otherwise respond, in writing, to Carney's evaluation. (Joint Exhibit No. 5).

43. During their meeting on August 6, 1999, Carney testified that he told Complainant that she was not ready for a permanent branch manager position but that he would review her status in six months. Carney told Complainant that he would not hire anyone for the Quincy branch manager's position and would assign a successful branch manager to work with Complainant by sharing information and strategies on how to run the Quincy branch more effectively. Carney also testified that he told Complainant that he believed she would become a branch manager by the end of

1999 or early 2000 with additional experience and training. I credit Carney's testimony.

44. During the August 6, 1999 meeting, Carney also gave Complainant a memorandum outlining three actions he proposed for her to gain the "necessary skills and experience" to become a branch manager: (1) Complainant would continue in the assistant manager's training program; (2) Carney would pair Complainant with a strong mentoring branch manager while she continued to serve as the acting Quincy branch manager; (3) as a development opportunity, Carney invited Complainant to attend the scheduled twice monthly managers' meetings to discuss best practices and key challenges. (Joint Exhibit No. 7).

45. Complainant testified that she told Carney that the Quincy branch was not "running smoothly" as of August 6, 1999 because of unseasoned staff, overwhelming teller transactions, high sales goals, staff shortages and the office's location. I credit Complainant's testimony.

46. As of August 6, 1999, Complainant had approximately two months remaining in the assistant managers' training program.

47. Complainant did not attend a managers' meeting after August 6, 1999.

48. On August 23, 1999, Respondent increased Complainant's salary to \$13.17 per hour. (Joint Stipulation No. 11).

49. In August 1999, Carney paired Complainant with Howley whom he believed was his most senior manager and who had taken on leadership roles that required her to work outside of her

branch. Howley testified that Carney asked her to answer Complainant's general's questions if she needed help and to give her "some coaching" and feedback regarding her performance. Howley testified that she met Complainant at two assistant manager meetings and at least twice in the Quincy branch. During the meetings in the Quincy branch, Howley observed Complainant's performance of her day-to-day tasks with branch employees and customers. I credit Howley's testimony.

50. Howley testified that she observed that the Quincy branch was a "challenging" location that was extremely busy. Howley recommended to Complainant that she work with other branch managers to get more information about how they managed staff and customers. While Howley testified that Carney did not ask her to assess whether Complainant was ready for a promotion to a branch manager position, Howley believed Complainant needed more time to develop her management skills. Howley felt strongly that "[Respondent] would be setting her up to fail if we promoted her right away" because of the "intense" environment in the Quincy branch. I credit Howley's testimony.

51. Carney testified that Howley reported to him that she felt that Complainant had difficulty communicating and giving feedback to branch employees but that Complainant had demonstrated sufficient skills, knowledge and ability to successfully perform a branch manager's duties in the future. Carney testified that he still believed Complainant had the potential to become a branch manager by the end of 1999 despite Howley's observations. I credit Carney's testimony.

52. On November 22, 1999, Complainant resigned from her assistant manager's position at Respondent. (Joint Stipulation

No. 12; Joint Exhibit No. 8).

53. Complainant testified that she felt that she was "forced out" of her assistant manager's position at Respondent because she did not receive any assistance, was not paid overtime although she worked more than 40 hours a week and had an insufficient number of branch staff. Complainant testified that she was robbed on an unspecified date and that Respondent left her in the Quincy branch office by herself on several occasions even though they knew that she was fearful of being robbed. Complainant also testified that she could not sleep at night and woke up sweating because of the stress of managing the Quincy branch without adequate assistance. Complainant testified that she consulted a doctor who told her that she "was under a lot of stress," advised her to get some time off and find another position.

54. After the bank robbery, Complainant met once with a psychiatrist provided by Respondent. Complainant testified that she did not return to the psychiatrist because he wanted to talk about the robbery and she did not.

55. Since October or November 1999, Complainant has worked as an account representative at Wells Fargo Financial Corporation. Complainant's duties at Wells Fargo Financial include processing loan applications, rewriting first and second mortgages, handling equity lines and personal loans, performing cash transactions and providing customer service.

III. Conclusions of Law

General Laws, Chapter 151B, §4, paragraph one, provides that it shall be an unlawful practice for an employer, because of an individual's race, color and/or sex, to "refuse to hire or employ or to bar or to discharge from employment such individual, or to discriminate against such individual in compensation or terms, conditions or privileges of employment, unless based on a bona fide occupational qualification." In the absence of direct evidence of an unlawful motive based on Complainant's race, color and/or sex, as in this case, the Commission follows the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 972 (1973) and adopted by the Supreme Judicial Court in Wheelock v. Massachusetts Commission Against Discrimination, 371 Mass. 130 (1976).³ See also Sullivan v. Liberty Mutual Insurance Co., ___ Mass. ___ (2005); Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001)(Chapter 151B has four elements that an employee must prove to prevail on a claim of discrimination in employment: membership in a protected class, harm, discriminatory animus, and causation); Abramian v. President & Fellows of Harvard College, 432 Mass. 104 (2000); Wynn & Wynn v. Massachusetts Commission Against Discrimination, 431 Mass. 655, 665-666 (2000).

³Complainant may prove unlawful discrimination by either direct evidence or, indirectly, by circumstantial evidence such as evidence that the reasons articulated by the employer for its actions are false. See Wynn & Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655, 665-667 (2000)(direct evidence is evidence that "if believed, results in an inescapable, or least highly probable, inference that a forbidden bias was present in the workplace"); Price Waterhouse v. Hopkins, 490 U. S. 228, 247 (1989); Johansen v. NCR Contem, Inc., 30 Mass. App. Ct. 294, 301-302 (1991).

In this case, Complainant alleges that Respondent discriminated against her based on her race, color and/or sex⁴ when it did not promote her to the Quincy branch manager's position in June 1999. To establish a prima facie case of race, color and/or sex discrimination based on Respondent's failure to promote her, Complainant must prove by a preponderance of credible evidence that (1) she is a member of a protected class(es) based on her race, color and/or sex; (2) she applied and was qualified for the Quincy branch manager's position at issue in this complaint; (3) despite her qualifications, Respondent did not select Complainant for the position; (4) Respondent selected an individual for the position who was not of Complainant's protected class(es). See Abramian, 432 Mass. 107, 116-118 (2002); Claude & Massachusetts Commission Against Discrimination v. Massachusetts Department of Mental Retardation, ___ MDLR ___ (2005); Massachusetts Commission Against Discrimination & White v. Citizens Bank, 22 MDLR 221, 224 (2004); Gonzales v. Salem State College, 24 MDLR 219 (2002). See e.g., Puckett v. Commercial Aviation Services, 24 MDLR 77 (2002) (finding evidence of race discrimination when candidates outside of the complainant's protected category were selected for promotional opportunities that were denied to the complainant, a qualified candidate).

I find that Complainant has established a prima facie case of discrimination based on Respondent's failure to promote her to the Quincy branch manager's position in June 1999. First, as an African-American woman, Complainant is a member of a protected class(es) under Chapter 151B based on her race, color

⁴During her testimony, Complainant alleged that Respondent also discriminated against her based on her sex when it did not choose her for a branch manager's position. Accordingly, I have analyzed the instant complaint based on three protected classes: Complainant's race, color and sex.

and sex. Second, I find that Complainant first told Carney, in May or June 1999, that she was interested in a promotion to the Quincy branch manager's position.⁵ While there is a dispute about the level or quality of Complainant's overall managerial performance or skills, I find that Complainant has established, by credible evidence, that she met the minimum qualifications for the Quincy branch manager's position as shown by her satisfactory, ongoing performance as the acting Quincy branch manager beginning in the fall of 1998.⁶ Finally, Carney did not choose Complainant for the Quincy branch manager's position in June 1999, but instead he selected Adebimpe, an African-American male.⁷ (Joint Stipulation Nos. 9 and 10). Accordingly, I find that Complainant has established a prima facie case of discrimination based on her sex when Respondent did not choose her for the Quincy branch manager's position in June 1999. See Abramian, supra.; Claude, supra. Since Adebimpe is African-American, I also find that Complainant has not established a prima facie case of discrimination based on her race and color.

Once Complainant establishes a prima facie case of unlawful discrimination based on her sex, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason(s) for its

⁵There is no evidence that Complainant told Carney that she was interested in a promotion to the Quincy branch manager's position before Respondent hired Ross, Buckeridge's successor.

⁶While Carney testified regarding an alleged internal policy of Respondent that required its employees to spend at least one year in their current positions before they were eligible for a promotion, neither party submitted written documentation of such policy. In addition, there is no evidence that Carney relied on such policy when he did not select Complainant for the Quincy branch manager's position in June 1999 or that Respondent applied the purported policy in any other promotional opportunity.

⁷I reject Respondent's contention that it took no adverse employment action against Complainant because it did not fill the Quincy branch manager's position in June 1999 and agreed to hold it open for Complainant. I specifically find that Respondent offered the Quincy branch manager's position to Adebimpe in June 1999 after Complainant had already expressed her interest in the position. I also find that Respondent made its offer to hold open the Quincy branch manager's position in August 1999 and only after Adebimpe had rejected it.

failure to promote Complainant to the Quincy branch manager's position in June 1999. See Weber v. Community Teamwork, Inc., 434 Mass. 761, 768-769 (2001); Abramian, 432 Mass. at 116-118; Wynn & Wynn, 431 Mass. at 665. If Respondent meets its burden of production, Complainant must show by a preponderance of the evidence that Respondent "acted with a discriminatory intent, motive or state of mind." Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001). Complainant may meet this burden through circumstantial evidence including proof that "one or more of the reasons advanced by [Respondent] for making the adverse decision is false." Lipchitz, 434 Mass. at 504. Complainant retains the ultimate burden of proving that Respondent's failure to promote her was the result of an unlawful animus based on Complainant's sex. Id.; Abramian, 432 Mass. 117.

Respondent's articulated reason for not selecting Complainant for the promotion at issue was that she did not have sufficient leadership, supervisory and managerial skills to successfully manage the Quincy branch in June 1999. I credited Carney's testimony that he concluded, in late 1998 and early 1999, that Complainant had the potential to become a branch manager based on her performance as an assistant branch manager but that she needed more time to develop her overall managerial and supervisory competencies before he could promote her to a branch manager's position, especially in a busy and diverse office like the Quincy branch. I also credited Carney's testimony that Complainant had to improve her overall leadership, communication and problem solving skills with employees and customers to complement her sales abilities in early 1999. Accordingly, I find that Respondent has articulated a legitimate, non-discriminatory reason(s) for its failure to

promote Complainant to the Quincy branch manager's position in June 1999.

Since Respondent has met its burden of production of articulating a legitimate, nondiscriminatory reason(s) for not promoting Complainant, she must now establish by a preponderance of the evidence in the record that Respondent's proffered reason(s) was not the real reason for her non-promotion and that Respondent acted with a discriminatory intent, motive or state of mind based on her sex. See Lipchitz, 434 Mass. at 504; Blare v. Husky, 419 Mass. 437, 443 (1995). Complainant may meet this burden through circumstantial evidence including proof that "one or more of the reasons advanced by [Respondent] for making the adverse decision is false." Lipchitz, supra. Complainant retains the ultimate burden of proving that her non-promotion resulted from Respondent's discriminatory animus based on her sex. Id.; Abramian, 432 Mass. at 117.

Complainant has failed to meet her burden of proving that Respondent was motivated by a discriminatory animus based on her sex when it did not promote her to a branch manager's position in June 1999. Complainant did not produce any credible evidence to establish that Respondent's articulated reason was false or was not the real reason for its decision. To the contrary, the uncontroverted evidence in the record clearly shows that Carney developed a career development plan for Complainant, beginning in early 1999, to specifically improve her management and supervisory skills so that she could be considered for promotion to the Quincy branch manager's position in late 1999 or early 2000.

First, Carney recommended Complainant, in early 1999, for Respondent's assistant manager's training program to improve her management skills, enhance her professional development and prepare her for future career opportunities at Respondent, including a branch manager position.⁸ I note that Carney's recommendation and Complainant's acceptance into the assistant manager's training program took place prior to Complainant's expression of interest, in May 1999, regarding the Quincy branch manager's position.

Second, Carney gave Complainant an overall "satisfactory" rating on her 1999 annual performance rating and proposed two additional action steps, in August 1999, to supplement her continued participation in the assistant manager's training program: (1) establish a mentoring relationship between Complainant and Howley, an experienced in-store branch manager; (2) include Complainant in Respondent's twice monthly managers' meetings so that she could receive additional information regarding best management practices.⁹ I note that Carney proposed and implemented these additional steps despite Marsh's report of Complainant's "difficulties" during the training program and Tedesco's concerns about Complainant's inappropriate and unprofessional actions during the Bradford managers' meeting in July 1999. I also conclude that Carney's development plan for Complaint was consistent with his credible testimony that he told Complainant, in August 1999, that he intended to keep the

⁸While Complainant did not complete the training program, there is no evidence that her failure to complete the program resulted from any actions taken by Carney or any other Respondent manager or supervisor.

⁹Despite Carey's recommendation, Complainant did not attend a managers' meeting after August 1999. Complainant offered no evidence that her failure to attend these meetings resulted from any actions by a manager or supervisor of Respondent.

Quincy branch manager's position open until she was ready to successfully assume such duties—no later than 2000.

I find that Carney's testimony and observations about Complainant's management, supervisory and leadership skills that she needed to improve in June 1999 are also consistent with Complainant's performance reviews in 1998 and 1999, Carney's career development memorandum, dated August 6, 1999 and Howley's credible testimony regarding her assessment of Complainant's management and leadership skills. (Joint Exhibit Nos. 4, 5 and 7). I also find, based on the totality of the evidence in the record, that Adebimpe had management experience superior to Complainant's when Respondent chose him for the Quincy branch manager's position in June 1999. The uncontroverted evidence established that Adebimpe had at least two years of experience as an assistant manager and a branch manager in comparable in-store branches for Baybank and had completed its nine month leadership development program. Conversely, Complainant had less than one year of combined experience as an assistant manager and acting branch manager in June 1999 and had just started Respondent's assistant manager's training program in May 1999. In addition, Complainant had no supervisory or management experience before she began working at Respondent.

During her testimony, Complainant also alleged that she was "forced out" of her assistant manager's position because she did not receive adequate assistance, she was not paid overtime although she worked more than 40 hours per week and she had an insufficient number of employees in the Quincy branch.¹⁰ In this case, Complainant offered no evidence to support her allegations

¹⁰For purposes of my analysis, I'll assume that Complainant has alleged that Respondent subjected her to these workplace conditions because of her sex.

and concerns about the operations at the Quincy branch or that she was treated differently regarding such concerns because of her sex. Complainant did not produce any documents or memoranda describing her alleged complaints. I also find that Complainant did not prove that she discussed her workplace issues with Carney or any other manager or supervisor prior to her resignation or provided Respondent with an opportunity to address her concerns. In addition, Complainant did not cite or mention her concerns about the Quincy branch's operations and Respondent's alleged failure to resolve them in her resignation letter. (Joint Stipulation No. 12; Joint Exhibit No. 8). Even if Complainant had proved that she had these concerns, which she did not, I find that they are reasonably characterized as her general dissatisfaction with the workplace conditions and/or with conduct by Respondent that did not violate Chapter 151B, i.e., Complainant did not show that these conditions resulted from Respondent's alleged discriminatory animus based on her sex.

Finally, Complainant did not produce any information to show Respondent's workforce profile for branch manager positions, by gender, during the relevant time period. Complainant also failed to produce any information showing Respondent's pattern of promoting assistant managers to branch manager positions during the relevant time period.¹¹

For the reasons discussed above, Complainant has not persuaded me that Respondent's reasons for not promoting her were a pretext for unlawful discrimination based on her sex. I conclude, therefore, that Respondent did not engage in unlawful

¹¹I note that the listing of participants in Complainant's assistant managers' training program shows that 11 of 13 (85%) participants were female. (Joint Exhibit No. 6).

discrimination based on Complainant's sex when it did not promote her to the Quincy branch manager's position in June 1999.

IV. ORDER

Based on the foregoing findings of fact and conclusions of law, the complaint is hereby dismissed. This decision constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file a Notice of Appeal with the full Commission within ten (10) days of receipt of this order and a Petition of Review with the full Commission within thirty (30) days of receipt of this order.

SO ORDERED this 30th day of June, 2005.

Kenneth B. Grooms
Hearing Officer