

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
VLADIMIR GLEZER,  
Complainant

v.

Docket No. 02-BEM-02997

ROCKMORE COMPANY, INC.  
and PETER NOYES,  
Respondents

Appearances: William J. McGrean, Jr., Esq., for Complainant

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On September 13, 2002, Complainant, Vladimir Glezer, filed a complaint with the Commission against Respondent, Rockmore Company, Inc., alleging that he was discriminated against on the basis of his age (D.O.B. 6/30/41) in violation of M.G.L. Chapter 151B, §4(1B). On January 11, 2005, the Investigating Commissioner granted Complainant's Motion to Amend the Charge to add Peter Noyes as a party-Respondent, and to include a claim of discrimination based on national origin, in violation of G.L. Chapter 151B, §4(1). On July 17, 2006, the Investigating Commissioner found probable cause to credit Complainant's allegations and the matter was certified to public hearing.

A Pre-Hearing Conference was held before the undersigned Hearing Officer on November 6, 2006. Respondents received notice of the pre-hearing conference and failed

to attend. Respondents also failed to respond an October 6, 2006, Order of the Hearing Officer compelling their response to Complainant's interrogatories, requests for documents and requests for admissions. At the Pre-Hearing Conference, the Hearing Officer imposed sanctions for Respondents' failure to respond to discovery. The sanctions included prohibiting Respondents from introducing evidence in support of their claims or defenses at the Public Hearing.

A Public Hearing was held on December 14, 2006. Respondents, who had been duly served with Notice of Hearing, did not appear and the hearing proceeded as a default hearing in accordance with the Commission's Procedural Regulations, 804 CMR 1.21(8). On December 14, 2006, an Order of Default was entered on the record against Respondents. A Notice of Entry of Default and an Order of Entry of Default were mailed to Respondents by certified mail, return receipt requested. In accordance with the Commission's Procedural Regulations, 804 CMR 1.21 (8), within ten days of receipt of the notice of entry of default, Respondent may petition the Commission to vacate the entry of default. Respondents did not seek to vacate the default within the time period prescribed.

The record before me consists entirely of Complainant's un rebutted testimony, the un rebutted testimony of his daughter and two exhibits. Based on the credible evidence and the reasonable inferences the fact-finder may draw therefrom, I make the following findings of fact and conclusions of law.

## II. FINDINGS OF FACT

1. Complainant is a Russian Jewish man who was born on June 30, 1941. He immigrated to the United States from Russia in 1987 with his wife and two young

daughters. A year later, Complainant's wife died leaving him to raise his two daughters, whose ages were seven and four, alone. Complainant became a U.S. citizen in 1993.

2. Complainant has three college degrees, two of which he obtained in Russia, one in liberal arts and one in engineering. In the U.S. he attended Salem State College, in Salem MA, studied accounting, and graduated in 1990. Prior to his employment at Respondent, Rockmore Company, ("Rockmore"), Complainant worked at Acorn Communication Group for five years, providing bookkeeping services.

3. At all times relevant to this complaint, the Rockmore Company, Inc., formerly Rockmore Dry Dock, Inc., was owned by Peter Noyes who is the President. Complainant stated that Peter Noyes was a principal and owner of three separate companies that owned and operated a dry dock restaurant and a floating restaurant in Salem, MA, and sight-seeing and charter boat operations in Massachusetts and Florida. Complainant stated that he did bookkeeping work for all three operations. Respondent, Rockmore, employs more than 20 people and maintains an office in Marblehead, MA. Complainant's W2 forms for the years 1999 and 2002 show his employer as the Rockmore Dry Dock, Inc.

4. Complainant obtained employment at Rockmore by responding to a newspaper advertisement. He scheduled an interview with Noyes over the phone, and testified that upon meeting Noyes for the interview, Noyes remarked that, from their phone conversation, he thought Complainant would be younger. Complainant, who was 58 years old at the time, testified that this comment made him uncomfortable.

5. Complainant understood from his interview that Noyes desperately needed an experienced bookkeeper. Noyes offered Complainant a full time position as a

bookkeeper at a rate of \$15.00 per hour with no benefits. Complainant accepted the offer and on August 1, 1999, began his employment with Rockmore at its Marblehead office.

6. Complainant testified that at the start of his employment, Rockmore's financial records were in complete disarray and the computer records had been accidentally deleted by a previous employee, who Complainant referred to as a young girl. Over the next four months, Complainant brought order to Respondents' books and finances by categorizing expenses, receivables, income, and payroll, creating financial statements, closing the books for 1998 and 1999, and installing a more complex computer program called "Peachtree" for data entry and bookkeeping.

7. Complainant worked for Respondents for almost three years and testified that he found the job very challenging, greatly enjoyed his work and loved working with numbers. He particularly enjoyed the challenge of organizing the finances and creating order out of chaos. Throughout Complainant's employment, he was never reprimanded. The only concern Noyes voiced to Complainant was that there was too much data in the computer.

8. Complainant testified that in November of 2001, Noyes had a discussion with him about replacing him as Rockmore's bookkeeper. According to Complainant, in that discussion, Noyes referred to Complainant's age, telling Complainant that his CPA had advised him that there were "a lot of young people around" who could replace Complainant. Complainant objected to this notion, telling Noyes that no young person could do the job that Complainant had done. Complainant testified that Noyes' suggestion that a younger person could easily do his job made him angry, particularly in light of the difficult challenge of creating systems "from scratch" to bring order to

Rockmores' books and the finances. Complainant stated that he had a similar conversation with Noyes about his leaving Respondents in May of 2002.

9. In the Spring of 2002, Rockmore's General Manager left the company and Noyes hired a 21 year old male. Complainant stated that this young man told him he had no bookkeeping experience. When Noyes instructed Complainant to hand over all the computer financial records to this much younger employee, Complainant felt uneasy, suspected his employment was in jeopardy and felt as he put it, "sure bad things were coming."

10. On July 1, 2002, Noyes told Complainant he no longer needed his services. Complainant voiced his opposition to the termination and told Noyes that it was wrong to get rid of older people who are responsible and experienced. Complainant also told Noyes that he was not above the law. Noyes' responded that Complainant should take two weeks vacation to give Noyes a chance to consult with his lawyer.

11. A week later Noyes asked Complainant to meet him at the Post Office in Marblehead. Noyes began the conversation by telling Complainant that Noyes' wife had fears about Noyes meeting Complainant because Complainant is Russian and Russians could be violent. This insult made Complainant angry and upset and he told Noyce that it was a stupid comment. He stated that it was not the only time there had been a reference to Russians being violent or in gangs during the course of his employment. At this meeting Noyes offered Complainant \$1500, but Complainant refused the money stating that this was no more than a month of unemployment. He responded that he would prefer to remain employed as he had financial obligations that included a mortgage and his daughters' student loans. Noyes asked Complainant about the amount of his mortgage

and Complainant replied he owed \$46,000. At that point Noyes stated he would rather keep Complainant employed rather than pay him a significant sum of money. Their meeting ended with no agreement.

12. Complainant testified that he called Noyes a week later to discuss a reference and Noyes asked him to meet at his office in Salem. Noyes told Complainant that he was through hiring older people and that Noyes' wife was physically afraid of Complainant. They discussed money again and Noyes asked Complainant to sign a release promising not to sue Noyes. Complainant indicated he would sign a release only if Noyes paid him \$20,000 and gave him a reference. Noyes responded that he would pay Complainant \$20,000 but first had to speak with his wife about any such agreement. He then went into the office and dictated a reference for Complainant but did not give it to him, because Complainant would not sign the release right then.

13. An hour or so after their meeting, Noyes' lawyer, who according to Complainant, has since been disbarred from the practice of law, phoned Complainant and told Complainant their conversation was being taped and if he made a move, Noyes would "hit him with all his might." He also told Complainant that Noyes was the boss and could do whatever he wanted. In that conversation he referred to Complainant as a "fucking Russian."

14. Noyes officially terminated Complainant on July 15, 2002 having come to no agreement with Complainant over money or a reference. Complainant testified that he felt frustrated and betrayed after the hard work he had done to organize Respondents' records and create a bookkeeping system. He testified that the way he was terminated

was very depressing and he not only lost a job, but was cut-off from the workforce because Noyes refused to give him a reference.

14. Subsequent to his termination, Complainant looked for work as a bookkeeper and went on job interviews, but with no reference, and at his age, then 61, he was unable to obtain employment.

15. In 1999, Complainant's net earnings from Respondent were \$11,730.00. In 2002, Complainant's net earnings Respondent were \$12,615.00. (Exhibits C-1 and C-2) Complainant's W2 forms for those years show his employer as the Rockmore Dry Dock, Inc. I find that had Complainant continued to work for Respondents, he would have earned at least \$12, 615.00 per year in the years 2003 through 2006.

16. Complainant received unemployment compensation of approximately \$1500 per month for approximately eleven months, until sometime in June of 2003.

17. Unable to secure employment after his termination, sometime in 2002, Complainant purchased the Lucky Sevens, a convenience store in Lynn, MA. He testified that he had done some bookkeeping for the owner of the store in the past and believed it to be a profitable venture. He paid the purchase price of \$185,000 by taking out a home equity loan on his condominium, cashing out his Individual Retirement Account and taking some cash advances on his credit cards. He also received financing from the previous owner.

18. Complainant testified that being the owner and operator of a convenience store is physically strenuous, requires him to work long hours including early mornings and late nights. He sometimes works up to 14 hours a day behind the counter. He realized almost immediately that retail is very stressful and the work also proved to be dangerous as the

store has been robbed at gunpoint and knifepoint a number of times. He testified that the summer before the hearing he was shot by a robber with some sort of fake gun.

19. Complainant testified that the operation of the store has not been successful and that he has barely made sufficient income to cover his debts and that he was eating his equity loan. He was forced to file for bankruptcy three years after opening the store, and the amounts owed on his credit cards were discharged. However, he was still responsible for his mortgage and student loans for his daughters. He testified that owning the store has been very difficult and has taken a toll on him physically and financially, that he has lost his home and his retirement money, and still has significant debt. At the time of the Hearing he was planning on selling the store at a substantial loss.

20. Complainant had also operated a seasonal business preparing tax returns and his income from that venture prior to purchasing the store was approximately \$15,000 per year. After buying the store his income from doing taxes decreased to \$6,000 per year because he no longer had sufficient time to devote to the second business.

22. Complainant testified about the decline in his physical health after his termination from Rockmore. He stated that he developed constant chest pain and his diabetes, which had been under control when he worked for Respondents, worsened once he began operating the convenience store.

23. Complainant testified that he was hurt financially and emotionally by his termination. He viewed it as a betrayal by Noyes and it continued to prey on his mind. He felt disposed of "like trash." He stated that since his termination, he constantly wants to be left alone, has lost confidence, and is unable to handle stress. He sometimes feels as though he is going crazy. He testified that these feelings are connected to his termination

and how badly he was treated. He stated that Noyes destroyed what remains of his life. Complainant also spoke compelling about feeling like an outcast who was unaccepted and oppressed as a Jew in Russia, only to come to this country to be denigrated as an older worker and insulted for being Russian, and how badly this made him feel.

24. Complainant's daughter, Anna Glezer, a 4<sup>th</sup> year medical student specializing in psychiatry, testified about how her father's emotional and psychological health was significantly affected by his termination. She confirmed that his diabetes worsened, his cardiac health became a concern, and that he began to exhibit many signs of depression, such a loss of interest and motivation in activities he previously found enjoyable and suffered a loss of memory. According to Ms. Glezer, her father became, and is still, very stressed and dejected and that the decline in his health is continuous and progressive. I found both Complainant and his daughter to be extremely compelling and credible witnesses. It was quite obvious from observing Complainant that he suffered a great deal of emotional pain and is in deteriorating health as a result of having to change jobs and take on a more demanding business.

### III. CONCLUSIONS OF LAW

#### A. Age Discrimination

M.G.L. chapter 151B, section 4 (1B) prohibits discrimination on the basis of age in the workplace. The statute protects persons of age forty (40) and over. Complainant may meet his burden of proving unlawful discrimination by direct evidence or circumstantial evidence. See Wynn & Wynn P.C. v. MA Comm'n Against Discrimination, 431 Mass. 655 (2000).

In the present case, I find that Noyes' remarks to Complainant constitute direct evidence of age discrimination. Noyes made several references to Complainant's age starting from the first moment he met Complainant stating that, from their phone conversation he expected Complainant to be younger. During the course of Complainant's employment he made reference to the fact that there were "a lot of young people around" who could replace Complainant, and upon terminating Complainant he stated that he was through with hiring old people. All of these comments are direct evidence of an age bias by Noyes and indicate that Complainant's age was an impermissible motivation for Complainant's termination.

Since Respondent failed to respond to discovery and did not appear at the public hearing, Complainant's evidence is unrebutted. If there were other reasons for Complainant's termination, they were not asserted and are not before me. Given these circumstances, Complainant need only present a prima facie case of discrimination to prevail.

The elements of a prima facie case of discrimination vary depending on the type of discrimination alleged. See Knight v Avon Products, 438 Mass. 413, 420 n.4 (2003). In an age discrimination termination case, Complainant must show evidence that he is a member of a class protected by G. L. c. 151B, performed his job at an acceptable level, was terminated, and that his employer sought to fill his position by hiring another individual who is at least five years younger. Id. at 422-25.

Complainant has met his threshold burden and established a prima facie case of age discrimination. He is a member of a protected class based on his age. His unrebutted testimony that over a three year period his work was satisfactory, and that he was never

reprimanded for poor performance, established that he was performing his bookkeeping responsibilities in an acceptable manner. His age was mentioned as a factor in his discussions with Noyes on a number of occasions, including at the time of his termination. He was replaced by a 21 year old. Having established all the elements of a prima facie case by credible testimony that was unrebutted, Complaint must prevail.

Based upon the evidence before me, I conclude that Complainant has established a violation of M.G L. c. 151B, Section 4 (1B).

#### B. National Origin

Complainant also asserts that his national origin was a factor in his termination. He testified to comments made to him by Noyes and Noyes' attorney during the course of his employment and during their subsequent discussions regarding whether he would remain employed or be paid some type of severance or settlement. These comments indicated the presence of an irrational fear and bias against him because of his national origin. Noyes apparently had no compunction about relaying an ethnic slur to Complainant. After speaking with Noyes, his attorney called Complainant a "fucking Russian." The fact that these discriminatory references were made to Complainant by Noyes and his attorney are evidence of a bias toward him because of his national origin. I conclude that their utterance is sufficient to raise an inference that Noyes harbored discriminatory views and also acted based on his wife's irrational fears and prejudices about Russians. This establishes a more than reasonable likelihood that Complainant's national origin was also partly a factor in his termination and Noyes' subsequent treatment of him. I conclude that Complainant has presented sufficient credible evidence,

that stands unrebutted, of a prima facie case of national origin discrimination in violation of G.L. c. 151B,s.4 (1). He, therefore, must prevail.

#### IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to award remedies to effectuate the purposes of G.L.c.151B and to render the injured Complainant whole. Remedies include damages for lost wages and for any emotional distress Complainant has suffered as a direct result of Respondent's discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004).

An award for emotional distress must rest on substantial evidence that it 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 Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. *Id.* In this case, Complainant testified credibly and quite compellingly about the emotional and physical injury he suffered as a direct result of his termination from Rockmore. Complainant stated that he cannot forget how he was betrayed by Noyes and felt disposed of "like trash." I believe that Complainant felt that after three years of enormously hard work getting Respondents' finances in order and creating systems "from scratch," that he had been used up and was being thrown away. He testified that since his termination from Rockmore, he constantly wants to be left alone, has lost confidence, is unable to handle stress, and feels as though he is "going crazy." He attributes these feelings to his discriminatory treatment by Noyes and expressed how hurt he feels to be victimized as an immigrant who saw promise in this country, educated himself, and

worked very hard to raise and educate his daughters. The deterioration of Complainant's physical health has had an impact on his emotional health and significantly contributed to his depression. My observations of Complainant at the hearing, including his affect and demeanor, lead me to conclude that he remains deeply emotionally affected by his termination up to the present time.

Complainant's daughter, Anna Glezer gave extremely credible and detailed testimony about her observations of her father's physical and emotional health and how both deteriorated significantly as a result of his termination. She specifically addressed his depression and loss of interest and motivation.

On the basis of the credible testimony of Complainant and his daughter, I am persuaded Complainant suffered emotional distress as a direct result of his termination and is entitled to an award of \$ 40,000 to compensate him for that distress.

Complainant has also established that he lost wages both from his position with Respondents and from additional income he earned at his tax business that he is no longer able to pursue with the same degree of commitment due to his long hours operating his store. I conclude that Complainant mitigated his damages by seeking other bookkeeping employment. His decision to buy the store was in lieu of other full time employment which he was unable to secure. He did not earn any income from this venture and in fact incurred substantial losses which resulted in his declaring bankruptcy.

I find that Complainant is entitled to the amount of income he would have earned working for Respondents, but for his discriminatory termination, an amount of at least \$12, 615.00 per year for the years 2003 through 2006 and one half that amount (\$6,307.50) for the remainder of 2002, minus the income he received from

unemployment compensation (\$1500 per month for 11 months). This amounts to a total of \$44,152.50 in back pay minus \$16, 500.00 in unemployment compensation, an amount of \$27,652.50. I find that he is also entitled to the difference between what he earned previously from his part-time tax business and what he currently earns, a difference of \$9000.00 a year, for the years 2003 to 2006, which amounts to \$27,000.00

#### V. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that:

- 1) Respondents cease and desist from discrimination on the basis of age and national origin in their hiring and firing practices in the future.
- 2) Respondents pay to Complainant the amount of \$54,652.50 in damages for lost wages with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or this order is reduced to a court judgment and post judgment interest begins to accrue.
- 3) Respondents pay to Complainant the amount of \$40,000 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post judgment interest begins to accrue.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full

Commission within ten days of receipt of this order and a Petition for Review to the Full  
Commission within thirty days of receipt of this order.

So Ordered this 12<sup>th</sup> day of March, 2007

---

Eugenia M. Guastaferr  
Hearing Officer