

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
WARREN DELANEY,
Complainant

v.

DOCKET NO. 01-BEM-10656

ONE STOP BUSINESS CENTER, INC.
Respondent

Appearances: Howard M. Brown, Esq. for Complainant
Jeffrey B. Loeb, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On November 28, 2001, Complainant, Warren Delaney, filed a Complaint of age discrimination against his former employer, Respondent, One Stop Business Center, Inc., alleging that he was terminated from his employment as a sales representative on account of his age in violation of G.L. c. 151B s.4(1B). The Investigating Commissioner initially issued a Lack of Probable Cause Finding from which Complainant appealed. On March 16, 2005, the Investigating Commissioner reversed the earlier finding, and issued probable cause to credit the allegations of the Complaint. Efforts at conciliation were unsuccessful and the matter was certified to public hearing. A hearing was conducted before the undersigned hearing officer on September 11, 12, 13 and October 13, 2006. Post-hearing briefs were filed by the parties. Having reviewed the record of the

proceedings and post-hearing submissions of the parties, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Complainant, Warren Delaney's date of birth is June 5, 1937. Complainant was 64 years old on November 1, 2001 when he was terminated from Respondent.
2. Respondent, One Stop Business Center, Inc. is a Massachusetts Corporation based in Burlington, and is engaged in the business of selling, leasing, and supporting digital photocopiers, printers, fax machines, and networking. Respondent has more than six employees and, during the relevant time period, had additional business locations in Boston and Norfolk, MA and Pawtucket, RI.
3. Prior to working for Respondent, Complainant had worked in sales for approximately 30 years. He was national sales manager for the Howard Johnson Company and held positions in sales and sales management for A-Copy, an office equipment firm.
4. Complainant was initially hired by Respondent as a sales manager in its Norfolk, MA office in 1993. Between 1993 and 1998, Complainant held various positions with Respondent, including manager of the Norfolk, MA office, manager of a team of sales representatives based in Burlington, MA and manager of the Pawtucket, R.I. office. During the times that Complainant was a sales manager for Respondent, he continued to perform sales work, including calling on customers and potential customers.

5. From 1998 until his termination in November 2001, Complainant worked as a sales representative for Respondent and was based in the Burlington office. Beginning in 1998, his manager was John Howe and from mid-1999 until August of 2001, his manager was Greg McCarthy. In August 2001, Roopa Shah became Complainant's manager when McCarthy decided he no longer wanted to be a manager and chose to become a key account sales representative. McCarthy described being a manager as a "bi-polar experience" because it was difficult to evaluate people you are friendly with. From his testimony I drew the inference that he was uncomfortable supervising Complainant. (Tr. 1, pp. 32, 79-80)
6. Respondent's sales force was composed predominantly of younger employees, most of whom were ages 21-29. (Ex. C-20) In October of 2001, 71% of the sales representatives were between the ages of 25 and 29. Only three of the sales representatives (14%) were age 40 and older, and this included Complainant, who at age 64, was the oldest sales representative. Both Mr. McCarthy and Ms. Shah were significantly younger than Complainant when they acted as his supervisors.
7. Gerry Mahoney was hired as Respondent's Director of Sales on March 1, 1999. He was the Director of Sales in November, 2001, and was responsible for overseeing the entire outside sales force. (Tr. 3, pp. 5, 27). Mahoney testified that it was "coincidental" that Respondent's sales force was comprised primarily of young men, but I do not find this assertion credible.
8. Of the 24 sales representatives hired by Respondent in 2001, 13 or 54% were ages 21 to 24 and another 2 (8%) were between ages 25 and 29. Seventy-eight per cent of the new hires were under the age of 40. (Ex. C-25) I find that these

percentages reflect a deliberate effort to recruit younger employees. This is supported by Mahoney's testimony that one of the two most successful methods of recruiting sales representatives was to recruit at universities and attend on-campus job fairs. (Tr. 3, pp. 24-25).

9. Respondent assigned its sales representatives to certain territories. Throughout his tenure as a sales representative working out of the Burlington office, Complainant was assigned to the same territory. Initially the town of Framingham was part of Complainant's territory, but was removed from his territory in November of 2000. (Tr. 1, p. 49, Tr. III, p. 77, Ex. C-4, C-7). According to Respondent this was part of a company wide adjustment of territories meant to achieve a more equitable distribution of prospects for the sales representatives and Complainant was not the only sales representative whose territory was changed between February of 1999 and November of 2000. (Tr. II, 188, III, p. 27-28, 32-35; Ex. C-2, C-4, C-17, R-5). Complainant alleged that his sales decreased in part because he lost this part of his assigned territory and I believe that this happened.
10. According to Complainant and others, all sales representatives had monthly performance quotas and were expected to make the minimum quotas. (Tr. I, p. 36, 120. Exs. R-2-R-4). The sales quota for more senior sales representatives, such as Complainant, was \$30,000 per month which is \$360,000 annualized. (Tr. 1, p. 37). There was testimony that supervisors did sometimes warn underperforming sales reps that failure to meet quotas could result in termination. McCarthy testified that if a rep was not adequately performing, he, as the

supervisor, could take corrective action, including issuing warnings, putting the employee on probation, or demoting the employee. (Tr. 2, p. 143). Mahoney testified that Respondent routinely took a series of corrective steps with sales reps who had performance problems. (Tr. 3 p.7) The Respondent's employee handbook references "progressive discipline" that includes verbal warnings, written warnings, suspension and ultimately termination. (Ex.C-6, p.29)

11. As an example of progressive discipline, Complainant pointed to Respondent's treatment of sales rep Matthew Butler, who worked for Respondent for approximately two years from May 2001 to June 2003, and was 22 years old when he was hired. From June 2002 to May 2003 Butler consistently failed to achieve his monthly sales quota. (Tr. 2, p.36) He was not terminated despite several months of failing to achieve his sales quota. He was warned in December of 2002 that he would be demoted to junior account rep if he did not reach his quota that month. (Ex. C-15) Mr. Butler was demoted in February 2003 and in April 2003, after continued failure to meet sales quotas, his supervisor, Ms. Shah, noted that he would be put on probation and warned that "failure to write budget or follow direction will result in termination." (Tr. 2, pp. 39-40; Ex. C-15) Mr. Butler was never terminated, but resigned in May of 2003. (Tr. 2 p. 41; C-16). Ms. Shah, acknowledged that the discipline Mr. Butler received was an example of the types of steps one could take as a manager to address a sale's reps lack of performance. (Tr. 2, p. 41).
12. During the more than 2 years that Complainant was under Greg McCarthy's supervision, McCarthy took no corrective action against him. (Tr. 2, p.144).

Complainant was consistently rated “P” for pass on the monthly management forms McCarthy completed, which meant the sales rep was doing what he was supposed to do. (Tr. 2, p. 132-134). However, McCarthy did make comments in Complainant’s Monthly Field Travel Reports such as the following: that he needed to acquire a lap-top computer and learn to use the Goldmine software; that he needed to find new sales opportunities instead of relying on the existing customer base; that he had to do more prospecting instead of relying solely on lease expirations and upgrades; that he must grow and change with the industry and understand the current technology, as his product knowledge is inadequate and will translate into eroding success; that he must adapt to remain successful.

13. Although McCarthy testified there were some issues with Complainant’s performance, he acknowledged that this was true of most sales reps that he supervised during his two years as a sales manager at Respondent. Comparing Complainant to other sales reps, McCarthy rated him in the “middle to slightly higher.” (Tr. 2, p. 193) Complainant testified that McCarthy complimented him frequently and said there was no one better than him in knowing the customer base. I credit this testimony. In August of 2001 when McCarthy stepped down as manager he made a list of concerns about Complainant’s performance and met with Complainant to discuss these. Complainant refused to sign or discuss the memo. (R-9; Tr. 2, p. 184, Tr. 3, p.44)

14. Complainant’s sales for the 12 months ending in June of 1999 were \$406,874. His sales for the 12 months ending in June of 2000 were \$478, 091. For the 12 months ending in June of 2001 they were \$275, 173. During the period from July

2001 to November 2001 his monthly sales were at least the following: July, \$7,250; August, \$24,060; September, \$2,370; October, \$3,090; and November \$28,648. (C-3, R-10; Tr.1 pp. 44-46, 52). Sales made in September and October were credited in November when the machines were actually delivered to the customers. (C-8; Tr. 1, pp. 86-89, 52).

15. Ms. Shah's evaluation of Complainant's performance in September of 2001 was generally positive. (Tr. 2, p.52, C-7). In the monthly management form dated September 6, 2001, Ms. Shah graded Complainant with a "P" for pass, which meant that he was doing what he was supposed to do, and that he was in good standing with her. (C-15: Tr. 2, pp. 52-53). The report completed by Shah on October 6, 2001 regarding Complainant's performance is generally negative. (C-7). In her monthly management form dated October 8, 2001, Shah graded Complainant with an "F" for "fail." (C-15). This was the only time during his employment that Complainant received a failing grade. Other sales reps had received failing grades from Shah and were not terminated. (C-15)
16. Complainant admitted that he had two or three "bad months." He offered several reasons for the decline in his sales during the summer and early fall of 2001. First, Respondent had removed Framingham from his territory. Framingham was the largest commercial town in his territory and there were numerous existing accounts which could be renewed, as well as new business to develop. Complainant testified that when he was notified of this decision by Mr. McCarthy, her told McCarthy that it was like "taking money out of my pocket." (Tr. I, p. 49-50)

17. Complainant testified that his sales were negatively affected when McCarthy removed a lease termination report from Complainant's desk. There was some dispute about whether Complainant was supposed to have this lease termination information, or if this was only for managers, but McCarthy told Complainant that Mahoney did not want Complainant to have this information any longer. (Tr. I, p. 55, Tr. II, p. 155). I believe that Complainant was told this. Complainant considered the lease termination information to be the best leads. (Tr. I, p. 55). Ms. Shah confirmed that the lease termination report was "valuable" and a "great source of leads." (Tr. 2, p. 49)
18. Contrary to the testimony of McCarthy and Mahoney, Shah testified that the Goldmine software used by Respondent did not generally include upcoming lease expiration dates. (Tr. 2, p. 50). Thus, the lease termination date was not available to Complainant after the report was taken away from him.
19. Complainant's sales also decreased when Respondent instituted a policy requiring sales representatives to spend a day or two each week telemarketing by making "cold calls." (Tr. 1, p. 72-73). Ms. Shah testified that the 9/11 terrorist attacks had a significant impact on "everyone's performance." (Tr. 2, p. 113) Complainant also testified that the events of 9/11 "affected everyone's sales, not just mine." (Tr. 1, p. 84). I credit their testimony that the terrorist attacks contributed to a significant downturn in Respondent's business and impacted everyone's sales numbers.
20. It is clear that Respondent ultimately did not require representatives to make quota on a consistent basis and did not terminate representatives for failing to

make quota unless the failure continued for a protracted period, and only after various types of corrective actions and progressive disciplinary measures were implemented. Mahoney acknowledged that only 20% of sales representatives achieved quota in 2000-2002. (Tr. 3, p. 109). McCarthy testified that a sales representative could fail to make quota for several months at a time and not be terminated. (Tr. II, p. 164). During the two years that McCarthy was a manager, his team did not achieve its quota “very often.” (Tr. II, p. 192).

21. Complainant testified that shortly before November 1, Director of Sales, Gerry Mahoney, told him he was doing fine and had almost made his sales quota for the upcoming month of November. (Tr. 1, p. 90) While Mahoney denied making this statement, I do not credit his testimony. Mahoney also testified that he never walked around the bull pen encouraging the sales representatives, but given the testimony of Complainant and McCarthy, I did not find this credible. (Tr. 3, p.83).
22. There is some dispute about the events immediately preceding Complainant’s termination. Shah testified that as of October of 2001, she believed that Complainant’s performance did not warrant termination, but rather corrective action. (Tr. 2, pp. 59-60). According to Shah, Complainant refused to sign his October 2001 Field Travel Report and walked out of the meeting. She testified she was upset, but not angry, about his refusal to sign the report. (Tr.2, pp. 55-56). She stated that in discussion with Mahoney immediately following Complainant’s refusal to sign the report, Mahoney asked her to terminate Complainant and she

refused. (Tr. 2, p.58). She also testified that Mahoney informed her that Complainant was going to be terminated. (Tr. 4, p.9)

23. Mahoney, on the other hand, testified that Shah was livid when Complainant refused to go over the report with them and sign it. According to Mahoney, she requested that Complainant be terminated and that he supported her decision. (Tr. 3, pp. 44,46). Shah denied making such a request. (Tr.4, p.8). Mahoney testified that Shah did not want Complainant working for her any longer, and that she refused to work with him. Shah also denied making these statements to Mahoney. (Tr. 3, pp. 46, 49, Tr. 4, p.8). I do not fully credit the testimony of either Shah or Mahoney regarding this meeting and the decision to terminate Complainant. Shah was not very forthcoming with her testimony. I do believe that Complainant refused to sign the FTR stating “I’m out of here,” and walked out of the meeting and that Mahoney and Shah then discussed terminating Complainant. At some point thereafter, after discussions with Gould and Guthrow, Complainant was terminated by Mahoney on November 2, 2001. (Tr. 3, p. 44, 46, 48). Mahoney testified that Complainant was terminated because he was unwilling to be coached, couldn’t accept the industry changing and passing him by, and had soured his relationship with his sales manager who was unwilling to work with him. (Tr. 3, p. 49).

24. Complainant testified that he believed his age was the reason for his termination. He stated the Mahoney made a number of age related comments either to him or about him. Mahoney would tell the younger reps who had questions to go “ask the old bastard, he knows everything.” (Tr. 1, p. 78). He made a comment about

Complainant showing his AARP card to young ladies when he goes out to clubs in Boston. (Tr. 1, p. 77). He also made comments to the effect that Complainant had been around Respondent too long, and that he was losing his hair. (Tr. 1, p. 78). Complainant testified that he mostly brushed these comments off and tried not to take offense at them.

25. A witness for the Complainant, Brian O'Donnell, was a sales representative from September of 2000 to June of 2001, and worked under McCarthy in the Burlington office. O'Donnell testified that Jack Guthrow and Randy Gould were the owners of the company and that Complainant had known Guthrow for many years. He testified that he frequently heard comments about Complainant's age such as such as: "Warren, you're too old for this; Brian can you see yourself doing this at Warren's age; Warren does things old school, doesn't do things new school; Warren, glad to see you were able to get out of bed today." He stated that Guthrow would say these things to Complainant, but he couldn't remember specifically who made every comment. More significantly, he generally overheard managers say: "Copier sales is a tough job and a young man's game. You have to be out there pounding the streets." (Tr. 2, pp. 116-118, 120). When O'Donnell would hear comments of this sort being made to, or about, Complainant, he'd say to Complainant: "Sounds like they want you to die, sounds like they want you out of here." He stated that all the other reps were in their mid-twenties and at 47 he was the second oldest sales rep. I found O'Donnell to be an extremely credible witness and I believe that managers made the comments he attributed to them and that they generally held the belief that sales were "a

young man's game." There was testimony that Mahoney made other insensitive, crude and offensive comments about and in front of the staff. I credit this testimony. I did not credit Mahoney's testimony that he never made references to people's age, national origin/religion and weight.

26. Complainant was 64 years old at the time of his termination. He testified that it was the first time in his successful sales career that he had been terminated from his employment and that he found it "pretty tough." He had trouble sleeping, and suffered from anxiety at the time and reported this to his physician on 3/19/02. His physician prescribed Ambien to help him sleep and encouraged him to seek mental health counseling and job counseling. (C-24). Complainant did not seek mental health counseling but testified that he still has trouble sleeping and continues to have periodic feelings of depression. (Tr. 1, p. 108, 110). I found Complainant to be a proud man who had some difficulty expressing how distressing it was to him to lose his livelihood at age 64. He stated he doesn't like to admit how tough it was. He testified that he had difficulty socializing and facing his family. He has had to accept financial help from his daughter to make ends meet and he seemed to feel very much embarrassed by this. He testified that his daughter basically takes care of him.
27. From 1998 to 2000, Complainant's income from Respondent averaged \$48,064 per year (approximately \$4000 per month). (Tr. 1, p. 98; C-12). Beginning in 2001 Complainant's income was reduced due, in part, to his lackluster sales for a period of months, and to his termination in November of that year. His annual income from employment and unemployment compensation was as follows:

2001- \$32,105.00
2002- \$17,249.00
2003- \$ 664.00
2004- \$ 1,000.00
2005- \$ 95.00 (C-12)

Had he continued to work for Respondent in 2001, Complainant estimated his compensation, based upon the sales he had completed in the first 10 months, would have been \$36,000. (Tr. 1, p132). Complainant testified he might have made additional sales in November, and given that his sales numbers had picked up some, this is not entirely speculative. I find that Complainant would have earned at least \$35,000 for the year had he not been terminated. Complainant testified that after his termination he sought employment in various industries in 2001 and 2002. He networked and talked to people he knew in the copier industry, the hotel business and an advertising agency. He did not find work and collected unemployment compensation and used some of his savings. In 2003 he worked for the TSA doing security at the airport for six days but quit because he could not stand on his feet for eight hours a day. He had sporadic employment and income from sales in 2004. On his 2004 and 2005 tax returns, Complainant's occupation is listed as retired. In 2006 he spent the first three months of the year in Florida. He receives approximately \$16,000 per year in Social Security benefits, has some 401K savings and still looks for work at age 69.

III. CONCLUSIONS OF LAW

General Laws. c. 151B s.4(1B) makes it an unlawful practice to discharge one from employment on account of age. For a complainant to establish a claim of age discrimination, he must demonstrate that: (1) he was a member of the protected class; (2) his job performance was acceptable; (3) he was subjected to an adverse employment action; and (4) the employer sought to replace him with someone who is substantially younger, at least five years younger than Complainant. Knight v. Avon Products, Inc. 438 Mass. 413, 425 (2003); MacCormack v. Boston Edison, Co., 423 Mass. 652, 662-663 (1996). Complainant has satisfied the first, third and fourth prongs of this test. He was 64 years old at the time of his termination and he was replaced by a sales representative who was 26 years old.

Respondent asserts that Complainant's job performance in the months leading up to his termination was unacceptable, that he refused to use the computer software provided for sales reps, and that he relied exclusively on the existing customer base and did not seek out new sales opportunities. It argues that he failed to establish that he was successfully performing his job and that the decrease in his sales numbers reflected this. However, Complainant's two supervisors in the months leading up to his termination testified that, by and large, his performance was adequate and that he was doing what he was supposed to do. Even though Complainant's sales had diminished over a period of months, there was evidence to suggest that his sales numbers were beginning to improve. The evidence suggests that Respondent did not generally terminate a sales representative for a downturn in sales over a few months

time, but instead utilized other methods to counsel and encourage sales representatives to improve performance. It was not until her final monthly management report of Complainant that Ms. Shah graded Complainant with an “F” for fail, but this grade represented only a single month of diminished sales and there was evidence that other representatives received failing grades for months at a time and were not terminated. Given these circumstances, I conclude that despite his diminished sales, Complainant was adequately performing his job for purposes of establishing a prima facie case of age discrimination.

Once the Complainant has established a prima facie case, the burden shifts to Respondent to articulate a lawful reason or reasons for its employment decision. Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116, 117 (2000). Respondent offered the following reasons for Complainant’s termination: he was “unwilling to be coached,” “unwilling to accept that fact that [the] industry was changing and that it was passing him by,” and he “had soured the relationship with his sales manager to the point that she refused to work with him.” Respondent asserts that his poor performance coupled with his lack of willingness to improve and insubordinate conduct, in refusing to sign his Field Travel Report, gave them adequate reason to terminate Complainant. Respondent has satisfied its burden of production to articulate a legitimate non-discriminatory reason for its action.

Once Respondent has articulated a legitimate, non-discriminatory reason for its actions, Complainant must demonstrate that the stated reasons are a pretext for unlawful discrimination or, put another way, that Respondent acted with discriminatory intent, motive or state of mind. Lipchitz v. Raytheon Co. 434 Mass.

493, 504 (2001). This element of proof may be satisfied by the inference of discriminatory animus drawn from proof that one or more of the reasons advanced by the Respondent is false. *Id.* at 504. One of the most probative means of establishing pretext for discrimination is to demonstrate that Complainant was treated differently than similarly situated employees outside the protected class. Matthews v. Ocean Spray Cranberry, Inc. 426 Mass. 122, 129 (1997). Here, Complainant was able to demonstrate that other sales representatives, who were significantly younger were not treated in a similarly harsh manner, when they failed to meet their sales quotas over a period of time. In addition, Respondent was shown to have implemented progressive discipline with respect to a least one younger employee who failed to meet his sales quotas for over a year and who received failing grades on his monthly management form for four months. This employee was demoted and later threatened with probation and a warning that he would be terminated if his sales record did not improve. In contrast, Respondent made no attempt to implement progressive discipline with Respondent.

Moreover, in contrast to the picture painted by Respondent, both Complainant and Shah testified that they got on quite well and respected each other. The fact that Respondent became angry and refused to sign his negative monthly field travel report for October 2001 was characterized as insubordination by Respondent, in part, justifying his termination. According to Complainant he was angry because he perceived the criticism as unfair. Given Complainant's long history with the company and his personal relationship with the owners, his termination seems precipitous and unjustified by this outburst over a negative field report.

Proof of pretext may also be shown by some direct evidence of age based animus. Lipchitz, supra. at 502. Complainant presented direct evidence in the form of ageist comments and the fact that the overwhelming number of sales representatives recruited and hired by Respondent were very young. The circumstances of Complainant's termination, when viewed in conjunction with evidence that the overwhelming majority of sales reps were very young, and that the copy sales business was viewed, and referred to, as a "young mans game," lead me to conclude that the ageist comments made to Complainant were not merely stray remarks, as Respondent urges me to find, but evidence of a broader and deeper animus against older people in the profession, in general, and of a bias against Complainant because of his age. From the testimony of both McCarthy and Shah regarding their supervision of Complainant, I draw the inference that they had a level of discomfort in dealing with him that was based in large part on his age, and the fact that they were much more used to supervising sales reps younger than they were. Given all of the above, and that fact that the testimony about the events leading up to the decision to terminate Complainant was conflicting and less than credible, I find that Complainant has established evidence of pretext for age discrimination. Therefore I conclude that his termination was a violation of G.L. c. 151B s. 4(1B).

IV. REMEDY

The Commission is authorized to award damages to prevailing Complainants, including damages for emotional distress caused by the unlawful acts. Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Awards for emotional distress must be fair and

reasonable and proportionate to the harm suffered. Factors to consider are the nature and character of the harm, the severity of the harm, the duration of the harm and whether Complainant mitigated the harm through counseling or medication. *Id.* at 576.

Complainant seeks an award of back pay from November 2001, when he was terminated, through December 31, 2005, when he asserts he would have retired. He also seeks damages for emotional distress resulting from his discriminatory termination. Complainant's average salary for the 4 years prior to his termination was \$48,000. Complainant testified that he made attempts to find work and did work for short periods of time in the years subsequent to his termination. Respondent urges me to find that Complainant's damages for back pay are cut off as of 12/31/03 because he essentially made the decision to retire and listed his occupation as "retired" on his tax forms for 2004 and 2005. I concur that Complainant is not entitled to back pay up until December of 2005, but it is clear from this salary history, and his own testimony, that after his very brief employment with the TSA in 2003, Complainant did not seek full time work. This is supported by the fact that his income from employment in 2004 was only \$664.00 and by mid-year he was 66 years old. I conclude that he considered himself effectively retired for that year also.

Complainant earned approximately \$32,150 for the 10 months he worked in 2001. Given his salary history and his sales performance in 2001, it is fair to presume that he would have earned at least \$35,000 for the years, 2001 and 2002. Because the nature of income from sales is sporadic and often unpredictable, Complainant's lost income can not be discerned with precision, and must be presumed from his past performance. I conclude that Complainant's lost wages for 2001 were approximately \$2850 and for

2002, approximately \$35,000, for a total of \$37,850. Complainant's income from unemployment and other sources of mitigation for 2002 was \$17,249. Subtracting this amount for \$37,850 his total lost wages are approximately \$20,601.

I conclude that Complainant is further entitled to an award of \$25,000 for damages for emotional distress he suffered as a direct result of his termination. Complainant impressed me as a proud man who was very much embarrassed and humiliated by his termination and the fact that he could no longer take care of himself financially and had to rely on his grown daughter for financial support. He testified about having trouble sleeping and consulted with his physician who prescribed medication to help him sleep. He also felt anxious and depressed, but despite his doctor's recommendation, did not seek counseling. He found it difficult to socialize and to face his family. He stated that it was "pretty tough," but he doesn't like to admit how tough it was. He continues to have trouble sleeping and periodic feelings of depression. I believe these symptoms as well as his feelings of inadequacy and humiliation were directly related to his termination and conclude that he is entitled to an award of \$25,000 in damages for emotional distress.

V. ORDER

This decision represents the final order of the Hearing Officer. Respondent is hereby ORDERED to:

- 1) Cease and desist from engaging in any discrimination based upon age.
- 2) Pay to the Complainant the sum of \$20, 601 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 the matter is reduced to a court judgment and post-judgment interest begins to accrue.

- 3) Pay to Complainant the amount of \$25,000 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 the matter 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 C.M.R. 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within 10 days of receipt of this decision, and a Petition for Review to the Full Commission within thirty (30) days of receipt of this decision.

So ordered this 30th day of April, 2007.

Eugenia M. Guastaferr
Hearing Officer