

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

TOYA MOORE, CHIMERE JONES,
CORLENE TAYLOR, MARIA LUIS,
MICHELLE FERREIRA,

and

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Docket Nos. 03 SEM 03286
03 SEM 03287
04 SEM 00139
04 SEM 00164
04 SEM 00165

Complainants

Against

DOLLAR DREAMS,
ZAFADAH TOGA,
ABDUL (LNU), and
SAJAD (LNU)¹

Respondents

Appearances: J. Whitfield Larrabee, Esq. for Complainants

Robert Dambrov, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On December 23, 2003, Complainants Toya Moore and Chimere Jones filed complaints of discrimination alleging that they were victims of sexual harassment and

¹ LNU refers to last name unknown.

retaliation by Respondent Dollar Dreams store and store manager Zafadah Toga. On January 23, 2004, Complainant Corlene Taylor filed a complaint of discrimination alleging that she was a victim of race discrimination, religious discrimination, sex discrimination, and retaliation by Respondent Dollar Dreams and store managers Zafadah Toga and Sajad (LNU). On January 27, 2004, Complainants Maria Luis and Michelle Ferreira filed complaints of discrimination alleging that they were victims of national origin discrimination, sex discrimination, sexual harassment, race discrimination, religious discrimination, and retaliation by Respondent Dollar Dreams and store managers Zafadah Toga, Abdul (LNU), and Sajad (LNU). All of the Complainants are former employees of the Dollar Dreams store.

The Investigating Commissioner issued a finding of probable cause and on September 16, 2005, certified the claims of quid pro quo sexual harassment, hostile work environment sexual harassment, racial discrimination, religious discrimination, and retaliation to public hearing.

A public hearing was conducted on July 27 and 28, 2006. The following exhibits were accepted into evidence: Complainants exhibits 1A-E and 2; Respondents exhibits 1 and 2. Complainants submitted a post-hearing brief on or about September 23, 2006. Respondents did not submit a post-hearing brief.

To the extent the Complainants' proposed findings are not in accord with or irrelevant to my findings herein, they are rejected. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, it is rejected. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainants were all employed as cashiers by Respondent Dollar Dream, aka Dollar Dreams, aka Dollar Only, LLC,² a retail establishment on 1314 Boston Road in Springfield, MA. In 2003-2004, the store employed over six employees, including the Complainants.
2. During the 2003-2004 period in which Complainants worked at Dollar Dreams, Zafar Farooqui was a minority owner of the business and Respondent Sajad (LNU) was a district manager of the business. Store managers included Respondent Zafadah Toga and Respondent Abdul (LNU). A third store manager, Malik (LNU), was not named as a Respondent and was replaced as the store manager by Zafadah Toga during the first part of December of 2003.

Toya Moore³

3. Complainant Toya Moore is an African American female who worked as a cashier at Dollar Dreams from September of 2003 to April of 2004. She was approximately eighteen years old at the time she worked at the store.
4. Moore testified that on two occasions when she went into the back room of Dollar Dreams for change, Zafadah Toga walked up behind her and grabbed her buttocks. The first time she didn't complain about the touching, but she mentioned it to Chimere Jones who said she had also been touched by Toga. On the second occasion that Toga grabbed her buttocks, Moore told him not to do it again. Toga

² The store will hereinafter be referred to as Dollar Dreams, the name on the storefront.

³ Complainants are listed chronologically in the order in which they filed their complaints at the MCAD: Moore filed on 12/23/03; Jones filed on 12/23/03; Taylor filed on 1/23/04; Luis filed on 1/27/04; and Ferreira filed on 1/27/04.

did not grab her buttocks after Moore told him to stop, but he rubbed against her at the cash register. I credit Moore's testimony.

5. Moore testified that Toga's actions made her feel "violated." She testified that she cried twice at work and that she felt sick, nauseous, depressed, afraid, irritated, and aggravated as a result of Toga's conduct. I credit Moore's testimony.
6. According to Moore, Toga told her that he loved her and wanted her to be his girlfriend. He asked her to go to his house on a lunch break. I credit Moore's testimony.
7. Moore filed an MCAD complaint on December 23, 2003. Moore testified that after she filed the complaint, Toga became extremely rude to her. She claims that he offered her \$2,000.00 to drop her case. I credit Moore's testimony but do not find the offer to have been a serious one.
8. According to Moore, her brother came into the store one day in April of 2004 in order to give her a house key. Moore talked to her brother for a brief period of time, approximately five minutes, after which store manager Abdul (LNU) ordered her to cash out and go on break. When she returned from her break, Abdul fired her. I credit Moore's testimony.
9. Moore testified the she and the other Complainants were replaced by women who were African American or of Middle Eastern descent.
10. According to Moore, she earned approximately \$250.00 per week at Dollar Dreams before filing her MCAD complaint, but that after filing her complaint, her hours were reduced so that she only earned \$67.00 per week prior to being fired. Neither party submitted documentary evidence of Moore's income from Dollar Dreams. I find

Moore's testimony that she earned approximately \$250.00 per week prior to filing her MCAD complaint to be an exaggeration but credit her testimony that after filing her complaint, her income was reduced to approximately \$67.00 per week.

11. Moore testified that after being fired from Dollar Dreams in April of 2004, it took her six months to find other work. She claims that she applied for approximately three jobs per week in the Holyoke area, primarily at the Holyoke Mall, but could only specifically recall submitting employment applications to one shoe store and to one clothing store during the six months after she left Dollar Dreams. I credit Moore's testimony that she attempted to find employment after being fired from Dollar Dreams, but I find her testimony that she applied for approximately three jobs per week to be an exaggeration.

Chimere Jones

12. Complainant Chimere Jones is an African American female who worked at Dollar Dreams as a cashier from November 28, 2003 until December 26, 2003.
13. Jones testified that Respondent store managers Zafadah Toga and Abdul (LNU) would sit in a back room of the store drinking alcohol. She claims that she heard them commenting that they didn't like white women, Portuguese women, or Puerto Rican women.
14. Jones testified that Toga frequently touched her, asked her to be his girlfriend or his wife, rubbed the lower part of his body against her buttocks, and stood behind her and rubbed her shoulders and her arms. Jones described these incidents as occurring "just about weekly." Jones stated that Abdul did not engage in these activities. I credit Jones's testimony concerning Toga's conduct.

15. Jones testified that on two occasions, Toga pointed a laser light at her vagina and that Maria Luis witnessed the incidents. I credit the testimony of Jones concerning these two incidents. Although Jones did not identify Toya Moore and Michelle Ferreira as witnesses to the laser incidents, Moore and Ferreira corroborated that they also observed Toga point a laser pen at Jones's crotch.
16. According to Jones, the stocking clerks in the store did not observe her interactions with Toga because they were shelving items in the back of the store. She contends that they did not come up to the front of the store because the female cashiers restocked the merchandise behind the cash registers. I credit her testimony.
17. Jones testified that in reaction to being touched and rubbed by Toga, she would complain, cry, argue with her boyfriend, "Peto" and push him away sexually, shower, scrub herself because she felt "dirty," and walk around talking to herself. She testified that she felt enraged, upset, angry, and couldn't sleep. Jones asserts that she began to take anti-depressants, sleeping pills, and migraine medication as a result of her experiences at work. Jones claims that her behavior caused her boyfriend to walk out on her. I credit Jones's testimony that she experienced emotional distress as a result of sexual harassment.
18. Jones testified that the "owners" of Dollar Dreams said that if she, "kept her mouth shut," they would pay her \$50,000.00. I do not find her testimony in this regard to be credible.
19. Jones testified that after she filed her MCAD complaint, she was no longer put on the work schedule at Dollar Dreams. I credit her testimony.
20. Jones testified that after she was terminated by Dollar Dreams, she concentrated on

moving to Taunton to be near her mother and did not look for a job in Springfield between January and May of 2004. After moving to Taunton, Jones began to work at a Filenes store in May of 2004, where she earned more money than she had made at Dollar Dreams.

Corlene A. Taylor

21. Corlene A. Taylor, an African American female, began working at Dollar Dreams in February of 2003⁴ as a cashier. She was terminated at the end of January of 2004. Taylor worked approximately twenty-five to thirty hours per week until January of 2004. She earned approximately \$160.00 to \$170.00 per week from Dollar Dreams prior to her termination.
22. Taylor testified that Respondent store managers Toga and Abdul encouraged attractive young women to apply for cash register positions but told males that there were no openings for cash register positions. Taylor asserts in her MCAD complaint that she, Chimere Jones, Toya Moore, Maria Luis and Michelle Ferreira, “all typically worked together or worked similar shifts and, as such, were associated with each other.”
23. In September of 2003, Taylor started to attend the Branford Hall School for training as a medical assistant. She asked store manager Malik (LNU) if she could change her hours so that she started in the afternoon and worked until closing. He allowed her to make the change.
24. In January of 2004, two young women were hired to work at the cash registers.

⁴ Taylor testified that she began in April of 2003 but her complaint states that she was hired in or about February of 2003. I conclude that February of 2003 is the correct start date on the basis that her complaint was drafted in January of 2004 and, thus, was closer to the events at issue and on the basis of her testimony that she worked for Dollar Dreams for almost a year.

According to Taylor, they were Muslim, of Middle Eastern descent, and wore head scarves and long dresses. Taylor helped to train them. After the young women were hired, Taylor's hours were cut, without explanation, to eight to ten hours per week. At the end of January of 2003, Taylor came to work one morning and, approximately ten minutes after she arrived, Toga told her to "punch out." He gave her a check for work she had already performed and said he didn't need her that day but would call her if he needed her. Taylor responded by asserting that she was scheduled to work that day and asked, "what's the problem?" According to Taylor, Toga said it was none of her business and told her to leave the store. Taylor testified that she continued to ask why she was being let go and refused to leave. She said words to the effect, "You have some nerve giving the new girls my hours and asking me to leave for no reason.

You're not going to get away with this." I credit her testimony.

25. Respondent Toga called the police after Taylor continued to question him about why she was being terminated and refused to leave. At one point in their exchange Taylor yelled, "This is bullshit." Toga responded by saying, "Fuck you bitch."

26. Taylor testified that she felt angry and disrespected that she was terminated without an explanation.

27. After Taylor was terminated from Dollar Dreams, she collected unemployment compensation for five or six months while she looked for another job. Taylor applied for retail and cash register positions at approximately ten stores, including Sears, J. C. Penny, and Filenes. She testified that she applied for "any" hours on Fridays, Saturdays, and Sundays and for evening hours on weekdays. In August of 2004, Taylor got a job at Yellow Cab Co. answering phones from 10:00 p.m. to 6:00 a.m.

Although Taylor made more money than she had at Dollar Dreams, she was constantly tired from working the night shift. She was too fatigued to spend time with her children during the day. Taylor had to arrange for her children to sleep at a babysitter's which cost between \$10.00 and \$20.00 per night. The arrangement lasted for five months until Taylor was fired for falling asleep during a shift. Taylor testified that she has not been able to find work since she was fired from Yellow Cab Co. at the end of 2004 or beginning of 2005.

Maria Luis

28. Complainant Maria Luis is a white American female of Portuguese descent who was hired to work at Respondent Dollar Dreams on or about May 2, 2003. Complainant's Exhibit 2. She worked for Respondent until January 18, 2004. Id. Luis testified that she enjoyed her job before Respondents Toga and Abdul began to work at the store and liked the fact that she could walk to work because she didn't have a car.
29. Luis testified that store managers Toga and Abdul drank alcohol at the store and referred to her, to the other female cashiers, and to female customers as "bitches." Luis claimed that they gave attractive female customers a discount. I credit her testimony.
30. Luis testified that on one occasion, Zafadah Toga pointed a laser pen to Chimere Jones's crotch area and made the sound, "mmmm." I credit her testimony.
31. Luis testified that Zafadah Toga would stand near her at the cash register, brush his hand against her buttocks, or grab her buttocks. According to Luis, she told Toga that she did not like the way he treated her, but he ignored her. Luis estimated

that Toga touched her approximately once a week and estimated that it occurred more than twenty times. She also testified that he rubbed his crotch area against her buttocks on numerous occasions. According to Luis, the stocking clerks in the store did not observe her interactions with Toga because they were shelving items in the back of the store. She contends that they sometimes came up to the front of the store to shelve items, but weren't at the front of the store all the time.

32. Luis testified that Toga ordered her to stock shelves even though stocking wasn't a part of her job. When she said that she should not have to stock shelves, he responded by calling her a "bitch." I credit her testimony.
33. Luis testified that she once observed Toya Moore crying as she came out of Toga's private office. Moore told her that she was crying because Toga asked her to go his apartment at lunch time and she was offended. I credit this testimony.
34. According to Luis, after she agreed to act as a "witness" for Jones and Moore in support of their MCAD complaints, Toga cut her hours from 33-36 hours to 20 hours, then to two days per week, then to one day per week and ultimately terminated her. Employment records show that during the eight and one-half months that Luis worked at Dollar Dreams, she sometimes averaged fewer than twenty hours per week and a other times she worked more than thirty hours per week. Following the filing of MCAD complaints by Jones and Moore on December 23, 2003, Luis worked thirty-two and one-half (32 ½) hours during the week of December 26, 2003, thirty and one-half (30 ½) hours during the week of January 2, 2004, nineteen (19) hours during the week of January 9, 2004, sixteen (16) hours during the week of January 16, 2004 and five (5) hours during the week of January 18, 2004. She was given a check for five

(5) hours during the week of January 18, 2004 and told not to come back unless she was called. Complainant's Exhibit 2.

35. Luis testified that she became so depressed and stressed about her work situation that she lost ten pounds. Her weight decreased from 140 pounds to 130 pounds. She claimed that she did not intentionally lose this weight because, "I like weight on me." Luis asserted that during the time she worked at Dollar Dreams, she became anxious, depressed, and cried at home. Complainant testified that she couldn't sleep. She described her relationship with her boyfriend as "going down hill" because she experienced difficulty engaging in physical intimacy. Complainant and her boyfriend broke up about a month after she was terminated from Dollar Dreams after a two-year relationship. Luis testified that she went to her internist, Dr. Vicki Verlinda, for treatment relating to her symptoms and was given a prescription for Klonopin. I credit her testimony.
36. Luis claimed that she could not find paid employment after she was terminated from Dollar Dreams. At the end of March of 2004, approximately three months after she stopped working at Dollar Dreams, she obtained a volunteer position working at the Survival Center, a community organization. Luis testified that she received bread and canned food from the Center. Luis testified that prior to accepting the volunteer job, she had sought employment at three temp agencies but did not apply to any of the numerous retail stores near Dollar Dreams because she had unsuccessfully applied to some of those retail stores before working at Dollar Dreams and was "content" to help people at the Survival Center. Luis did not collect unemployment compensation. In December of 2005, Luis began working as a dental assistant and, at

the time of public hearing, earned more than she had at Dollar Dreams.

37. Luis claims that Respondents hired young women who appeared to be of Middle Eastern descent to take over her hours. I credit this testimony.

Michelle Ferreira

38. Michelle Ferreira was hired as a cashier at Dollar Dreams in September of 2002 by Respondent Sajad (LNU) and worked there, except for mid-July 2003 to mid-November 2003, until she was fired on or around January 18, 2004. She described the atmosphere of the store changing when Respondents Toga and Abdul (LNU) were brought in as managers. Ferreira worked approximately twenty-five (25) to thirty (30) hours per week until approximately January 2, 2004, when her hours were reduced to below twenty (20) hours per week. Complainant's Exhibit 2. After four weeks of reduced hours in January of 2004, Abdul told her and her aunt, Maria Luis, that he'd call them when he needed them, but he never called them again. According to Ferreira, Abdul said that their hours were being cut because the store did not have enough hours or money to pay them, but he increased the hours of other girls whom she described as being of Pakistani descent at the same time he cut her hours and those of her aunt.

39. Ferreira testified that on numerous occasions, Respondent Toga came up behind her while she worked at a cash register and touched or grabbed her buttocks, "quite a few times." I credit her testimony.

40. Ferreira testified that when Respondent Toga touched or grabbed her buttocks, she "wanted to punch him" but didn't react other than to turn and look at him because she needed her job in order to pay her bills and because she could walk to

work if necessary. I credit her testimony.

41. Ferreira testified that on several occasions, Respondents Toga and Abdul asked Ferreira to drive them to a liquor store to buy liquor. On one occasion, Toga asked her to drink with him. I credit her testimony.
42. Ferreira testified that Toga and Abdul gave discounts to certain female customers they found attractive. I credit her testimony.
43. According to Ferreira, she once asked Toga and/or Abdul for the telephone number of the store owner in order to report their behavior but was not given the correct number. I credit her testimony.
44. Ferreira testified credibly that Zafadah Toga told her that she was too fat, that she needed to lose weight, and that she should wear more revealing clothes. She said that his comments disgusted her, undermined her self esteem, and made her uncomfortable with her body. Ferreira became depressed, lacked energy, felt sick to her stomach, suffered from anxiety, and lost a lot of weight.
45. After Ferreira was taken off the payroll at Dollar Dreams at the end of January of 2004, she was out of work for approximately one month. In March of 2004, Ferreira began to work at Dunkin Donuts at \$7.25 per hour. She subsequently became an assistant manager, after which her hourly rate increased to \$8.50 plus tips. Ferreira earned more at Dunkin Donuts than she had at Dollar Dreams.

Zafar Farooqui

45. Part-owner Zafar Farooqui testified that during the 2003-2004 period, he came into the store once or twice a week to make sure the store was operating properly. He claimed that it was his practice to speak to the cashiers upon entering the

store. Farooqui admitted that he did not know Chimere Jones and could not identify the other Complainants by name. I do not credit Farooqui's testimony that he typically spoke to cashiers on the occasions when he visited Dollar Dreams.

46. Farooqui testified that the Complainants didn't pay attention to customers, were always on their cell phones, and gave away inventory to family and friends. He claims that at some point in mid-2003, store manager Malik (LNU) fired Ferreira for giving a full bag of merchandise to a customer without charging the customer but that Malik subsequently re-hired her. I do not credit Farooqui's testimony.

47. Farooqui testified that he fired Malik as the manager of Dollar Dreams at the end of November, 2003 or the beginning of December, 2003 and replaced him with Respondent Zafadah Toga.

48. Farooqui testified that Dollar Dreams was burglarized on December 28, 2003 by someone using a store key, disabling the alarm system, and taking over \$7,500.00 in cash and checks. Respondent's Exhibit 1. Farooqui claims that he fired Maria Luis, Michelle Ferreira, and Corlene Taylor shortly after the burglary because Toga told him that the cashiers were complicit in the theft. Farooqui testified that he believed the store's former store manager, Malik, broke into the store because Malik had a key and knew how to disable the burglar alarm and that he believed Malik did so with the assistance of Luis, Ferreira, and Taylor. The police report of the theft only states that a "former employee" was suspected. Respondent's Exhibit 1. Nobody was ever charged with the theft. I credit Farooqui's testimony that a theft took place and that he suspected that Malik was

involved, but I do not credit his claim that he fired Luis, Ferreira and Taylor because he suspected that they were also involved.

49. Farooqui testified that January and February are slow months for business at Dollar Dreams.

50. Farooqui testified at the public hearing that Toya Moore stopped working at Dollar Dreams because she thought she was given fewer work hours than the other cashiers, but in his amended position statement Farooqui stated that Moore was discharged for having an insolent attitude and for giving away store merchandise to customers. I do not credit either reason for why Moore stopped working at Dollar Dreams.

51. Farooqui testified that he did not know why Chimere Jones stopped working at Dollar Dreams.

52. Farooqui testified that he “totally disagreed” with Complainants’ assertion that only young, attractive women were hired as cashiers. He testified that no consideration was given to color, age, or race. Farooqui testified that most of the people hired to work at the store were students or housewives and they were of different ages and races. I do not find Farooqui’s testimony to be credible.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

M.G.L. C. 151B, sec. 4, paragraph 1 prohibits workplace discrimination, including sexual harassment. See Ramsdell v. Western Bus Lines., Inc., 415 Mass. 673, 676-77 (1993). Chapter 151B, sec. 4, paragraph 16A also prohibits sexual harassment in the workplace. See Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Sexual

harassment is defined as “sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, or sexually offensive work environment. M.G. L. c. 151B, sec. 1, para. 18. All of the Complainants, except Taylor, assert that they were subjected to a sexually-hostile work environment, and Moore, Jones, and Ferreira claim that they were subjected to quid pro quo sexual harassment as well.

In order to establish a “hostile work environment” sexual harassment claim, Complainants must prove by credible evidence that: (1) they were subjected to sexually demeaning conduct; (2) the conduct was unwelcome; (3) the conduct was objectively and subjectively offensive; (4) the conduct was sufficiently severe or pervasive as to alter the conditions of employment and create an abusive work environment; (5) the employer knew or should have known of the harassment and failed to take prompt and effective remedial action. See College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987); Parent v. Spectro Coating Corp., 22 MDLR 221 (2000); MCAD Sexual Harassment in the Workplace Guidelines, II. C. (2002).

Sexual harassment must be objectively and subjectively offensive. See Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677-78 (1993). The objective standard means that the evidence of sexual harassment must be considered from the perspective “of a reasonable person in the plaintiff’s position.” Id. at 678. The reasonable woman inquiry requires an examination into all the circumstances, including the frequency of the

conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker's performance, and what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) *citing Harris v. Forklift Systems, Inc.*, 510 U.S.17 (1993); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

The subjective standard of sexual harassment means that an employee must personally experience the behavior to be unwelcome. An employee who does not personally experience the behavior to be intimidating, humiliating or offensive is not a victim within the meaning of the law, even if other individuals might consider the same behavior to be hostile. See MCAD Sexual Harassment in the Workplace Guidelines, II. C. 3 (2002); Ramsdell v. Western Bus Lines, Inc., 415 Mass. at 678-679.

The hostile work environment harassment in this case was both objectively and subjectively offensive. There is ample credible evidence that store manager Zafadah Toga put his hands on, grabbed, or rubbed his crotch against the buttocks of Complainants Luis, Jones, Moore, and Ferreira. Luis estimated that these contacts occurred more than twenty times. Jones testified that they occurred "just about weekly." Ferreira claimed that they occurred on "numerous occasions." Moore testified that Toga grabbed her buttocks twice and on other occasions rubbed against her. I credit Complainants' testimony both as to the type of contact and its frequency. In addition to the cumulative and credible evidence of Toga touching, grabbing, and rubbing Complainants' buttocks with his hands and groin, there is credible evidence that Toga pointed a laser light at Jones's vagina on two occasions, and on one occasion, made the sound, "mmmmm" as he directed the light at her crotch. The contact to which

Complainants Luis, Jones, Moore and Ferreira were subjected by Respondent Toga was severe and pervasive. It was demeaning, degrading, and humiliating. By any standard it was sufficiently egregious to satisfy the objective standard of hostile work environment sexual harassment.

There can also be no doubt that the contact was also subjectively offensive to the four Complainants who were victimized by it. Two of the four Complainants who had their buttocks rubbed, touched and/or grabbed by Respondent Toga -- Luis and Moore -- told Toga that they did not want him to touch them. Moore testified credibly that Toga's actions made her feel "violated" and caused her to cry at work on two occasions. A third Complainant, Jones, testified that she felt enraged and angry by the touching. Within days of the physical contact, she filed an MCAD complaint. The fourth Complainant, Ferreira, asserted that she wanted to "punch" Toga for grabbing her buttocks although she muted her reaction because she was fearful of losing her job. None of the four Complainants engaged in any behavior which suggested such contact was acceptable. In sum, the conduct altered the conditions of employment and created a sexually-abusive work environment.

Because Zafadah Toga was a store manager and a named Respondent, it matters not whether minority store owner Zafar Farooqui knew or should have known about the sexually harassing conduct and failed to take prompt and effective remedial action. See College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987); Parent v. Spectro Coating Corp., 22 MDLR 221 (2000); MCAD Sexual Harassment in the Workplace Guidelines, II. C. (2002). By placing Toga in charge of the store, Farooqui and Dollar Dreams bear responsibility for the hostile work environment sexual

harassment which Toga perpetrated.

Turning to quid pro quo sexual harassment, there are several allegations of sexual advances on the part of Respondent Toga which could be linked to a quid pro quo sexual harassment claim. For instance, Toga asked Jones and Moore to be his girlfriend, invited Moore to go to his apartment at lunch time, and asked Ferreira to drink with him. Each of the women declined the invitations and was subsequently fired. However, I do not find that submission to Toga's advances was an explicit, or even implicit, term or condition of employment. See MCAD Sexual Harassment in the Workplace Guidelines II. B. (11/1/02). The parties' deteriorating relationship appears to be based on the filing of complaints of discrimination, not the rejection of such invitations to drink or to commence relationships. Several of the Complainants were verbally propositioned; others were not, but the outcome was the same for all.

B. Retaliation

All of the Complainants allege retaliation against Respondents based on their opposition to sexual harassment and to their reduction in hours and terminations. Chapter 151B, sec. 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000), *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995).

To prove a prima facie case for retaliation, Complainants must demonstrate that they: (1) engaged in a protected activity; (2) Respondents were aware that they had engaged in protected activity; (3) Respondents subjected Complainants to an adverse employment action; and (4) a causal connection existed between the protected activity, known by the retaliators, and the adverse employment action. See Morris v. Boston Edison Company, 924 F. Supp. 65, 68-69 (D. Mass. 1996); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000).

Once a prima facie case is established, the burden shifts to the Respondents at the second stage of proof to articulate a legitimate, nondiscriminatory reason for their action supported by credible evidence. See Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If Respondents succeed in offering such a reason, the burden then shifts back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justification is not the real reason, but a pretext for discrimination. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001). Complainants may carry this burden of persuasion with circumstantial evidence that convinces the fact finder that the proffered explanation is not true and that Respondents are covering up a discriminatory motive which is the determinative cause of the adverse employment action. See id. Even if the trier of fact finds that the reason for the adverse employment action is untrue, the fact finder is not required to find discrimination in the absence of the requisite intent. See id.; Abramian v. President and Fellows of Harvard College, 432 Mass. at 117-118.

By objecting to Zafadah Toga's sexually offensive conduct and by filing

complaints with the MCAD or by agreeing to act as witnesses in support of the complaints of their fellow cashiers, Complainants engaged in the protected activity, the first element of a retaliation claim. See Augburg v. American Drug Stores, 21 MDLR 238, 242 (1999); Proudy v. Trustees of Deerfield Academy, 19 MDLR 83, 88 (1997). The next question is whether Complainants experienced adverse employment actions as a result of their protected activity.

Toya Moore's December 23, 2003 MCAD complaint states that after she objected to Toga's touching her at work, he retaliated by giving her fewer hours of employment. She testified credibly at the public hearing that after she filed her MCAD complaint, Respondent Toga became extremely rude to her and offered her money to drop her case. The complaints of Luis and Ferreira corroborate Moore's assertion by stating that they "witnessed Respondents badger, harass, and intimidate Toya Moore on a constant basis, in an attempt to convince her to drop her complaint." In April of 2004, approximately three months after filing her MCAD complaint, Moore was summarily fired by Respondent Abdul after she took a short break to talk to her brother. I conclude that the reaction of Respondents Toga and Abdul to Moore's protected activity, principally the filing of an MCAD complaint, constituted prima facie evidence of retaliation.

Complainants Luis, Ferreira, and Taylor are situated differently than Toya Moore in that their hours of employment were reduced and they were terminated by Respondents prior to their filing complaints at the MCAD. Thus, the filing of their complaints during the last week of January of 2004 cannot be deemed protected activity which motivated Respondents to treat them in an adverse manner. However, Luis, Ferreira, and Taylor engaged in other forms of protected activity prior to the filing of

their MCAD complaints, to wit: agreeing to be witnesses for their fellow cashiers who had already filed MCAD claims. Luis, Ferreira, and Taylor assert that their hours were cut and they were subsequently fired as a result of agreeing to serve as a witness for Jones and Moore. Although they were not named as witnesses in the MCAD complaints of Jones and Moore, the record establishes that Respondents viewed all five Complainants as a single cohort who worked together, supported one another, and would testify on each other's behalf. Within a two-week period of Jones and Moore filing their MCAD complaints on December 23, 2003, the hours of Luis, Ferreira and Taylor were substantially reduced. Within several more weeks, all three Complainants were terminated. Additionally, Luis asserts that prior to having her hours cut and being fired, she told Toga that she objected to the way he treated her. Ferreira contends, as well, that prior to being fired, she asked Toga and/or Abdul for the telephone number of the store owner in order to report their behavior. Based on these actions, I conclude that all the Complainants have established that they engaged in protected activity, were subsequently subjected to adverse action, and that a causal connection exists between the protected activity and the adverse employment action.

Once a causal connection is found between protected activity and adverse employment actions, the burden shifts to Respondents to articulate and produce credible evidence to support legitimate, non-discriminatory reasons for their actions. In this regard, store owner Farooqui testified that the Complainants didn't pay attention to customers, were always on their cell phones, gave away inventory to family and friends, and may have been complicit in a burglary of the store. Farooqui also testified that Toya Moore stopped working at Dollar Dreams because she thought she was given fewer work

hours than the other cashiers. I do not credit any of these reasons. Had Farooqui really been concerned that Luis, Ferreira, and Taylor were involved in a burglary of the store, he would have fired them immediately rather than systematically cut their hours for weeks prior to terminating them. Farooqui's assertion that Moore was disgruntled about being given fewer hours than the other cashiers similarly does not withstand scrutiny because she was retained in employment for several months after the others were fired. Farooqui's rationale for why Moore stopped working at Dollar Dreams is also contradicted by credible evidence that Moore did not leave of her own volition but was summarily fired after an incident in which she briefly spoke to her brother.

Since Respondents have failed to articulate legitimate, non-discriminatory reasons for reducing the hours of the Complainants and ultimately firing them, I conclude that Respondents acted with retaliatory animus.

C. Race, National Origin, and Religious Discrimination

Three of the five Complainants allege that they were discriminated against based on religion, national origin and race. Specifically, Luis and Ferreira claim that they were discriminated against on the basis of race (white), national origin (Portuguese descent), and religion (Catholic). Taylor claims that she was discriminated against on the basis of race (African American) and religion (Christian). As evidence of such discrimination, Luis asserts that Respondents hired young women of the Muslim faith and of Middle Eastern descent to take over her hours. Complainant Ferreira asserts that her hours and those of Luis were cut while the hours of young women of Pakistani descent were increased. Taylor asserts that in January of 2004, she helped train two young women of the Muslim faith and of Middle Eastern descent and that after they were hired, Taylor's

hours were cut, without explanation, to eight to ten hours per week.

M.G.L. c. 151B, s. 4(1) prohibits discrimination in the terms and conditions of employment based on race and/or color, religious creed, and national origin. In order to prevail on a claim of racial, religious, and/or national origin discrimination, absent direct evidence,⁵ Complainants must show that they: (1) are members of a protected class; (2) were performing the duties of their positions in a satisfactory manner; (3) suffered an adverse employment action; and (4) similarly-situated, qualified person(s) not of their protected class were not treated in a like manner. See Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000).

If Complainants successfully establish a prima facie case, the burden then shifts to the second stage of proof in which the Respondents must articulate and provide credible evidence in support of a legitimate, nondiscriminatory reason for its action. See Blare v. Husky Injection Molding Sys. Boston, Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas corp. v. Green, 411 U.S. 792 (1973). If Respondents assert such a reason, Complainants bear the burden to persuade the fact-finder by a fair preponderance of the evidence that Respondents' articulated justification is not the real reason, but a pretext that permits a finding of unlawful discrimination. See Abramian, 432 Mass. at 117-118. Complainants must ultimately prove by a preponderance of the evidence that Respondents were motivated by discriminatory animus. See Lipchitz v. Raytheon, 434 Mass. 493 (2001). Complainants may meet this burden of proof by circumstantial evidence such as the inference of discriminatory animus that may be drawn from proof

⁵ Jones claims that she heard Respondent store managers Toga and Abdul commenting that they didn't like white women, Portuguese women, or Puerto Rican women. I decline to give evidentiary weight to this claim.

that one or more of the reasons advanced by the employer is false. Id. at 504.

Complainants are members of protected classifications as a result of their Portuguese ancestry, or African American race, and Catholic/Christian religious affiliations. They suffered adverse employment actions in that their hours were cut and they were eventually terminated. There is a factual dispute about the quality of Complainants' job performance, but for the purpose of a prima facie case, I shall assume that they performed their jobs in a satisfactory manner. Complainants assert that other cashiers whom they identify as of Middle Eastern ancestry and of the Muslim faith did not suffer the same adverse actions. On this basis, I conclude that Complainants have made out a prima facie case of race, national origin and religious discrimination.

At the second stage of proof, Farooqui asserts that he reduced the work hours of the Complainants and ultimately fired them because they were insolent, gave away merchandise to family and friends, talked on cell phones at work, and may have been involved in the burglary of the store. Farooqui disputes that he systematically replaced Complainants with females of Middle Eastern ancestry or national origin, maintaining that he hired all types of individuals as cashiers. Farooqui testified that he "totally disagreed" with Complainants' assertion that Respondents only hired young, attractive women as cashiers. He testified that no consideration was given to color, age, or race.

Farooqui's justifications would rebut the prima facie case of race, national origin, and religious discrimination, if credible, but I do not find Farooqui's testimony to be convincing. Farooqui stated that no consideration was given to color, age or race, but Complainants provided credible, cumulative, and consistent testimony that they were

replaced by young women of Middle Eastern descent.⁶ Farooqui asserted that he fired Complainants Luis, Ferreira, and Taylor, in part, because he suspected them of participating in the burglary of the store but this assertion is incompatible with the fact that he systematically cut their hours for weeks prior to terminating them. Had he really suspected that they were involved in a burglary of the store, he would have taken immediate action. In short, Farooqui has articulated legitimate, nondiscriminatory reasons for his actions but has not provided credible evidence to support the reasons. Complainants Luis, Ferreira, and Taylor have alleged and proven by a fair preponderance of the evidence that Farooqui's articulated justifications were a pretext for unlawful discrimination based on race and/or national origin.

IV. DAMAGES

Upon a finding of unlawful discrimination, the Commission is authorized, where appropriate, to award: 1) remedies to effectuate the purposes of G.L. c. 151B; 2) damages for lost wages and benefits; and 3) damages for the emotional distress Complainants have suffered as a direct result of Respondents' discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988).

Lost Wages

As far as lost wages are concerned, all of the Complainants were successful in establishing that their hours were reduced and they were ultimately fired in retaliation for engaging in protected activity. Three of the Complainants -- Luis, Ferreira, and Taylor --

⁶ I discount the claim of disparate treatment based on religion because there is no evidence about the religious faiths of the young women who replaced Complainants other than conjecture based on the women's dress and racial characteristics.

also proved that their hours were reduced and they were ultimately fired based on race and national origin. The Complainants, except for Chimere Jones, are therefore entitled to recover for lost wages attributable to these forms of discrimination in the amounts set forth below. Jones is not entitled to recover for lost wages because she failed to mitigate her damages by seeking other employment.

Toya Moore

According to Moore, she earned approximately \$250.00 per week at Dollar Dreams before filing her MCAD complaint on December 23, 2003 but after filing her complaint, she only earned \$67.00 per week prior to being fired in April of 2004. Neither side submitted documentary evidence of Moore's income from Dollar Dreams. In the absence of documentary evidence supporting Moore's claim that she earned approximately \$250.00 per week, I decline to accept this figure as it substantially exceeds the average net income of Complainants Luis and Ferreira as set forth in Complainant's Exhibit 2 and Respondent's Exhibit 2, and as described in Taylor's credible testimony. Moore also testified that after being fired from Dollar Dreams, it took her six months to find other work, but she could only recall submitting employment applications to one shoe store and to one clothing store. I credit Moore's testimony that she made some attempts to find employment after being fired from Dollar Dreams, but I do not credit her testimony about the number of job applications which she allegedly submitted. Based on the foregoing, I decline to award damages to Complainant Moore for lost income.

Maria Luis

The evidence establishes that from the commencement of her employment in April of 2003 until her hours began to decline on or around January 9, 2004, Complainant

Maria Luis received an average of \$157.00 in net weekly pay. She thereafter worked nineteen (19) hours during the week of January 9, 2004 and sixteen (16) hours during the week of January 16, 2004. On January 18, 2004, Complainant was given a check for five (5) hours and was told not to come back unless called. Luis testified that she could not find paid employment after she was terminated from Dollar Dreams. At the end of March of 2004, approximately three months after she stopped working at Dollar Dreams, she obtained a volunteer position working at the Survival Center, a community organization. Luis testified that she received bread and canned food from the Center. Luis testified that prior to accepting the volunteer job, she had sought employment at three temp agencies but did not apply to any of the numerous retail stores near Dollar Dreams because she had unsuccessfully applied to some of those retail stores before working at Dollar Dreams and because she was “content” to be helping people at the Survival Center. Luis did not collect unemployment compensation. In December of 2005, Luis began working as a dental assistant and, as of the date of the public hearing, earned more than she did at Dollar Dreams.

I conclude that Complainant Luis is entitled to lost pay of \$1,502.00, equating to \$157.00 per week from January 9, 2004 through the end of March of 2004, less the income she received from Dollar Dreams in mid-January of 2004.

Michelle Ferreira

Ferreira worked received approximately \$155.00 in net pay from Dollar Dreams between mid-November of 2003 and January 2, 2004,⁷ when her hours were reduced to below twenty hours per week. Complainant’s Exhibit 2. After four weeks of reduced

⁷ Ferreira’s hours are computed from November 14, 2003 because she had a break in her service between July 11, 2003 and November 11, 2003.

hours in January of 2004, Ferreira was terminated. Ferreira testified that after she was taken off the payroll at Dollar Dreams at the end of January of 2004, she was out of work for approximately one month. In March of 2004, Ferreira began to work at Dunkin Donuts at \$7.25 per hour. When she became an assistant manager, her hourly rate was increased to \$8.50 plus tips. Ferreira was paid more at Dunkin Donuts than at Dollar Dreams.

I conclude that Complainant Ferreira is entitled to lost pay of \$903.00, equating to \$155.00 per week from January 2, 2004 through the beginning of March of 2004, less the income she received from Dollar Dreams in January of 2004.

Corlene Taylor

From February of 2003 to January of 2004, Complainant Taylor earned approximately \$160.00 to \$170.00 per week. In January of 2004, Taylor's hours were cut to eight to ten hours per week. At the end of January of 2004, she was terminated. After Taylor was terminated from Dollar Dreams, she collected unemployment compensation for five or six months while she looked for another job. Complainant did not specify, nor did Respondents ascertain, the amount of her unemployment compensation. While she received unemployment, Taylor applied for retail and cash register positions at approximately ten stores, including Sears, J C Penny, and Filenes. In August of 2004, Taylor obtained a job at Yellow Cab Co. answering phones from 10:00 p.m. to 6:00 a.m. where she earned more money than at Dollar Dreams. The arrangement lasted for five months until she was fired for falling asleep during a shift. Based on the foregoing, I conclude that Complainant Taylor is entitled to damages for lost pay in the amount of \$880.00, consisting of \$400.00 for January of 2004 and \$480.00 for the period from

February of 2004 until August of 2004.

Emotional Distress Damages

Four of the Complainants alleged and proved discrimination based on sexual harassment; all alleged and proved some form of discrimination. Their entitlement to an award of monetary damages for emotional distress does not need to be based on expert testimony; it can be based solely on their testimony as to the cause of the distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. See Stonehill, 441 at 576. An award must rest on substantial evidence that is causally connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. Id.

In regard to the above-articulated standards, some of the Complainants sought medical help to deal with the emotional trauma of being harassed while others did not, but all were visibly distressed over the manner in which they were treated. At the public hearing, the Complainants appeared to be young and vulnerable women with difficult lives. They depended on their employment to cope with financial burdens and family obligations. Four of the Complainants were physically accosted on a repeated basis by the store's manager in a manner that amounted to sexual assault. Farooqui's behavior towards the women was sexually-abusive and degrading. The harm experienced by all of the Complainants was severe.

Toya Moore

Moore testified that the sexual harassment she experienced at the hands of Zafadah Toga made her feel “violated.” She testified credibly that she cried twice at work and that she felt sick, nauseous, depressed, afraid, irritated and aggravated. Her testimony was corroborated by Maria Luis who stated that she once observed Toya Moore crying as she came out of Toga’s private office. Moore told her that she was crying because Toga asked her to go his apartment at lunch time and she was offended. At the time the harassment took place, Moore was only eighteen years old. Based on the foregoing, I conclude that Complainant Moore is entitled to \$20,000.00 in emotional distress damages.

Chimere Jones

Complainant Jones testified that in reaction to being sexually harassed at work, she would complain, cry, argue with her boyfriend, avoid physical intimacy, shower, scrub herself because she felt “dirty,” and walk around talking to herself. She testified that she felt enraged, upset, angry, and couldn’t sleep. Jones asserts that she began to take antidepressants, sleeping pills, and migraine medication as a result of her situation at work. She claims that her behavior caused her boyfriend to walk out on her. Jones presented as a fragile and vulnerable witness at the public hearing who experienced significant adverse impact from her mistreatment by Respondents. In consideration of the foregoing, I conclude that Complainant Jones is entitled to \$40,000.00 in emotional distress damages.

Maria Luis

Complainant Luis testified that she became so depressed as a result of the sexual harassment she experienced that she lost ten pounds, from 140 pounds to 130 pounds.

She claimed that she did not intentionally lose this weight because, “I like weight on me.” Luis asserted that during the time she worked at Dollar Dreams, she became anxious, depressed, and cried at home. Complainant testified that she couldn’t sleep. She described her relationship with her boyfriend as “going down hill” because she experienced difficulty engaging in physical intimacy. Complainant and her boyfriend broke up about a month after she was terminated from Dollar Dreams after a two year relationship. Luis testified that she went to her internist, Dr. Vicki Verlinda, for treatment relating to her symptoms and was given a prescription for Klonopin. I credit Complainant’s testimony about the scope and intensity of her distress and conclude that she is entitled to \$30,000.00 in emotional distress damages.

Michelle Ferreira

Complainant Ferreira testified that she wanted to “punch” Respondent Zafadah Toga when he grabbed her buttocks but didn’t react other than to turn and look at him because she needed her job in order to pay her bills and because she could walk to work if necessary. Ferreira testified credibly that Zafadah Toga told her that she was too fat, that she needed to lose weight, and that she should wear more revealing clothes. Toga’s comments disgusted her, undermined her self esteem, and made her uncomfortable with her body. Ferreira became depressed, lacked energy, felt sick to her stomach, suffered from anxiety, and lost a lot of weight.

Based on the foregoing and on her demeanor at the public hearing, I conclude that Complainant Ferreira is entitled to \$10,000.00 in emotional distress damages.

Corlene Taylor

Complainant Taylor testified that she felt angry and disrespected that she was terminated without an explanation. She was visibly distressed on the witness stand when she recounted the circumstances of her termination. Although Complainant Taylor found subsequent employment after leaving Dollar Dreams, she was forced to work the night shift. She described herself as being too fatigued to spend time with her children during the day. Complainant offered no other testimony regarding her emotional state. Based on the foregoing, I conclude that Complainant Taylor is entitled to \$10,000.00 in emotional distress damages.

V. ORDER

This decision represents the final order of the Hearing Officer. Respondent shall pay Complainants, within sixty (60) days of receipt of this decision the sum of:

\$ 20,000.00 in damages for emotional distress for Complainant Moore;

\$ 40,000.00 in damages for emotional distress for Complainant Jones;

\$ 1,502.00 in damages for lost wages and \$ 30,000.00 in damages for emotional distress for Complainant Luis;

\$ 903.00 in damages for lost wages and \$ 10,000.00 in damages for emotional distress for Complainant Ferreira;

\$ 880.00 in damages for lost wages and \$10,000.00 in damages for emotional distress for Complainant Taylor

The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made. If Respondent fails to comply with the terms of this Order

within the time period allotted, Complainant should notify the Clerk of the Commission. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may seek review by the full Commission by filing a notice seeking review within ten (10) days of receipt of this decision, and a petition for review within thirty (30) days of receipt of this decision.

So ordered this 10th day of January, 2007.

Betty E. Waxman, Esq.