

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
VANESSA FERGUSON,
Complainants

v.

DOCKET NO. 02-BPR-01167

FATOU B. SY,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Complainant Vanessa Ferguson. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for her refusal to rent to Complainant on account of her children and engaged in unlawful housing discrimination in violation of M.G.L. c. 151B, §4(11). Respondent appealed to the Full Commission.

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 et. seq.), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. G.L. c. 151B, § 5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding..." Katz v. MCAD, 365 Mass. 357, 365 (1974); G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to the determinations of the Hearing Officer. See e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonade Hotel, 4 MDLR 1007, 1011 (1982).

The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion or was otherwise not in accordance with the law. See 804 CMR 1.23.

Respondent has appealed the decision on the grounds that the Hearing Officer erred in concluding that Complainant met her burden of proof, in finding that Respondent did not occupy the first floor unit as her residence. Respondent also asserts that the award of \$10,000 for emotional distress to Complainant is not supported by the evidence and does not conform to the criteria for making such awards.

We have carefully reviewed Respondent's petition and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our review, we find no material errors of fact or law and conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Officer. We therefore, will not disturb the findings of credibility made by the Hearing Officer.

With regard to the Hearing Officer's award of \$10,000 for emotional distress we find that this modest award is supported by substantial evidence in the record, conforms to the criteria required for making such award, and is substantiated by the Hearing Officer's observation and impressions of witness testimony. We therefore decline to disturb this award. The appeal in this matter is hereby denied and we affirm the decision below in its entirety.

ORDER

For the reasons set forth above, we hereby affirm the Findings of Fact, Conclusions of Law and Order of the Hearing Commissioner. Respondent's appeal to the Full Commission is hereby dismissed.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in Superior Court seeking judicial review within 30 days of receipt of this decision in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Superior Court Standing Order on Judicial Review of Agency Actions. The filing of a petition pursuant to M.G.L. c. 30A does not automatically stay enforcement of this Order. Failure to file a petition in court within 30 days of receipt of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED this 4th day of May, 2007.

Walter J. Sullivan, Jr.¹
Chair

Martin S. Ebel
Commissioner

¹ Investigating Commissioner sitting by necessity to establish a quorum. See M.G.L. c .6, § 56, M.G.L. c.151B, § 5.

