

Annual Report 2018



**Massachusetts Commission
Against Discrimination**

About the MCAD

The Massachusetts Commission Against Discrimination (MCAD) is the independent state agency that enforces the anti-discrimination laws of the Commonwealth through training, mediation, investigation, prosecution and adjudication.

The people of Massachusetts, its workers, and visitors may file a Discrimination Complaint if they believe they were treated differently or unfairly in Massachusetts based on their identity as a member of a protected class (e.g., race, disability, age, national origin, gender, sexual orientation, or veteran's status).

The MCAD has four offices, Boston, New Bedford, Springfield, and Worcester, where one can meet with an intake specialist for a free consultation and file a Complaint. In most cases, there is a 300-day statute of limitations on filing a complaint at the MCAD from the last discriminatory act. Complaints filed at the MCAD will be investigated by an MCAD staff member to determine if the treatment alleged constitutes unlawful discrimination. The MCAD conducts its investigation as a neutral entity.

The MCAD also offers training and outreach to address and prevent discrimination. The Commission also conducts policy reviews, drafts model policies, and issues guidance on Acts that affect the work of the Commission.

Main Contact Numbers

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Office of the Commissioners & Press Office

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Training Unit

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Operations and Finance Division

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Table of Contents

i	About the MCAD Main Contact Numbers
ii	Table of Contents
1	Letter from the Commissioners
3	Administration & Finance Report
4	FY18-19 Budget
5	MCAD Process Flow Chart
7	Investigations Division Report
11	Legal Division Report
12	Noteworthy Settlements
22	Hearing Division Report
26	Significant Full Commission Decisions
30	Glossary of Terms
31	Staff List
32	Advisory Board List Intern List

Commissioners

Sunila Thomas George
Chairwoman

Sheila A. Hubbard

Monserate Quiñones

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Springfield, MA 01103
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Worcester **MCAD**
484 Main St. Rm. 320
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www.mass.gov/mcad

Letter from the Commissioners

Dear Governor Baker, Lieutenant Governor Polito, Senate President Spilka, Speaker DeLeo, and Members of the General Court,

In accordance with Chapter 151B, §3 (10) of the Massachusetts General Laws, we hereby submit the 2018 Annual Report of the Massachusetts Commission Against Discrimination (MCAD):

Calendar year 2018 was a remarkable year for this agency. On the heels of the #MeToo movement, sending shockwaves throughout the nation and the Commonwealth, the year began at a breakneck pace when the MCAD received 400% more Sexual Harassment complaints in January and February compared to those months in years previous. This unprecedented increase of filings was matched by the overwhelming requests for sexual harassment prevention training from the Commission.

Based on the deluge of additional cases and training requests, the MCAD petitioned for and received \$250,000 in supplemental funding for fiscal year 2018 from the Massachusetts Legislature to its state appropriation account. This boost, coupled with an increase to the agency's retained revenue caps, equipped the MCAD with the resources necessary to be better able respond quickly to the extraordinary demand for its services. With these additional funds, the MCAD was able to hire additional investigators to help triage sexual harassment cases and expand its training unit staff. Anticipating a continued increase in demand for the agency's programs and services in FY19, the Commission requested and received an additional \$500,000 in state appropriation to combat the inundation of new cases and the anticipated prosecution and adjudication of these cases.

The Legislature and Governor went above and beyond these requests, approving a FY19 budget increase for the Commission's state appropriation by \$592,804, and annualizing the cap increases in both of MCAD's Retained Revenue accounts. All told, these increases resulted in nearly \$2 million dollars in additional funding for the agency compared to the start of FY18. This is the largest state appropriation funding increase the agency has received in its history.

The FY18 budget approval set in motion a cascade of changes at the agency. In 2018, the Commission hired a dozen new staff members, and backfilled two vacant senior management positions: the Chief of Operations and Finance and the Chief of Investigations. Additionally, the Commission hired new staff members to assist with every step of the agency's process, from intake to investigations, through mediation, prosecution, and litigation.

The agency also expanded its training unit staff to four full time trainers. As a result, the MCAD conducted and attended approximately 250 training sessions, community events, and career fairs across the state in 2018. This is a remarkable increase compared to the 80 training sessions the MCAD conducted in 2017 and the 73 sessions in 2016.

In addition to the already exciting year, the MCAD co-hosted the 2018 Fair Housing and Civil Rights Conference in Springfield, Massachusetts, which took place in April. The two-day symposium offered 27 workshops on civil rights hot topics, and hosted over 500 attendees, featuring keynote speaker Maura Healey, the Massachusetts Attorney General, remarks by Victoria A. Lipnic, the Acting Chair of the EEOC, and Anna Maria Farias,

Assistant Secretary of HUD. The conference conveners also honored Dr. Anita Faye Hill as the first recipient of the *Charles J. Ogletree, Jr. Lifetime Achievement Award* for her courageous contributions to women's rights and her dedication to fighting sexual harassment and abuse.

Moving to Fiscal Year Reporting

Historically, the MCAD has always issued annual reports based on the calendar year. However, this 2018 Annual Report will be the last calendar year report that the agency issues. The MCAD will transition to a new reporting cycle starting this summer, when the MCAD will issue the first MCAD Fiscal Year 2019 Annual Report, capturing data and accomplishments from July 1, 2018 to June 30, 2019. This move will bring the MCAD into conformity with other independent and executive agencies in the Commonwealth.

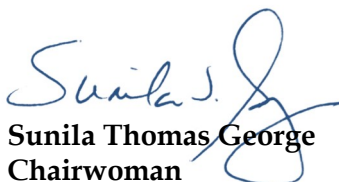
Conclusion

The accomplishments memorialized in this calendar year report show a marked increase in productivity in every department and program of the MCAD. The Commissioners take great pride in the successful efforts of its managers and staff, and thank all—including the MCAD Advisory Board—who have helped make 2018 one of the most dynamic years at the Commission in recent memory.


Thanks to the ongoing support from the Massachusetts Legislature and Governor's office, the agency has the resources necessary to begin implementing its vision for a more robust, effective, and impactful Commission. The Commission is now better situated to remediate discriminatory treatment in a timely manner and implement a proactive approach to preventing discrimination before it occurs.

Respectfully submitted,

The Commissioners of the MCAD


Sunila Thomas George
Chairwoman


Sheila A. Hubbard
Commissioner


Monserrate Quiñones
Commissioner

Administration and Finance Report

The Operations and Finance Unit, formerly the Administration and Finance Division (ANF), is comprised of the Office of Human Resources, Fiscal/Budget, Information Technology (IT), and Operations. These functions are overseen by the Chief of Operations and Finance (COF).

In FY18, the ANF division was completely overhauled and rebranded as the Operations and Finance Unit. Functions related to Training, the Clerk's Office, administrative services/reception were transferred to other units within the agency, with substantive functions related to budgeting and finance, Human Resources, Diversity/Accommodations, and Operations transferred in. In March of 2018, the Commission hired a new Chief of Operations and Finance, formerly titled the Chief of ANF, a position which had been vacant for over a year.

Fiscal/Budget

The Unit is tasked with all the financial and budgetary functions of the Commission. The Unit prepares and submits the Commission's annual budget request to the Commonwealth's Administration and Finance Secretary and the House and Senate Ways and Means committees; monitors fiscal year spending to ensure spending meets planned levels; makes requisite recommendations for spending deviations; oversees all of the Commission's purchasing, including all procurement and contract management; and manages accounts payable, accounts receivable, and revenue activities.

Office of Human Resources

The Unit provides all aspects of personnel administration and human resource direction and support for the employees of MCAD. These services include payroll administration, benefits and leave administration, labor and employee relations, handling of all Americans with Disabilities Act requests, accommodations, and processing, and approving all Family and Medical Leave Act requests. The Unit is also responsible for all posting, hiring, and recruiting (in collaboration with the Commission's Training Unit) of MCAD positions. The COF, as the designated Diversity Officer, oversees all diversity considerations and professional development opportunities. Additionally, the Unit recommends and implements agency-wide personnel policies and procedures.

Information Technology

The Unit oversees all of the Commission's IT and telephony functions including desktop and application support for all of the Commission's offices. The Unit also procures and supports all of the Commission's hardware and software.

Operations

The Unit manages the operations of the Commission's four office locations, and oversees lease management for the Commission's New Bedford, Springfield, and Worcester offices. The Unit is responsible for day-to-day operations of all locations including, but not limited to, maintenance, security, ID access, and asset inventory.

Funding/Personnel

In FY18, the Commission successfully increased its state appropriation and raised its retained revenue caps through a supplemental budget, which was supported and approved by the Governor, Senate, and House. Increased funding was sought as the impact of the #Metoo movement and similar movements were realized by the Commission by way of increased complaints related to sexual harassment and an enormous increase in requests for sexual harassment prevention training. The supplemental funding allowed the MCAD to hire an additional investigator and two additional trainers, doubling the size of the Training Unit.

The Commission requested additional funding in FY19 to continue to support the demands put on the agency. As noted in the Commissioners' letter, in FY19, the Commission received annualized supplemental funding in FY18 and additional funding to the Commission's state (direct) appropriation. The Commission earmarked these funds to hire nine mission-critical positions.

The Commission is grateful to the Governor, Senate and the House for their continued support of the Commission and its mission to *eradicate discrimination in the Commonwealth*.

MCAD Budget for FY18

July 1, 2017 – June 30, 2018

Direct State Appropriation (Line Item 0940-0100)

State Appropriation Total \$ 3,207,196

Retained Revenue Collected (Line Item 0940-0101)

HUD	\$ 1,185,777
EEOC	\$ 1,893,990
Training fees	\$50,190
Audit/Copying fees	\$ 1,867
Attorneys' Fees	\$ 0
Retained Revenue Total	\$ 3,131,824

Training Program (Line Item 0940-0102)

Training Program Total \$ 282,140

**Total FY18 Appropriated Funds
And Collected Retained Revenue** **\$ 6,621,160**

Expenses

Payroll	(\$ 5,284,898)
Rent	(\$ 111,371)
Administrative Overhead	(\$ 680,088)

Total FY18 Expenses **(\$ 6,076,357)**
Reversion to General Fund¹ **(\$ 544,803)**

MCAD Budget for FY19

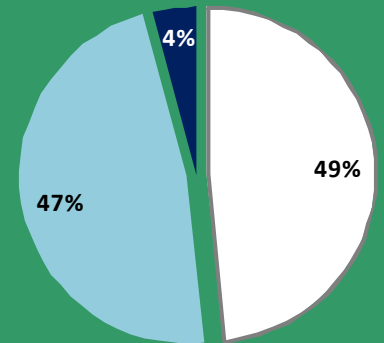
July 1, 2018 – June 30, 2019

State Appropriation (Line Item 0940-0100)	\$ 3,800,000
Retained Revenue (Line Item 0940-0101)	\$ 3,500,000
Training Program (Line Item 0940-0102)	\$ 410,000

Total FY19 Budget² **\$ 7,710,000**

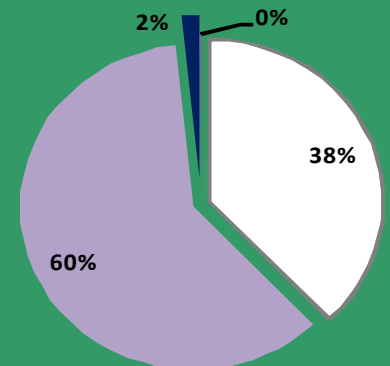
1. Funds earned in excess of the retained revenue caps as well as unspent funds are reverted back to the General Fund.
2. FY19 Budget includes all funds and retained revenue allocated in the FY19 Final Budget and all supplemental appropriations.

FY18 Funding & Revenue



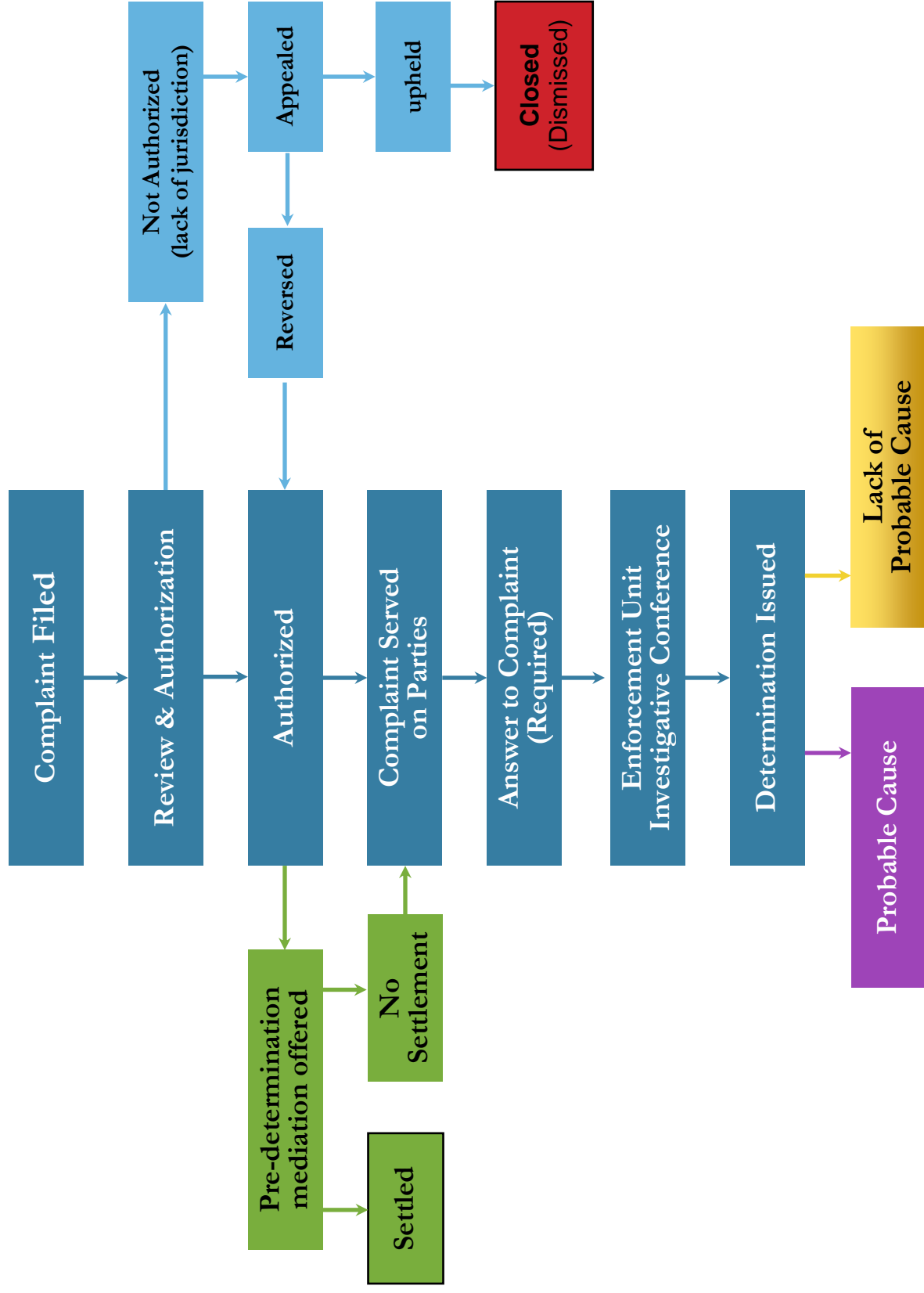
State Appropriation	\$3,207,196
Retained Revenue	\$3,131,824
Training	\$282,140
Total	\$6,621,160

Retained Revenue Sources

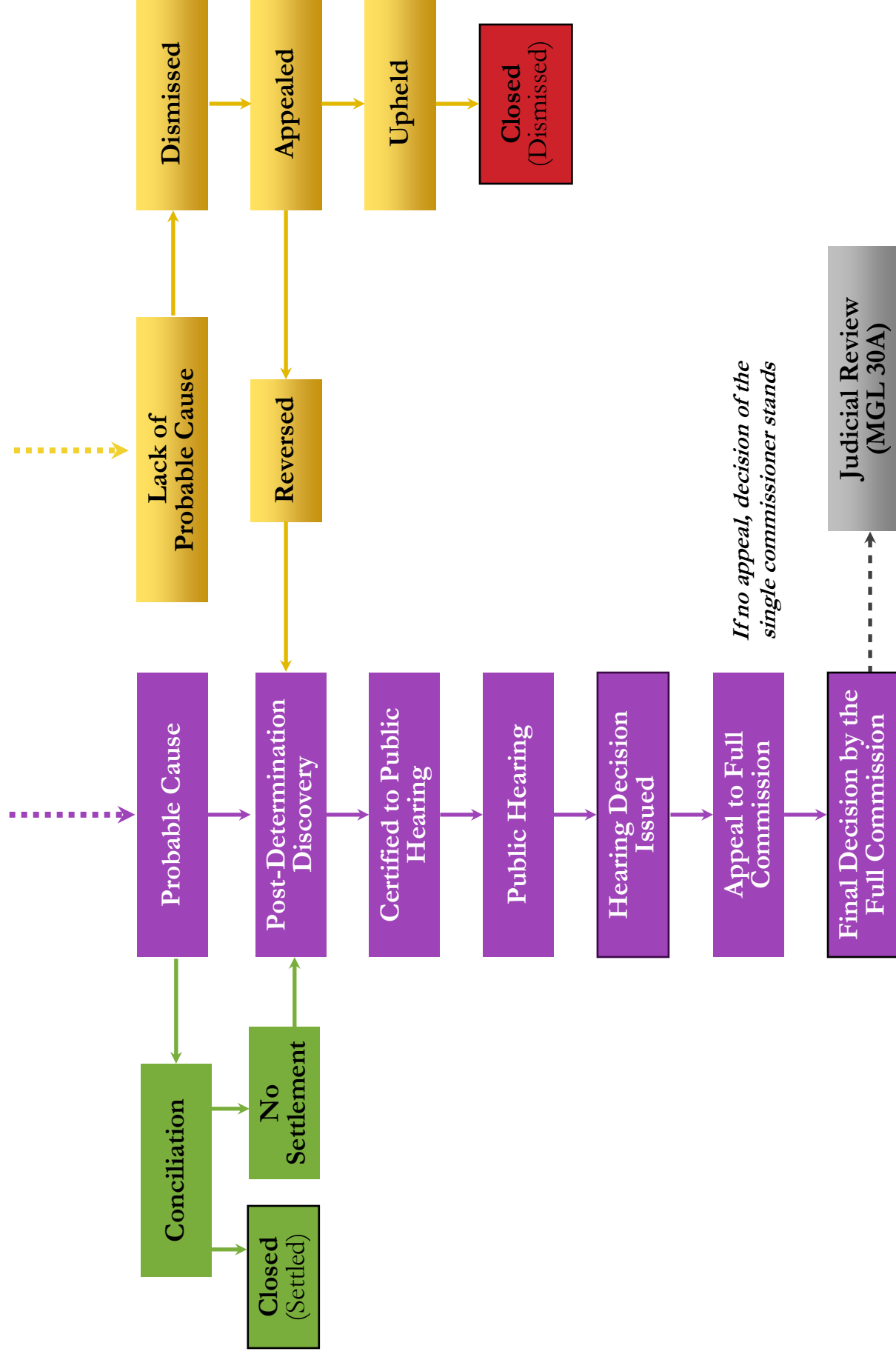


HUD	\$1,185,777
EEOC	\$1,893,990
Training Fees	\$50,190
Fees	\$1,867
Total	\$3,131,824

Flow Chart of MCAD Investigative Process



Flow Chart of MCAD Process After a Determination Has Been Issued



Division Highlights

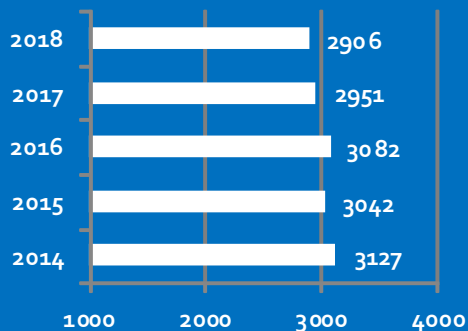
Staffing

- ◆ Chief of Investigations
- ◆ Deputy Chief of Investigations
- ◆ Investigators (22)
- ◆ Supervisors (7)
- ◆ Attorney Advisors (6)
- ◆ Admin & Reception Staff (10)

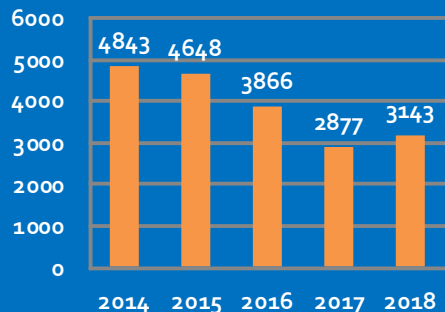
General Statistics

- ◆ 5,000+ Consultations
- ◆ 6,000 Info Calls
- ◆ 2,906 New Complaints Filed
- ◆ 3,244 Cases Closed or Resolved
- ◆ 295 Probable Cause Findings
- ◆ 247 Anti-Discrimination Trainings

Complaints Filed Annually



Inventory of Investigation Cases



Investigations Division Report

The MCAD's Investigations Division, formerly called the Enforcement Division, investigates Complaints of discrimination filed at the Commission. When a Complaint is filed at the Commission, the MCAD must determine if it has statutory authority to investigate the allegations raised in the Complaint. If the MCAD determines that it lacks jurisdiction or the investigation is not authorized, the Complaint is dismissed. Otherwise, the MCAD proceeds with a formal investigation.

First, the Complaint is served on the parties and the Respondent has the opportunity to answer the Complaint in the form of a Position Statement. The Complainant may then respond to the Position Statement with a Rebuttal. During the course of the investigation, the Investigator may interview witnesses, obtain documents, conduct site visits, or hold investigative conferences to gather additional information and seek clarification from the parties. Upon conclusion of the investigation, the Investigator, with the assistance of an Attorney Advisor, submits their findings to the Investigating Commissioner with a recommendation of **Probable Cause**—that it is more likely than not that unlawful discrimination occurred—or **Lack of Probable Cause**. The investigation concludes with the Investigating Commissioner assigned to the case issuing a determination titled the Investigative Disposition.

The MCAD welcomed a new Chief of Investigations and a new Deputy Chief of Investigations in 2018. The Chief and Deputy Chief are working collaboratively with the Investigations Division Supervisors on managing the Division's staff and caseload to ensure thorough and efficient investigations. Additionally, the increase in funding allowed the agency to hire multiple new investigators and offer promotional opportunities for Investigative Division staff.

In 2018, the MCAD received just shy of 3,000 complaints and completed 1,999 substantive investigations. The Commission kept its backlog—cases over 18 months old awaiting a determination—near last year's number, while not employing contract investigators to assist with the investigations, as had been done in 2016 and 2017.

The Investigations Division outperformed its annual work-share agreement with the Equal Employment Opportunity Commission (EEOC) again, resulting in the EEOC increasing

its contract with the MCAD by 300 cases (up 10%) to be completed in federal fiscal year 2019. This resulted in a \$210,000 increase in EEOC funds.

Training and Outreach Unit

The MCAD Training Unit provides internal and external discrimination prevention trainings, conducts outreach, assists with recruitment, and administers the MCAD's robust Internship Program. In 2018, the Training Unit expanded to four staff members, hiring two new trainers and an associate trainer to support the operations of the Unit. The Training Unit offers the following six external discrimination prevention trainings: Preventing & Addressing Workplace Discrimination; Preventing & Addressing Sexual Harassment; Responding to Accommodation Requests; Conducting Internal Investigations; Preventing & Addressing Housing Discrimination; Preventing & Addressing Public Accommodation Discrimination.

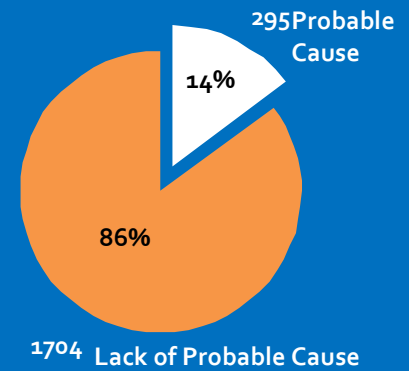
Throughout 2018, the MCAD Training Unit conducted and attended approximately 247 external discrimination prevention training sessions, community events, and career fairs across the state impacting roughly 4,400 participants ranging from HR professionals, management and staff, to attorneys, realtors, landlords, and government employees. Training sessions range from two hours to five days in length. Of note, a special training was held for all Sexual Harassment Officers across the Commonwealth agencies on conducting internal investigations.

The Commission held its 19th annual Courses for Equal Employment Opportunity Professionals this year, including the 2018 spring session in Boston, and, for the first time ever, in Springfield in the fall. The course consists of four half-day prerequisite sessions, two Train-the-Trainer modules (each comprising two to three days), and two EEO practitioner modules: Responding to Accommodation Requests and Conducting Internal Discrimination Complaint Investigations.

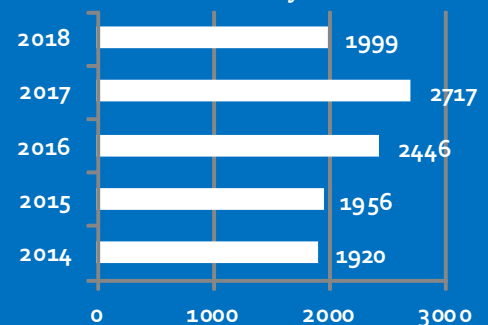
The Training Unit runs the new MCAD employee/intern trainings four times per year, and provided half-day trainings on de-escalation strategies and housing vouchers.

In the summer of 2018, the Commission held its annual summer series of brown bag lunch discussions on various topics for interns and employees, including workshops on conducting witness interviews, public service, the role of the Commissioners, and a tour of the State House. Interns worked on hundreds of investigations, conducted intake meetings with potential Complainants, and supported the Language Access Program and additional agency initiatives.

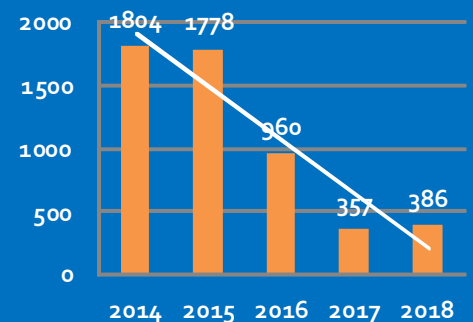
Substantive Determinations



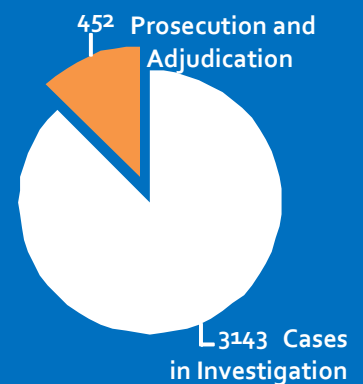
Substantive Determinations Annually



Inventory of Backlog Cases



All Active Cases



Complaints by Protected Category

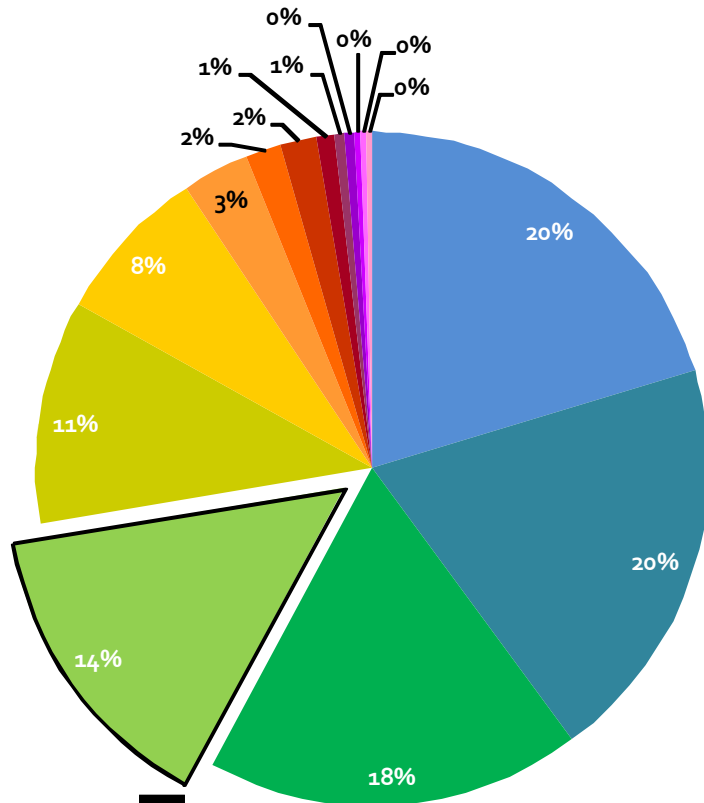
Disability	1226
Retaliation	1187
Race, Color	1090
Sex	875
Age	650
National Origin	457
Other*	190
Creed	106
Sexual Orientation	104
Public Assistance	50
Military Status	32
Gender Identity	26
Criminal Record	21
Children	17
Familial	15

* Includes Lead Paint, Marital status, Veteran, Genetic information

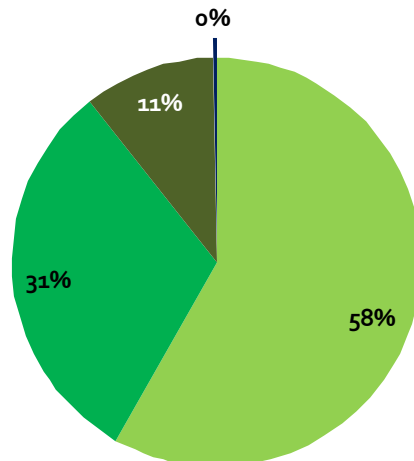
Sex Discrimination Breakdown

Sex Discrimination	597
Sexual Harassment	320
Pregnancy	106
Parental Leave	3

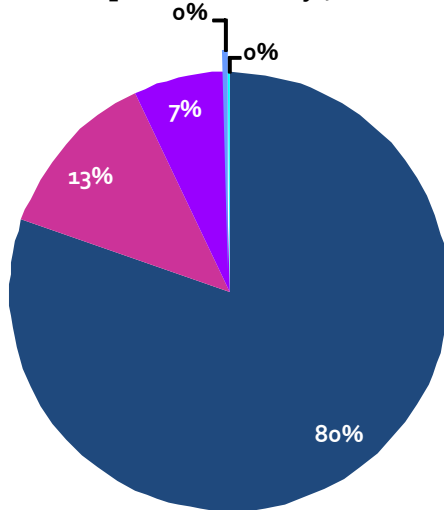
Complaints by Protected Category



Spotlight on Sex Discrimination



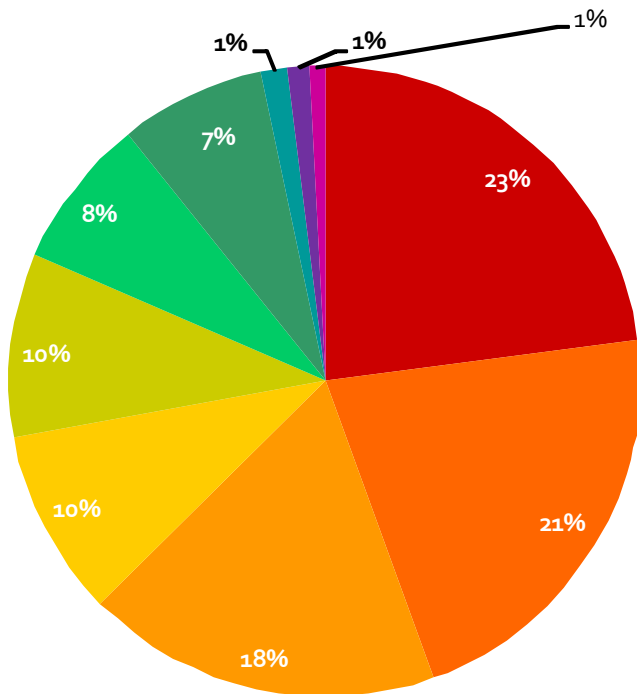
Complaints Filed by Jurisdiction



Complaints Filed by Jurisdiction

Employment	2,334
Housing	367
Public Accommodation	193
Education	10
Credit	2
Total	2,906

Administrative Closures

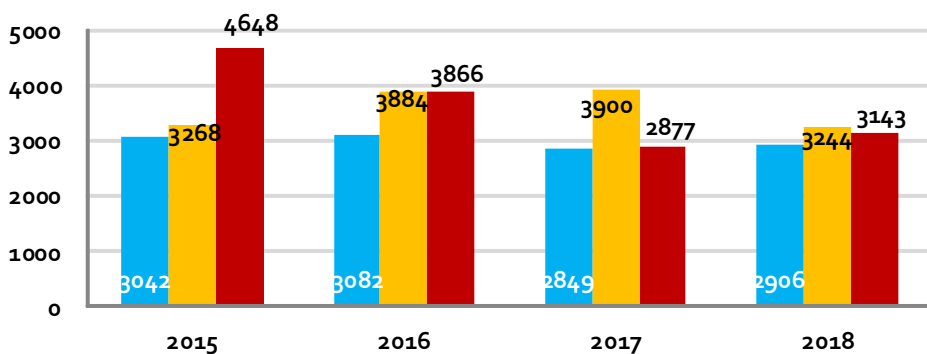


Administrative Closures

Settled	354
Removed to Court	330
Conciliated	281
Settled (Pre-Determination)	147
Withdrawn	146
Dismissed	119
Lack of Jurisdiction	114
Other*	22
Failure to Cooperate	17
Hearing Decision for Respondent	12

* Bankruptcy, Compliance with Order, Failure to Accept Full Relief, Investigation Not Authorized, Removed to AGO, Unable to Locate Complainant, Violation/Enforcement

Filings, Closures, and Inventory Compared



Filings, Closures and Inventory Compared

New Cases Filed
Closed Cases
Inventory of Enforcement Cases

LEGAL DIVISION REPORT

The Legal Division provides legal services and support to the Commission to achieve the goal of eradicating discrimination in Massachusetts. The Legal Division includes the General Counsel, Deputy General Counsel, six Commission Counsel, the Clerk's Office, and the Full Commission Law Clerk. The Legal Division also oversees the Full Commission review process, and provides recommendations on post-probable cause motions to the Investigating Commissioners.

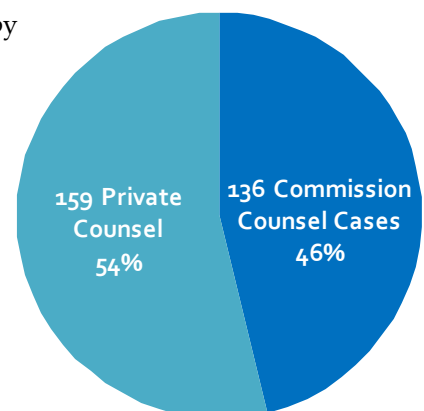
In 2018, the supervision of the Clerk's Office in Boston was returned to the Legal Division. The Clerk's Office within the Legal Division consists of the Clerk of the Commission, Deputy Clerk/Records Access Officer, Hearings Clerk, Conciliation Clerk, and Appeals Clerk. The Clerk's Office in Boston is responsible for overseeing Commission Public Hearings and Full Commission filings, assignment of motions to hearing officers, issuing Commission decisions and responding to public inquiries. In 2018, the Clerk's Office responded to 503 public records requests. The Clerk's Office in Springfield is staffed by an Assistant Clerk and First Assistant Clerk.

Commission Counsel enforce the Commonwealth's anti-discrimination laws through prosecution of complaints at public hearings and through litigation and appellate practice in Massachusetts courts. Commission Counsel also prosecute Commission-initiated complaints, and participate in conciliation proceedings. Commission Counsel hear and review Lack of Probable Cause (LOPC) and Lack of Jurisdiction (LOJ) appeals and provide recommendations to Investigating Commissioners regarding their findings. The Legal Division is also responsible for defending agency decisions when judicial review is sought in Superior Court and/or the State's appellate courts pursuant to M.G.L. c. 30A, § 14 (7). The Legal Division defends challenges to the Commission's jurisdiction and procedure and files enforcement actions to obtain compliance with the Commission's final orders. The Legal Division also provides legal and procedural advice concerning matters affecting the Commission, personnel, investigations, public records requests, and proposed legislation.

The Legal Division additionally develops publications for the Commissioners and public, providing guidance and responses to frequently asked questions (FAQs) concerning new and evolving areas of the laws enforced by the Commission. Members of the Legal Division also participate in outreach and training efforts to educate staff and the public. They also develop friend of court (*amicus*) briefs concerning Massachusetts anti-discrimination laws in cases litigated by private parties in the appellate courts. The Legal Division also works with the Attorney General's Office when appropriate to defend the agency and its enforcement powers in administrative and litigation matters.

Commission Counsel MCAD Case Assignments

Commission Counsel prosecute cases at Public Hearings after a finding of Probable Cause by the Investigating Commissioner. Once assigned to a case, Commission Counsel proceed in the public interest to eradicate discriminatory practices by obtaining affirmative relief and victim-specific relief for Complainants who are not represented by private legal counsel (pro se complainants). Of the 295 cases with a Probable Cause determination in 2018, the Legal Division was assigned to prosecute 136 new cases filed by pro se complainants. This was a decrease from the number of cases assigned in 2017, when 176 new cases were assigned. In 2018, Commission Counsel remained assigned to prosecute the caseload of 167 cases which existed as of December 31, 2017.



Noteworthy Settlements

In 2018, Commission Counsel resolved a total of 93 discrimination cases through conciliation and negotiation, recovering \$1,866,729 in victim specific relief and affirmative relief in the form of antidiscrimination training and policy reviews. The following is a description of some of the representative matters which were resolved by settlement this year, classified by the type of alleged discrimination.

Housing Cases

In a case alleging that Complainant, a resident of a treatment facility, was harassed on the basis of his religious creed by an employee of Respondent, and that Respondent failed to take sufficient remedial action, Respondent agreed to pay Complainant Twenty Thousand Dollars (\$20,000), to provide a copy of its fair housing policy for MCAD review, and to obtain training for employees and managers on the fair housing laws of the Commonwealth. [Bristol County]

A property manager who denied an individual an apartment rental because of the requirements of the Section 8 housing program agreed to resolve the matter for a payment of Three Thousand Five Hundred Dollars (\$3,500), participation in an MCAD anti-discrimination training, and an agreement that all subsequent advertisements for rental units at the subject property would include the statement, "Section 8 welcome." [Middlesex County]

In a case alleging that a Respondent homeless shelter failed to sufficiently address allegations of sexual assault by another resident against Complainant at the facility's premises, Respondent agreed to pay Complainant Thirty Thousand Dollars (\$30,000), to meet with Complainant personally to discuss his concerns, and to provide Complainant with a written letter of apology. Respondent further agreed to have certain managers attend fair housing training and to post a copy of Respondent's fair housing policy. [Suffolk County]

Employment Cases

Complainant, a 59 year old gentleman, applied for and was rejected for a teaching position. During the interview, Complainant alleged an ageist statement indicating a concern regarding his age relative to the rest of the staff was made. Complainant was rejected for this open position and a 33 year old female was hired instead. Respondent agreed to pay Complainant Thirty Thousand Dollars (\$30,000) to resolve the matter. [Bristol County]

A transportation carrier agreed to pay Thirty-Two Thousand Five Hundred Dollars (\$32,500) and provide five years of free transportation services in settlement of a disability discrimination complaint. The Complainant, whose disability required the waiver of certain job related functions, was allegedly denied a reasonable accommodation and separated from employment prior to conducting a thorough interactive dialog. [Essex County]

Complainant, a gentleman in his mid-sixties, was hired as a part-time personal trainer at a large fitness and wellness center. When a new Director was hired, Complainant noticed that younger trainers were treated better and given more clients. Complainant was terminated for allegedly violating the non-compete and non-solicitation clauses in his contract because he invited members and employees to work out with him at his home gym. However, witnesses supported the Complainant's claim that younger personal trainers who worked for competing facilities were not reprimanded or terminated. The matter settled for Nine Thousand Dollars (\$9,000) and the employer agreed to obtain antidiscrimination training for human resources personnel and managers. [Hampden County]

An employee alleged that her employer denied her request for a reasonable accommodation (intermittent leave) and then demoted her, due to her known medical conditions. The matter settled for Twenty Thousand Five Hundred Dollars (\$20,500) and the employer agreed to obtain antidiscrimination training for managers at the facility. [Hampden County]

Complainant, a black female medical resident, was terminated by Respondent prior to the start of her final year of residency. Complainant alleged that certain supervising attending physicians made offensive racially charged statements to her on a regular basis and harshly criticized Complainant for mistakes for which non-black residents were excused. One of these attending physicians wrote a negative evaluation of Complainant and recommended her termination. Numerous witnesses supported Complainant's claims that she was treated differently due to her protected classes, describing Complainant as a competent resident who should have been allowed to complete the program. The matter settled for One Hundred Ninety Thousand Dollars (\$190,000) and Respondent agreed to obtain antidiscrimination training for attending physicians who supervise residents. [Hampden County]

The employee in this disability discrimination case worked for a public school district for many years, when she began to have increasing health problems with fibromyalgia, epilepsy, and migraines. She alleged that the school district denied her reasonable accommodations and failed to engage in an interactive dialogue. The Respondent agreed to pay the Complainant Thirteen Thousand Seven Hundred and Fifty Dollars (\$13,750) and to train all the principals in this public school district in disability discrimination and reasonable accommodation. [Hampden County]

Complainant alleged that a colleague, who may have had supervisory authority, sent unwelcome sexually explicit text messages to her and another colleague, and sang offensive songs about the text messages. When Complainant reported the sexual harassment to human resources, she was terminated. Respondent claimed that its investigation revealed that the text messages were consensual and that Complainant was making the claim of sexual harassment in retaliation for another person being selected for a transfer position. The matter settled for Twelve Thousand Five Hundred Dollars (\$12,500) and Respondent agreed to obtain antidiscrimination training for human resources personnel. [Hampden County]

After an employee was laid off from her position at a State University following 38 years of service, she allegedly applied to five other positions and was not selected. The employee claimed that the reason for the layoff and the failure to hire her for these new positions was age discrimination. Probable Cause was found with respect to failure to hire for two positions. The employer agreed to resolve the matter for Twenty-Three Thousand Dollars (\$23,000). [Hampshire County]

A female employee who worked at a franchisee of an international company alleged that her supervisor had made sexist and sexually hostile comments in the workplace. The Respondent agreed to pay the Complainant Fifteen Thousand Dollars (\$15,000) and provide its human resources representative with three days of training in conducting internal investigations of discrimination and harassment. [Middlesex County]

A female employee in a small company alleged she was subjected to sexual harassing conduct by both a co-worker and a supervisor. After trying to stop the sexually hostile conduct by talking with her employer, she contacted a private attorney to discuss her legal options. She informed the president of the company that she had retained an attorney to address her concerns with sexual harassment and was terminated from her employment shortly thereafter. The company agreed to pay the employee Forty Seven Thousand Five Hundred Dollars (\$47,500), and to provide anti-discrimination training for all of the company's employees, supervisors and officers. [Middlesex County]

An employer that failed to reinstate an employee who had successfully completed a substance abuse recovery program, allegedly based on concerns associated with recidivism, agreed to resolve the matter by reinstating the employee and preparing an internal advisory addressing disability/reasonable accommodation and substance abuse. [Middlesex County]

A female security guard filed a complaint alleging that her supervisor subjected her to disparate treatment based on her gender. She further alleged that after complaining about the discrimination she was subjected to retaliation by both the supervisor and the employer. The alleged unlawful conduct resulted in her constructive discharge. To resolve the matter the employer paid Twenty-Eight Thousand Seven Hundred and Sixty Dollars (\$28,760) and agreed to training for all managers, supervisors, and human resource professionals responsible for Massachusetts employees. [Middlesex County]

In a case alleging that Respondent, a large telecommunications company, discouraged Complainant from continuing the application process for an insider sales position and ultimately failed to hire her once it was on notice of Complainant's pregnancy, Respondent agreed to pay Fifty Thousand Dollars (\$50,000) and to provide fair employment training for ten Human Resources managers. [Middlesex County]

In this disability discrimination case, an employee of a municipality was injured on the job resulting in loss of motion, pain, and limited ability to lift. Shortly after her receipt of Workers' Compensation, she was informed that her job was being eliminated as part of a department-wide reorganization. Complainant alleged that it was not a true reorganization as she was the only full-time employee whose position was eliminated as part of the alleged reorganization. In addition, the Town hired a non-disabled person in a position with a similar job description to the one which the Complainant previously held. The Town agreed to pay the Complainant Eighteen Thousand Five Hundred Dollars (\$18,500) in settlement of the claim. [Norfolk County]

Complainant was a nurse at Respondent nursing and rehabilitation facility who had a prosthetic leg due to an amputation and subsequently needed additional medical treatment, requiring her to use a wheelchair. Complainant alleged that her supervisor subjected her to a hostile work environment based on her disability, and that Respondent terminated her employment when she complained internally about her supervisor's discriminatory conduct. Respondent agreed to pay Complainant Eighty Seven Thousand Dollars (\$87,000) and conduct fair employment training for staff and managers at that facility. [Norfolk County]

In this retaliation case, an employee made efforts to make the owners of the company aware that the president had sexually harassed several employees. Upon receipt of the employee's written complaint of co-worker sexual harassment, the company terminated the employee alleging that it had concerns about the quality of her work performance. The Respondent agreed to pay the Complainant Thirty-Nine Thousand Dollars (\$39,000) in settlement of this claim. [Plymouth County]

Complainant, an Assistant Supervisor in the Maintenance Unit of Respondent's housing community, suffered a minor stroke or seizure at work and required FMLA leave. Complainant alleged that Respondent failed to provide a reasonable accommodation in the form of light duty work for Complainant upon his return from leave and subsequently terminated his employment. Respondent agreed to pay Complainant Thirty-Two Thousand Five Hundred Dollars (\$32,500) and train its managers on the fair employment laws of the Commonwealth. [Suffolk County]

A security company that failed to engage one of its officers in an interactive dialog regarding a reasonable accommodation for his disability and allegedly allowed the employee's request to languish, agreed to pay Eight Thousand Five Hundred Dollars (\$8,500), require training for all branch employees who handle reasonable accommodation inquiries, and prepare a policy for the centralized handling of all reasonable accommodation requests. [Suffolk County]

In this age discrimination case, the employee, who was sixty-eight (68) years old at the time of the lay-off, alleged that the Respondent selected for layoff the oldest individuals in each of the title groups, including his own. Moreover, he alleged that one of the management level employees responsible for selecting individuals for layoff made a comment that reflected age bias toward him. In addition, there was evidence that this company described its workforce on the internet as having an average age under thirty years old. The Respondent agreed to pay the employee One Hundred Seventy-Five Thousand Dollars (\$175,000) in settlement of this claim. [Worcester County]

Public Accommodation Case:

In this disability discrimination case, a Complainant who was legally blind was restricted in service and later escorted out of an establishment once the restaurant/bar turned itself into an over 21 establishment in the evening. This treatment was due to the Complainant's use of a Massachusetts State Identification card for identification since he could not possess a driver's license due to his disability. The business agreed to pay the Complainant Nine Thousand Five Hundred Dollars (\$9,500), implement a nondiscrimination policy, and obtain training for employees and managers on nondiscrimination in places of public accommodation. [Norfolk County]

Consent Decree

The Commission initiated a Complaint after it received an anonymous tip and a report provided by Suffolk Law School Housing Discrimination Testing Program of potential discriminatory conduct by Prestige Rental Solutions, a property rental office located in Allston and Jamaica Plain. Suffolk Law School's program had hired testers to present as potential tenants with young children. Several of the testers reported that a licensed agent at Prestige Rental Solutions refused them rentals and steered them away from apartments that were not de-lead. In addition, several testers reported that discriminatory statements were made by this agent when they expressed interest in apartments that were not de-lead. Upon investigation into Prestige's leasing practices, the Commission issued a probable cause finding of housing discrimination under state and federal anti-discrimination laws.

The Commission and Prestige resolved the matter through a Consent Decree which included the following terms: Prestige will make a charitable donation of Six Thousand Dollars (\$6,000) to Suffolk Law School's Housing Discrimination Testing Program, send its agents to fair housing training, and agree to cease discriminatory leasing practices. Additionally, Prestige's future housing advertisements will not include discriminatory language and will state that the listings are equal opportunity housing providers. In addition, Prestige's web-site will include a statement that it complies with federal and state anti-discrimination laws.

Public Hearings

Commission Counsel prepare and prosecute cases at public hearings through discovery, motion practice, argument, witness preparation and examination. The attorneys at public hearing, including Commission Counsel, also prepare proposed findings of fact and conclusions of law following the public hearing. Several of the public hearings prosecuted by Commission Counsel in 2018 are described below.

MCAD, Roberge v. Sullivan Keating & Moran Insurance Agency, MCAD Docket No. 15SEM00594. Commission Counsel prosecuted a two-day disability discrimination matter in 2018 against Sullivan Keating & Moran Insurance Agency ("Insurance Agency"). The Insurance Agency is a Springfield-based insurance agency that sells homeowners, auto, commercial, and life insurance. The Insurance Agency was aware that Mr. Roberge suffered from a number of medical conditions that impacted many of his essential life activities and the operation of major bodily functions. Mr. Roberge received

approval for absences from work for medical appointments, surgery, and hospitalizations related to these disabilities; however, the Insurance Agency denied Mr. Roberge's request to install, free of charge, a special telephone which would assist with his hearing loss. Mr. Roberge was terminated a few hours after returning to work from a medical appointment. Although Mr. Roberge's colleagues insisted that he did not look well enough to be at work and told him to go home, Mr. Roberge had been cleared to return to work by his physician and was performing the duties of the position. Relying on statements from colleagues, the owner of the Insurance Agency decided that Mr. Roberge posed a liability to the company due to his health and terminated Mr. Roberge for staying at work. The Hearing Officer's decision is anticipated to be issued in 2019.

MCAD and Attorney General of the Commonwealth of Massachusetts and Madeline Serrano v. Cataldo Ambulance Service, Inc. This is a joint prosecution between the MCAD and the Attorney General of the Commonwealth of Massachusetts alleging that Complainant, Ms. Serrano, suffered sex and disability discrimination, based upon her pregnancy and pregnancy-related complications, when Respondent failed to engage in an interactive dialog with Complainant regarding her requested reasonable accommodations, by Respondent failing to provide her with reasonable accommodations and by Respondent subsequently terminating her employment. A four-day public hearing was held on October 15-18, 2018. Post-hearing briefs were filed and the decision is expected to be issued in 2019.

Hearing Officer Decisions on Prosecuted by Public Hearings

MCAD & April Robar v. International Longshoremen's Association, Local 1413-1465 and Joseph Fortes, MCAD Docket Nos. 09NEM03054, 11NEM02713. In January, 2018, Hearing Officer Betty Waxman issued a decision in this gender discrimination case prosecuted by Commission Counsel. The decision concluded that International Longshoremen's Association, the labor union responsible for selecting dock workers at the New Bedford waterfront, and Joseph Fortes, an officer of the union, discriminated against Ms. Robar on the basis of gender (female). The Hearing Officer recited two examples of direct evidence of gender discrimination: (1) a union official's statement, made in the Position Statement submitted to the Commission, that the union hired females who "knew their place" and accepted the "outcome" of their assignment; and (2) a union official's statement that "We don't pick women to work on fruit boats." The Decision noted that no females were ever hired by Local 1413-1465 to operate forklifts on the fruit boats in New Bedford, and, in addition, credited the indirect evidence of discrimination offered at hearing. The Hearing Officer ordered the Union to (1) submit reports regarding the gender of the assignments made to the boats for the remainder of the calendar year 2018; (2) confer union membership upon Ms. Robar retroactive to October 1, 2009 and provide her with whatever pension, death and other benefits accrue; (3) pay Ms. Robar Fifty Thousand Dollars (\$50,000) in emotional distress; (4) pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000); and (5) provide its union members with anti-discrimination training, with a focus on gender discrimination. The Respondent has appealed to the Full Commission.

MCAD and Jeffrey May v. Parish Café and Bar, MCAD Docket No. 16BPA01670. In this sexual orientation in a place of public accommodation case, Complainant alleges that while a customer of Respondent, an employee denied him entry to the restaurant's restroom, called him homophobic names, and grabbed him by the arm in order to escort him out of the restaurant. A public hearing was held on May 17-18, 2018. On July 30, 2018, the Hearing Officer issued a decision finding that Complainant offered credible evidence that he is a gay male who was denied entrance to Respondent's restroom by a restaurant employee later identified as Michael Thompson, that Mr. Thompson made homophobic comments to Complainant, and that Mr. Thompson grabbed Complainant's arm and ushered him out of the restaurant to the outside patio. The Hearing Officer found that "Complainant's version of events is corroborated by the testimony of his partner Ryan Lovell who observed Thompson poking/jabbing Complainant in the chest as Complainant backed up and who was told later that night that Thompson had called Complainant a "dumb ass gay." It is likewise supported by waiter Timothy Johnson who saw

Thompson holding onto Complainant's upper arm as he led Complainant out of the restaurant and by the acknowledgement of general manager Devon Leahy that Thompson was "maybe a little too physical." According to Leahy, door men are instructed to verbally (not physically) deny non-patrons access to the restaurant's restrooms." The Hearing Officer awarded the Complainant \$25,000 in emotional distress damages, issued an order for Respondent to cease and desist from engaging in acts of discrimination based on sexual orientation, and ordered a training requirement that Respondent's owners and staff at both restaurant locations must attend training pertaining to sexual orientation discrimination and provide documentation to the MCAD of their attendance. Respondent has appealed this decision to the Full Commission.

MCAD, Elizabeth Cumberbatch, Fred Walker, Anthony Walker, Andrew Walker v. Irina Temkina, MCAD Docket No. 13BPH02588 (October 10, 2018). In this action alleging that Respondent discriminated against Complainant by failing to rent her a house after learning that Complainant had biracial children, the Hearing Officer issued a Decision finding that Complainant failed to proffer the funds necessary to secure rental of the house and failed to establish that she was objectively qualified as a tenant for the property. The Hearing Officer also discredited certain testimony of the Complainant. The Hearing Officer therefore determined that Respondent did not discriminate against Complainant on the basis of the race and color of Complainant's children, and dismissed the complaint.

Massachusetts Superior Court Activity

The Legal Division defends the Commission's decisions and procedures in the Massachusetts courts. These cases include M.G.L. 30A administrative appeals and challenges to the Commission's investigative and enforcement authority. During 2018, Commission Counsel were assigned fifteen new Superior Court cases to defend. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts Superior Courts.

Defense of Full Commission Decisions (M.G.L. c.30A cases)

Ahold, USA v. MCAD, et al, Suffolk Superior Court C.A. No. 1884CV00680F

The plaintiff, Ahold USA filed an action pursuant to G.L. c. 30A arguing that the Commission's decision concluding that Brenda Patterson was subject to discrimination based on her race and color was in contravention of the standards of review set forth in Chapter 30A. The parties resolved the matter prior to the filing of an Answer in the Superior Court.

Massachusetts Department of Corrections v. MCAD, et al., Suffolk Superior Court C.A. 1784CV03554. The Massachusetts Department of Correction, sought judicial review, pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A, § 14, of a final decision and order of the MCAD. The Commission determined that DOC discriminated against Ms. Scanlan in violation of M.G.L. c. 151B, § 4 ¶ 4. The Hearing Officer awarded Scanlan damages for emotional distress, attorney's fees and costs, and additionally issued equitable remedies and assessed a \$10,000 civil penalty. On appeal to the Superior Court, DOC did not contest liability under M.G.L. c. 151B. DOC did comply with the Full Commission decision and order - except for the interest on attorney's fees and costs and payment of the civil penalty. DOC's issues on appeal were whether the MCAD has authority to award interest on attorney's fees and costs against the Commonwealth and if so, what rate of interest should apply. MCAD filed a Counterclaim for Enforcement. In the Massachusetts Supreme Court's decision of Brown v. Office of the Commissioner of Probation, 475 Mass. 675 (2016), based upon the doctrine of sovereign immunity, the SJC precluded post-judgment interest, on attorney's fees and costs and punitive damages as to the Commonwealth in G.L. c. 151B, § 9 cases. In reliance on Brown, the Superior Court judge (Ricciuti, J.) determined that in this G.L. c. 151B, § 5 case the MCAD, was also precluded from awarding interest on attorney's fees and costs against the Commonwealth.

Federal Square Properties, Inc. and Pacific Land, LLC v. MCAD, et al., Worcester Superior Court. C.A. No. 1885CV01751B. In this matter, Federal Square Properties and Pacific Land, LLC filed an action in Superior Court seeking judicial review, in accord with G.L. c. 30A. In the complaint, the plaintiffs challenge the Commission's finding that Melissa Derusha was denied a housing rental because she was the recipient of a Section 8 housing subsidy. Based on conduct established at public hearing, the Commission imposed a \$5000 civil penalty against both the property owner and the rental/management company. The administrative record is due to be filed in the Superior Court in March 2019.

FGS v. MCAD et al., Suffolk Superior Ct. No. 1784CV04054. After a Full Commission decision affirming a Hearing Officer's determination that FGS had discriminated against an employee on the basis of handicap by failing to provide a reasonable accommodation in the form of extending his leave of absence and by terminating his employment, FGS appealed the case to Superior Court. After the Commission filed its Answer and Counterclaim, the parties filed a Stipulation of Dismissal, with the proviso that the Commission's Order that Respondent cease and desist from acts of discrimination on the basis of handicap would remain in full force and effect.

Slive + Hanna, Inc. v. MCAD et al., Suffolk Superior Court No. 1884CV3513C. A Decision of the Full Commission upheld a Hearing Officer's Decision partially in favor of Complainant, in which Respondent was held to have retaliated against Complainant after he filed his MCAD complaint alleging discrimination on the basis of disability. Respondent filed an appeal of the decision in Superior Court. The Commission's Answer and Counterclaim for Enforcement were filed November 28, 2018. Plaintiff filed its Answer to Defendant's Counterclaim on December 3, 2018. The administrative record is currently being compiled by the Commission.

In **Kathleen M. Stefani v. MCAD et al.**, Suffolk County Superior Court C.A. No. 1784CV00662, Commission counsel defended the MCAD's decision in favor of the Respondent, the Massachusetts Department of State Police. The Complainant, Major Stefani, filed a sex discrimination charge against the State Police, alleging that she had been demoted due to gender. In **MCAD & Stefani v. Massachusetts Department of State Police**, No. 03-BEM-01428, MCAD Hearing Officer Betty Waxman held that the State Police Colonel's decision to demote Major Stefani was not motivated by gender bias, but instead acted due to his opinion that she had not been straightforward with him, and was disloyal when she sought to replace him as colonel. Major Stefani had applied for the colonel's position shortly after the colonel had been appointed to the rank. The colonel learned this through indirect channels, and shortly thereafter, publicly expressed anger and concern about the loyalty of his subordinates. The Hearing Officer noted that this colonel had promoted two females to supervisory positions around the time he made the decision to demote Major Stefani, and that he initiated the demotions of more males than females from supervisory positions. The Hearing Officer concluded that the State Police had not engaged in gender discrimination. The Full Commission affirmed the Hearing Officer's decision. Stefani filed an appeal pursuant to M.G.L. c. 30A in Superior Court. On March 15, 2018, the Superior Court (Giles, J.) granted judgment on the pleadings to the Massachusetts Commission Against Discrimination. The matter is currently on appeal to the Massachusetts Appeals Court.

Swissport LLC, SA v. Massachusetts Commission Against Discrimination, Suffolk County Superior Court C.A. 1884CV01844D. The Commission has filed the administrative record and a briefing schedule has been set in this G.L. c.30A Superior Court matter. In the underlying matter, the Commission found Swissport, formerly known as Servisair LLC., liable for age discrimination when it failed to consider Complainant for two available positions when it eliminated his position as operations manager. At the time Respondent made the decision to eliminate the operations manager position, Complainant had worked for Respondent for thirty-four (34) years and was fifty-eight (58) years old. The Hearing Officer concluded that Respondent eliminated the position due to financial considerations, however its decision not to consider Complainant for two available positions and its repeated assurances to Complainant that

his job was secure while actively discouraging him from applying for these positions, was motivated by age discrimination.

C-Worcester v. MCAD & Tatum/Harris, Worcester, Superior Court; No. 1585CV01263.(Update to case previously reported in the 2017 Annual Report.)

Based on the doctrine of Res Judicata, as purportedly implicated by the Federal Court's Decision in *Lopez v. City of Lawrence*, 823 F.3d 102 (1st Cir. 2016), the Superior Court on January 10, 2018 (Reardon, J.) reversed two full commission decisions addressing the disparate treatment and disparate impact claims of two Black police officers denied promotions to the position of sergeant (1585CV01263, 1185CV02497, 1185CM02500). Both the MCAD and the Officers appealed the Superior Court decision. Briefs have been filed and the matter is scheduled for argument in February 2019 at the Massachusetts Appeals Court.

Challenges to Lack of Probable Cause Determinations and Preliminary Hearings

Although M.G.L. c.151B provides that the outcome of Investigative Dispositions (e.g. LOPC determinations) and preliminary hearings challenging these dispositions are not subject to judicial review, disappointed Complainants persist in filing Superior Court complaints against the agency seeking review. The following describes some of such cases defended by Commission Counsel. The Superior Court has allowed the Commission's motion to dismiss in every decided case.

Carmen Allison v. Massachusetts Commission Against Discrimination, Samaritan Inn, Springfield District Court, Civil Action No. 1823CV001137. The Commission issued an LOPC determination in this matter. Complainant appealed the LOPC determination in a preliminary hearing before the MCAD. The MCAD affirmed the LOPC and the Complainant sought relief in Springfield District Court. The Complainant argued that she was entitled to relief pursuant to G.L. c. 30A. The lower court (Melikian) granted the MCAD's motion to dismiss on October 2, 2018.

Pamela Grace v. Massachusetts Commission Against Discrimination, Suffolk County Superior Court C. A. No. 1884CV00965. The Commission issued an Lack of Probable Cause (LOPC) determination in this matter. Complainant appealed the LOPC determination in a preliminary hearing before the MCAD. The MCAD affirmed the LOPC and the Complainant sought relief in Superior Court. The Complainant argued that she was entitled to relief pursuant to G.L. c. 30A. The lower court (Wilson) granted the MCAD's motion to dismiss on July 17, 2018.

Mansir v. BJ's Wholesale Club, Inc. and Massachusetts Commission Against Discrimination, Suffolk Superior Court C.A. 18-2218-C. Plaintiff sought to challenge a LOPC determination which had been affirmed by the MCAD in a preliminary hearing. The Court (Gordon, Robert) allowed the MCAD's motion to dismiss, and the MCAD has been dismissed from the action with prejudice.

Camille T. Mata v. Massachusetts Commission Against Discrimination, Franklin Superior Court C.A. No. 1778CV00081. The Commission issued an LOPC determination in this education discrimination matter. Complainant appealed the LOPC determination in a written preliminary hearing before the MCAD. The MCAD affirmed the LOPC and the Complainant sought relief in Superior Court. The Complainant argued that she was entitled to relief pursuant to G.L. c. 30A. The lower court (Callan) granted the MCAD's motion to dismiss on February 12, 2018. Complainant appealed the matter to the Massachusetts Appeals Court.

Camille T. Mata v. Massachusetts Commission Against Discrimination, Franklin County Superior Court Civil Action No. 1878CV00079. The Commission issued an LOPC determination in this matter. Complainant appealed the LOPC determination in a written preliminary hearing. The MCAD affirmed the LOPC and the Complainant sought relief in Superior Court. The Complainant argued that she was entitled to relief pursuant to G.L. c. 30A. The MCAD filed a motion to dismiss and a motion hearing has been scheduled for January of 2019.

Gerard D. Grandoit v. Massachusetts Commission Against Discrimination, et al.

An individual filed four separate Complaints with the Commission. All four were dismissed by the Commission for lack of probable cause or lack of jurisdiction. Complainant appealed the findings and, after preliminary hearings before the Commission, the findings were affirmed. Complainant then filed four separate actions in Superior Court seeking judicial review under M.G.L. c. 30A. In each the Commission sought dismissal based on a lack of jurisdiction and the failure to state a claim for relief due to the unavailability of judicial review for an investigatory dismissal by the Commission.

In Suffolk County Superior Court Case No. 1784CV03173, the Commission's motion to dismiss was allowed by the Court (Giles, J.) on November 22, 2017. Complainant appealed and the matter is pending before the Massachusetts Appeals Court.

In Suffolk County Superior Court Case No. 1784CV03181, the Commission filed a motion to dismiss, which was allowed on January 19, 2018 (Wilkins, J.).

In Suffolk County Superior Court Case No. 1784CV03061, the Commission's motion to dismiss was filed January 9, 2018. The Superior Court closed the case on April 5, 2018, and Grandoit appealed to the Massachusetts Appeals Court. This case, as well as three other Grandoit appeals (3062, 3063 and 3064), were consolidated by the Appeals Court (Case No. 2018-P-0762).

Suffolk County Superior Court Case No. 18-02906 is a case seeking judicial review of the Commission's investigatory dismissal of the charge. The Commission has filed a motion to dismiss.

Defense of Commission Procedures

J. Whitfield Larrabee v. MCAD, Suffolk Superior Court No. 1584CV02725. In this action alleging breach of contract and violation of the Massachusetts Public Records Act, M.G.L. c. 66, §10, Plaintiff sought damages, a preliminary and permanent injunction, a writ of mandamus, and other legal and equitable relief. The court (Connolly, J.) granted MCAD's Motion for Summary Judgment on August 18, 2017, recognizing that MCAD's practice to release complaints and related information only after the close of its investigation is consistent with the public records act, common law and the constitution. Plaintiff sought relief in the Appeals Court. Both sides filed appellate briefs, and are awaiting a date for oral argument.

Massachusetts Appeals Court

Camille T. Mata v. Massachusetts Commission Against Discrimination Appeals Court No. 2018-P-0782. The Complainant appealed the Superior Court's dismissal of a challenge to an LOPC determination to the Massachusetts Appeals Court. Briefs have been filed, and the appeal has been taken under advisement as of December 11, 2018.

Gerard D. Grandoit v. Massachusetts Commission Against Discrimination, et al., Appeals Court No. 2018-P-0762. Grandoit's brief was accepted as filed in this consolidated appeal. The Commission filed its brief November 23, 2018.

C-Worcester v. MCAD & Tatum/Harris, Appeals Court No. 2018-P-0576. As described above, the Commission and Officers appealed the Superior Court's ruling. Briefs have been filed and the matter is scheduled for argument in February 2019.

Massachusetts Supreme Judicial Court – Amicus Briefs

The Massachusetts Supreme Judicial Court invites amicus (friend of court) briefs from the Massachusetts Commission Against Discrimination and other interested entities concerning Massachusetts anti-discrimination law. In response to such inquiries, the Legal Division considers the

request, provides recommendations to the Commissioners and when appropriate, prepares and files amicus briefs to provide the Commission's opinion regarding the issue.

Yee v. Massachusetts State Police, SJC-12385. The Supreme Judicial Court solicited amicus briefs on whether and in what circumstances the denial of an employee's request for a lateral transfer constitutes an adverse employment action actionable under M.G.L. c. 151B. The Commission filed an amicus brief in support of the appellant, describing the circumstances under which Massachusetts state and federal courts have found an employer's actions to constitute an "adverse employment action." The brief also described the analytical approach taken by other jurisdictions in lateral transfer cases brought pursuant to state or federal anti-discrimination statutes. The Commission's brief concluded that evidence of a lost opportunity for overtime compensation resulting from a "lateral" transfer should be sufficient to deny summary judgment for defendant on the grounds that the transfer did not constitute an adverse employment action.

HEARINGS DIVISION REPORT

The Hearings Unit is comprised of two full-time Hearing Officers, one 4/5-time Hearing Officer, and the three Commissioners. In addition to presiding over formal adjudicatory hearings and issuing comprehensive written decisions, the Hearings Unit also conducts motion conferences, pre-hearing conferences, certification conferences, conciliations and mediations, and issues rulings on discovery matters and other motions.

In 2018, the Hearings Unit scheduled 46 public hearings. Of the 46 cases scheduled, hearings were held in 18 cases and 24 cases settled prior to the hearing. The remaining 4 cases were continued or dismissed. The Hearings Unit scheduled 97 pre-hearing conferences. Of that number, 42 pre-hearing conferences were held, and 32 cases were continued. Nineteen (19) cases settled prior to the conference. The remainder were dismissed or withdrawn.

The Hearings Unit conducted some 26 mediations or conciliations, the vast majority of which resulted in significant settlements for Complainants.

In 2018, the Hearings Unit issued 16 hearing decisions. Of those, 11 addressed claims of employment discrimination, 2 addressed claims of housing discrimination, and 3 addressed claims of discrimination in a place of public accommodation. Six of the employment cases involved claims of sex discrimination or sexual harassment.

Of the 16 cases decided, 11 were decided in favor of Complainant and 5 were decided in favor of Respondent, including both claims of housing discrimination. The following is a summary of some of the significant decisions issued. All of the decisions and awards are published in the Massachusetts Discrimination Law Reporter and on MCAD's website.

Significant Hearing Officer Decisions

MCAD & April Robar v. International Long Shoremen's Assoc. et. al, 40 MDLR 1 (2018) (Gender Discrimination)

Complainant, a female, sought work as a forklift operator on Massachusetts docks and claimed that the International Longshoremen's Association, Local 1413-1465 refused to hire her based on her gender. The Hearing Officer found direct evidence of gender discrimination based on the Union President's statement, "We don't pick women to work on fruit boats." There was also indirect evidence of gender discrimination. Complainant obtained credentials as a forklift operator and made many unsuccessful attempts to obtain forklift assignments on fruit boats in New Bedford Harbor. On at least one occasion males without credentials were selected to operate forklifts, while Complainant and other credentialed females were passed over. Despite testimony to the contrary from the Union President that was not credited, Respondent acknowledged in discovery that no women had ever been hired to work on fruit boats that the Union serviced. The Hearing Officer found, however, that the evidence did not support a claim of retaliation for filing an MCAD complaint where Complainant asserted she was passed over as a forklift driver at another dock two years after filing her complaint. Complainant received \$50,000 in emotional distress damages, a \$10,000 penalty was assessed against the Union, and training.

MCAD & Peter Dateo v. Springfield BBQ, LLC, 40 MDLR 7 (2018) (Age Discrimination)

Complainant brought charges of age and gender (male) discrimination and retaliation against a restaurant and bar where he worked. Complainant had a lengthy career as a bartender, and at age 48 was hired by Respondent as a full-time bartender. Complainant received uniformly positive reviews and was told by managers that he did a great job. Complainant was told by a former manager that Respondent's new managers needed younger females at the bar to attract business. After his hours were reduced and shifts given to young females, Complainant filed a charge of age and gender discrimination with the MCAD and thereafter his employment was terminated. He subsequently filed a second complaint at MCAD charging that his termination was unlawful retaliation. A default public hearing was

conducted after Respondent failed to appear at the duly scheduled hearing. There was credible uncontroverted evidence that two other male bartenders were replaced by female bartenders in their mid-twenties, that Complainant's hours were reduced, and that he was told that Respondent wanted to "put a new face to the bar to get business up." Respondent was found liable for age and gender discrimination. Complainant was awarded \$75,000 in emotional distress damages and \$43,939 in back pay.

MCAD & Michaela Martins v. Isabel's Pizza, d/b/a Papa Johns 40 MDLR 33 (2018) (Sexual Harassment-Hostile Work Environment)

Complainant was a high school student who worked part-time evenings at a Pizza chain restaurant in Fall River. She began receiving sexually suggestive text messages from her supervisor including invitations to meet up with him after work and wanting to rip her clothes off, all of which made her fearful. When she attempted to discourage her supervisor's advances, he began to treat her rudely and assigned her extra work. One night at the end of her shift, Complainant's supervisor cornered her against a wall, rubbed her thigh and buttocks and told her she would "like it." Complainant was able to break free, ran to her car in terror and drove home. She immediately reported the incident to her parents and the police and notified the store manager who fired the supervisor and advised Complainant to take a day off. When Complainant reported for her next shift, co-workers told her that the supervisor's cousins had come to the restaurant looking for her. Complainant felt threatened and intimidated by this news and relayed her fears to her manager, who did not propose any proactive measures to help ensure her safety. Respondent owned five Papa John's franchises and two in the town where Complainant worked. Since Respondent was not forthcoming in offering Complainant any assurance of her safety at work or offering a transfer to another location, Complainant did not return to work and alleged that she was constructively discharged.

The Hearing Officer concluded that Complainant was subjected to a sexually hostile work environment by conduct sufficiently severe and pervasive to alter the conditions of her employment. Since the offending supervisor assigned tasks to Complainant and exercised authority over her in the workplace, Respondent was found to be vicariously liable for his unlawful sexual harassment. The hearing officer also found that Respondent's failure to respond in a proactive manner to a potentially threatening situation against one of its employees, after she was the victim of sexual assault, caused Complainant to be constructively discharged. Complainant was awarded \$2,600 for lost wages for the three months she was unemployed, and \$75,000 in damages for severe emotional distress resulting from the sexual assault. Complainant testified that she suffered constant anxiety, difficulty eating and sleeping, had nightmares and difficulty concentrating and feared going out in public alone at night.

MCAD & Theophilus Drigo v. City of Boston, 40 MDLR 36 (2018) (Race Discrimination, Retaliation)

Complainant worked as a mechanic for the City of Boston Central Fleet Management Division for many years. Complainant had a good performance record and received positive evaluations until two Caucasian mechanics were brought into his department. He claimed that thereafter his supervisor assigned him more difficult and less desirable tasks, denied him training, subjected him to harsher disciplinary scrutiny, and singled him out for cell phone usage. After Complainant verbally complained to superiors, he filed a written internal complaint of race discrimination with the City's Human Resources Department which resulted in a suggestion of regular shop meetings and more transparent communication by management, with one-on-one coaching or counseling sessions. Since Complainant's supervisor left his employment with the City prior to the completion of the investigation, Respondent assigned another manager to oversee the shop where Complainant worked. Complainant alleged that he began to experience treatment by management that he viewed as retaliation for his having complained of discrimination, including being passed-over for promotion. Complainant cited several memos in which he believed his performance was being singled out, including a one-day suspension for personal cell phone use, a claim of insubordination, and a negative performance review. There was credible testimony that Complainant's cell phone usage was no more frequent than that of his coworkers and his negative review was inconsistent with prior and subsequent reviews when he worked under different supervisors.

The Hearing Officer concluded that Complainant was subjected to harsher scrutiny, retaliatory discipline, and negative reviews. However, Respondent's denial of promotion was found to not be retaliation as it was justified by the successful candidate's superior qualifications. Complainant was awarded \$50,000 in damages for emotional distress for retaliatory harassment and Respondent was ordered to expunge records of certain disciplinary actions.

MCAD & Somaira Osorio v. Standhard Physical Therapy et al., 40 MDLR 49 (2018) (Sexual Harassment, Hostile Work Environment, Retaliation)

Complainant filed charges of sexual harassment and retaliation against a physical therapy practice that employed her as a receptionist, and its two managers, one of whom subjected her to unwanted physical and non-physical sexual advances. Respondents denied the charges and attributed Complainant's termination to her pursuit of a private money-making scheme in the office and to her demanding payment for snow days. Respondents were found to be utterly lacking in credibility. The fact that Complainant continued to work for Respondents despite being sexually harassed was explained by economic necessity rather than her acquiescence to, and acceptance of, the treatment. In regard to the retaliation claim, the Hearing Officer found there was a causal connection between Complainant voicing her objection to being sexually harassed and her termination. Both individually-named Respondents were held liable for the unlawful conduct as well as the physical therapy practice. Complainant received \$3,200 for back pay and \$50,000 in damages for emotional distress.

MCAD & Yvrose Cesar v. Danvers Management Systems, Inc. d/b/a Hunt Nursing and Rehabilitation Center, 40 MDLR 61 (2018) (Race discrimination)

Complainant, an African American of Haitian descent, worked as a Certified Nursing Assistant for Respondent nursing home for over 14 years, providing personal care for residents of the facility. Complainant was a very good employee who worked hard, was reliable and had good relationships with residents. She had favorable performance reviews for a number of years leading up to her complaints to management that she was being laughed at, mimicked, and ridiculed by co-workers who allegedly called her "ugly," "monkey," "horse," and "shit-face." After her complaints to HR, Respondent investigated her allegations and concluded they could not be substantiated. A number of employees interviewed told Respondent that Complainant was defensive and often accused them falsely of making fun of her or calling her ugly. Respondent called a meeting of Complainant's co-workers to discuss mutual respect wherein there was an attempted rapprochement. During the timeframe of the complaints, Respondent disciplined one employee for up to five incidents of calling other employees names, putting them down or insulting them. Thereafter Complainant continued to raise similar allegations with management, however, they were exaggerated and incredulous allegations that everyone at her place of employment was harassing her. Respondent was unable to substantiate these allegations and requested that Complainant seek some assistance from her physician or seek counseling. The Hearing Officer did not credit management's assertions that they did not understand Complainant's allegations to be about racial discrimination. Notwithstanding, the Hearing Officer concluded that while there was likely a kernel of truth to Complainant's allegations, Respondent's response to her repeated complaints was reasonable given the ambiguous information she provided, and that the evidence did not support her claim that she was the victim of a hostile work environment or that Respondent failed to take steps to address her allegations. In October of 2013, Complainant filed an MCAD complaint. In July of 2014, Complainant was terminated for refusing to accept a patient assignment. The Hearing Officer concluded that her termination was retaliatory. Complainant had never before refused an assignment, had a track record of good performance, was not contacted during Respondent's investigation and was not given the opportunity to present her position. Complainant was awarded \$12,000 in back pay damages and \$15,000 for emotional distress based on evidence that other factors likely contributed to Complainant's distress.

MCAD & Iris Quinones v. Faridoon Zamani, DMD & Faridoon Zamani, DMD, PC 40 MDLR 71 (2018) (Sexual Harassment-Hostile Work Environment- Constructive Discharge)

Complainant was hired as a dental assistant by Respondent Zamani, owner of a dental practice. A few weeks into her job, Complainant was subjected to a sexual advance by Zamani who tried to kiss her on the mouth. Complainant rejected this advance and left the workplace. The following morning at the front desk, Zamani, subjected Complainant to another advance by drawing close, grabbing her hand and forcing her to touch his erect penis. Complainant resisted this advance. Complainant was terrified by this behavior but managed to work for the remainder of the day. She did not return to work and later sent Zamani a text advising him that she would not return. The Hearing Officer found that Zamani's behavior was egregious and extremely offensive, constituted a physical attack on Complainant's person and was unwelcome. The behavior was sufficiently severe and pervasive to create a sexually hostile work environment. As Complainant's supervisor and the sole owner of the business, Zamani exercised authority over the terms and conditions of her employment. In addition to Zamani being individually liable for his conduct, Complainant's employer, the professional corporation, was found to be vicariously liable for his unlawful conduct.

The Hearing Officer concluded that Complainant was so fearful and intimidated by Zamani's conduct and her work environment was sufficiently hostile to justify her leaving the job. Where the hostile work environment was perpetrated by the owner and manager of the practice, Complainant had no one to turn to seek relief and she had no expectation of a resolution. Given these circumstances, the Hearing Officer concluded she was constructively discharged. The Complainant was awarded damages for emotional distress in the amount of \$135,000 based on her credible testimony that she suffered from persistent anxiety, insomnia, high blood pressure, neck pain, and panic attacks and that these symptoms were a direct result of her employer's unlawful conduct. The Hearing Officer also credited evidence that Complainant lost her sense of enjoyment of life, experienced feelings of alienation from friends and family, and sought medical help and treatment for the first time in her life from mental health providers who ultimately diagnosed her with post-traumatic stress disorder. Complainant was also awarded lost wages in the amount of \$12,800 for the 16 weeks she was unemployed.

MCAD & Kevin O'Leary v. Brockton Fire Dept. et al., 40 MDLR 91 (2018) (Disability Discrimination)

Complaint brought a complaint for disability discrimination based on a failure to accommodate his learning disability and for being subjected to a hostile work environment. Regarding the disability claim, Complainant requested an accommodation at the Fire Training Academy (which he passed) but did not make a subsequent request for an accommodation during his on-the-job-training at three fire houses. At his first rotation Complainant received daily and individualized training in the basic fundamentals of ladder and squad operations. In his second rotation he was provided with numerous practical drills, claiming he learned best from repetition. The evidence established that despite additional training, Complainant was unable to master the basic operations and rudiments of firefighting, and lacked an aptitude for the mechanical aspects of the job, many of which were paramount to successful firefighting. The Hearing Officer concluded that given these circumstances, even if Complainant had requested an accommodation, an interactive process would have been futile where his suggested accommodation of less stressful drilling conditions and fewer repetitions of drills would have been inadequate to ensure his success in learning essential tasks of firefighting. Respondents made a persuasive argument that stressful drilling was a necessary training technique that simulated real life fire situations. However, Complainant prevailed on his hostile work environment claim where the evidence showed that Complainant was subjected to constant pranking at Station 1 based on his disability and that the hostile treatment he received altered the conditions of his employment. Complainant was awarded damages of \$40,000 for the emotional distress resulting from the unlawful harassment. The amount is modest because a substantial part of Complainant's emotional distress claim relates to his termination which is not compensable.

Significant Full Commission Decisions

In 2018, the Full Commission issued fourteen decisions and eight orders. The decisions of the Full Commission are described below.

MCAD and Brenda Patterson v. Ahold USA, Inc., 40 MDLR 11 (2018)

Complainant, an African-American career employee, was employed by Stop & Shop for approximately forty years providing employment status processing services. Stop & Shop was acquired by Respondent Ahold USA, Inc. (Ahold) and then went through a number of reorganizations. Ms. Patterson was informed that her job had been eliminated, that she had not been placed in another job and would be terminated unless she found another position in the company. She was terminated when she did not find another job. The Hearing Officer, after examining the evidence concerning the transfer of positions, selection of candidates and hiring practices, determined that the reasons asserted by Respondent for failing to consider Ms. Patterson for several available positions were a pretext for unlawful discrimination based upon race and color. The Full Commission affirmed the Hearing Officer's decision and award of back pay of \$156,847, the award of front pay of \$117,764 to be discounted by an agreed upon rate and emotional distress damages of \$75,000. The Full Commission also awarded attorneys' fees and costs to the prevailing Complainant of \$146,310.

MCAD and Leon Glasman, o/b/o Julia Glasman v. MA Dept. of Transportation, 40 MDLR 23 (2018)

The Full Commission affirmed the dismissal of a public accommodations complaint, but not on the grounds of lack of jurisdiction found by the Hearing Officer. The Complainant brought the claim on behalf of his minor child, a person with disabilities who uses a wheelchair. Complainant alleged that the Massachusetts Department of Transportation ("DOT") violated G.L. c.272, §98, when it regraded a public highway in front of her home, which raised the height of the road and the slope of their driveway, restricting the child's access to the public highway. The Full Commission, reviewing the findings and record, held that the Commission had subject matter jurisdiction over the matter. However, the Complaint was properly dismissed based upon the Hearing Officer's conclusions that Respondent met its obligation to reasonably accommodate the minor child's disabilities, even though the father had been dissatisfied with DOT's various proposed and executed solutions to provide access to the highway.

MCAD and Laurel Radwin v. Mass. General Hospital, 40 MDLR 47 (2018)

The Full Commission affirmed a decision of Hearing Officer Guastaferrri dismissing a complaint of religious discrimination in employment and retaliatory termination. The Complainant was a leading scholar in nursing research recruited for employment by a Director of the hospital's Center for Nursing Research. Ms. Radwin's responsibilities included submitting grant applications for research which required her to work with administrative staff. During the course of Ms. Radwin's employment she informed fellow employees and her supervisor when particular events were scheduled on Jewish holidays, which led to some, but not all events being rescheduled. Following reports of friction with administrative staff, her supervisor met repeatedly with the Complainant and administrative personnel, and Complainant regularly met with a human resources generalist. Complainant's supervisor (who had initially recruited Ms. Radwin) determined that there was not sufficient progress in improving the workplace, and recommended termination of her employment. Ms. Radwin internally grieved the termination, which was upheld. The Full Commission affirmed the Hearing Officer's conclusion that the credible evidence produced by MGH demonstrated that there were legitimate non-discriminatory reasons for terminating her employment and the action was not retaliatory.

MCAD and Joseph Sasso v. Servisair, LLC, 40 MDLR 54 (2018)

The Hearing Officer's determination that Servisair was liable for age discrimination following Mr. Sasso's termination after thirty-four years of employment was upheld by the Full Commission. Complainant was an airport-services operations manager, and 58 years old at the time of his layoff on May 1, 2008. The Hearing Officer found that the Respondent discouraged him from formally applying for duty

manager positions, which were filled by individuals who were significantly younger than him and had far less experience in the airline industry. The Hearing Officer determined that Respondent's justifications for failure to transfer the Complainant into available duty manager positions which he was qualified to perform were a pretext for age discrimination. The Full Commission rejected Respondent's argument that Mr. Sasso's purported failure to formally apply for a new position absolved it of liability, recognizing the Hearing Officer's determination that there were informal procedures for internal transfers. The Full Commission also affirmed the determination that Complainant's receipt of Social Security benefits did not bar him from demonstrating that he was capable of working. The Full Commission affirmed the Hearing Officer's award to Complainant of \$125,000 in emotional distress damages and awarded \$99,228 in attorney's fees and costs to the Complainant.

MCAD and Garcia, et al. v. David Zak, et al., 40 MDLR 57 (2018)

The Full Commission affirmed the Hearing Officer's decision holding a lawyer, David Zak, liable to seventeen Latino homeowners for national origin discrimination in the provision of residential real estate-related transactions. The Hearing Officer found that Respondent targeted the homeowners on the basis of their national origin to provide loan modification services with excessive fees. Due to the ineffectiveness in obtaining mortgage modifications, Complainants suffered harm in the form of foreclosures, evictions, bankruptcies and emotional distress. The Full Commission rejected Respondent's argument on appeal, holding that discrimination based on loan modification services is within the meaning of "residential real estate-related transactions" described in G.L. c.151B, §4(3B). In addition to affirming the damage awards, the Full Commission awarded \$454,839 in attorneys' fees, after reduction for duplication of legal work and applying a reduced hourly rate to one of the Complainants' attorney's work.

MCAD and Marilda Colon v. East Bank Savings Bank, 40 MDLR 101 (2018)

The Full Commission affirmed the Hearing Officer's decision finding that Complainant was discriminated against in employment due to her Puerto Rican national heritage. Ms. Colon had successfully worked as a teller (and teller-supervisor) for eight years until a new supervisor came on board. After working under this new supervisor for less than a year, she was terminated based on alleged misconduct, violation of bank protocols and refusal to sign two warnings. The Hearing Officer evaluated evidence regarding comparative employees and conduct and concluded that the new supervisor interpreted every situation in an unfavorable light to Complainant, even though Caucasian employees who engaged in similar behavior did not experience the same consequences. The Hearing Officer determined that the articulated reasons for termination were a "cover-up" for discrimination. The Full Commission affirmed the Hearing Officer's decision, her award of \$95,328 in lost income and \$2,200 in moving costs associated with Colon's attempts to mitigate her losses and the emotional distress award of \$50,000. It also accepted the parties' stipulated amount of attorneys' fees and costs for the Complainant, totaling \$37,000.

MCAD and Dung Marotta v. Natural Salon, 40 MDLR 103 (2018)

The Hearing Officer's decision dismissing Complainant's age discrimination complaint was affirmed by the Full Commission. Complainant was employed by Respondent as a manicurist. The Hearing Officer determined that various circumstances Complainant characterized as evidence of age-related animus, including employees taking her customers away, knocking their chairs into her, and generally giving her a hard time, were "examples of employees getting on each other's nerves for reasons unrelated to age such as eating and working in a confined space and competing for clients." Complainant also alleged that she was constructively discharged following her hospitalization and subsequent convalescence. The Hearing Officer found credible Respondent's testimony that Complainant stopped working at the salon when she was hospitalized and that she could return to work when she was ready and able, but never did. The Full Commission also affirmed the Hearing Officer's denial of Complainant's Motion in Limine precluding Respondent from introducing evidence, recognizing both that the discovery sought was overly broad and minimally relevant, and that Complainant failed to move to compel discovery prior to the public hearing.

MCAD and Murphy, as trustee for Shanahan v. S & H Construction, 40 MDLR 108 (2018)

The Full Commission affirmed the Hearing Officer's decision holding that Respondent was not liable for a hostile work environment or for discriminating against Complainant on the basis of disability when it terminated his employment; however it engaged in unlawful retaliation when it pursued litigation against Complainant for debt collection only after he filed his MCAD charge. The Complainant was employed by Respondent as a carpenter and job supervisor. The Hearing Officer determined that Respondent terminated Complainant based upon job performance, and the employer's basis for its actions were supported by credible evidence. With respect to the retaliation claim, she found that Respondent had made a loan to Complainant, which he had not repaid. One month after Complainant filed his MCAD charge, Respondent brought suit against Complainant. In contrast, other employees' unpaid loans were not pursued in litigation, but instead taken as losses and tax write-offs. Further, she found that the Respondent then took possession of a vehicle operated by Complainant's ex-wife in execution of a default judgment against Complainant, indicating that it would return the vehicle if Complainant dropped the MCAD charge. The Hearing Officer's determination that Respondent's actions with respect to the unpaid loan were motivated by retaliatory animus in violation of G.L. c.151B was held to be supported by sufficient evidence. The Full Commission awarded \$48,390 in attorneys' fees, half of Complainant's request, recognizing that the Complainant had been unsuccessful in his discriminatory termination claim.

MCAD and Melissa DeRusha v. Federal Square Properties and Pacific Land, LLC, 40 MDLR 112 (2018)

The Full Commission affirmed the Hearing Officer's determination that a Worcester building owner and its agent management company were liable for housing discrimination violating G.L.c.151B, §§ 4(7B) and (10). The Hearing Officer found that the owner's agent discriminated against a Section 8 subsidy recipient by its refusal to rent to her and engaged in discriminatory statements when it indicated it would not accept Section 8 applicants. The Full Commission affirmed the Hearing Officer's rejection of Respondent's defense that it mistakenly believed that it was ineligible to participate in the Section 8 program due to ignorance of the program's requirements. The Full Commission also affirmed the Hearing Officer's award of only \$500 for emotional distress, based upon her credibility determination that Complainant's claims of emotional distress were exaggerated. The Complainant was awarded attorney's fees of \$16,318.

MCAD and Kevin Gude v. Jenalyn, Inc., et al. 40 MDLR 117 (2018)

The Hearing Officer's dismissal of a race discrimination claim based upon hostile work environment and employment termination was affirmed by the Full Commission. The Hearing Officer found credible that Respondent terminated Complainant's employment due to performance and unreliable attendance. Her determination that a single incident which occurred early in Complainant's employment in which Complainant was subjected to harsh words following a mishap with the office computers did not constitute a claim for racially discriminatory hostile environment was also affirmed by the Full Commission.

MCAD and Robert F. Murphy, III v. Town of Wilmington, 40 MDLR 119 (2018)

The Full Commission affirmed the Hearing Officer's dismissal of a disability discrimination claim based upon employment termination. The Complainant was a police cadet who developed tendonitis in both knees. Based upon Complainant's admissions, the Hearing Officer determined the condition was resolved within a month of its development. The Hearing Officer determined that Complainant was not a handicapped individual within the meaning of G.L. c.151B, so was unable to make out a prima facie case of handicap discrimination. The Full Commission found substantial evidence supporting the Hearing Officer's determination that Complainant was not terminated because he was perceived to be an individual with a disability, but due to his own performance.

MCAD and Luz Medina v. BayState Health, 40 MDLR 129 (2018)

The Hearing Officer's dismissal of Complainant's national origin, race and handicap discrimination claim based upon Respondent's failure to promote her to a full-time substance abuse counselor position was affirmed by the Full Commission. The Hearing Officer's determination that Respondent's articulated rationale for selecting another candidate and rejecting Complainant constituted a legitimate non-discriminatory reason for the decision was found to be supported by substantial evidence. The Full Commission also agreed with the Hearing Officer's conclusion that for the particular position, review of attendance records relative to unplanned events was reasonable and nondiscriminatory. The attendance records reviewed for Complainant did not include excused FMLA absences and attendance was essential to the position of substance abuse counselor given the evidence of difficulty obtaining weekend substitute coverage.

MCAD and Michele Falzone v. Sea View Retreat, Inc., et al., MDLR (2018)

The Full Commission affirmed the Hearing Officer's determination that Respondent engaged in discriminatory retaliation by terminating Complainant's employment after her internal complaint of sexual harassment. The Full Commission found sufficient evidence for her determination that while Respondent had a mixed motive for terminating Complainant's employment, including some performance issues, the Respondent would not have made the decision to terminate Complainant's employment if she had not made an internal complaint of sexual harassment. It affirmed the award of \$25,000 in emotional distress damages and back pay of approximately \$7,000. The Full Commission awarded \$35,760 in attorneys' fees, discounting the award due to lack of specificity in the billing entries.

MCAD and Derrick Sims v. 15 LaGrange Street Corp., et al., MDLR (2018)

The Hearing Officer's determination that Respondents were liable for racial discrimination after creating a hostile work environment and unlawfully terminating Complainant's employment as a bouncer was affirmed by the Full Commission. The Full Commission also affirmed the Hearing Officer's conclusion that the Respondents were not liable for retaliation based upon his complaints of sexual harassment in the workplace, because she found his testimony concerning the sexual harassment complaints vague and unconvincing. With respect to the racially hostile environment, the Hearing Officer's findings concerning the racially hostile treatment of Complainant relative to Respondent's owner's treatment of white bouncers, were found to be sufficiently supported by the evidence. The Full Commission affirmed the Hearing Officer's award of \$25,000 in emotional distress damages, and awarded \$32,130 in attorneys' fees to the Complainant.

Glossary of Terms

Administrative Resolution: A complaint that is resolved at the MCAD other than through completion of the investigative process or final adjudication. Such cases may be resolved through the actions of the parties or action by the Commission.

Alternative Dispute Resolution: The process in which disputants are assisted in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which may avoid the cost, delay, and unpredictability of an adjudicatory process.

Americans with Disabilities Act (ADA): The Americans with Disabilities Act is a federal law that was enacted by the U.S. Congress in 1990. The ADA is a wide-ranging civil rights law that is intended to protect against discrimination based on disability.

Chapter 30A Appeals: State Administrative Procedures Act governing judicial review of a final agency decision of the Full Commission.

Chapter 478: Case closure when the complaint is withdrawn from MCAD to remove the case to Court.

Conciliation: Mandatory post-probable cause resolution process in which the Commission attempts “to achieve a just resolution of the complaint and to obtain assurances that the Respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory practices, or the prevention of their occurrence, in the future.”

Disposition: The official document issued stating the determination by the Investigating Commissioner at the conclusion of an investigation.

EEOC: U.S. Equal Employment Opportunity Commission is the agency of the United States government that enforces the federal employment discrimination laws.

HUD: The U.S. Department of Housing and Urban Development. Within the Department of Housing and Urban Development, the Office of Fair Housing and Equal Opportunity (FHEO) administers and enforces federal laws to ensure equal access to housing.

Jurisdiction: the official power to make legal decisions and judgments.

Lack of Jurisdiction: A determination that the MCAD lacks the statutory authority to investigate, adjudicate, or otherwise address the allegations charged.

Lack of Probable Cause: A determination by the Investigating Commissioner of insufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent did not commit an unlawful practice.

Mediation: Voluntary pre-disposition process in which the parties in the dispute attempt to resolve the outstanding issues and arrive at a settlement with the assistance of MCAD trained personnel.

Pre-Determination Settlement: When a settlement is reached before the conclusion of the investigation.

Probable Cause: A determination of the Investigating Commissioner that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice.

Protected Category: a characteristic of a person which cannot be targeted for discrimination. Protected categories differ based on the type of alleged discrimination. Common protected categories include race, gender, gender-identity, ethnicity, age, national origin, sexual orientation, military status, and disability.

Regulations: The whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it.

Substantive Disposition: The disposition of a complaint upon conclusion of the investigation resulting in a finding of either “Probable Cause” or a “Lack of Probable Cause.”

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 * 10+ years of service to MCAD
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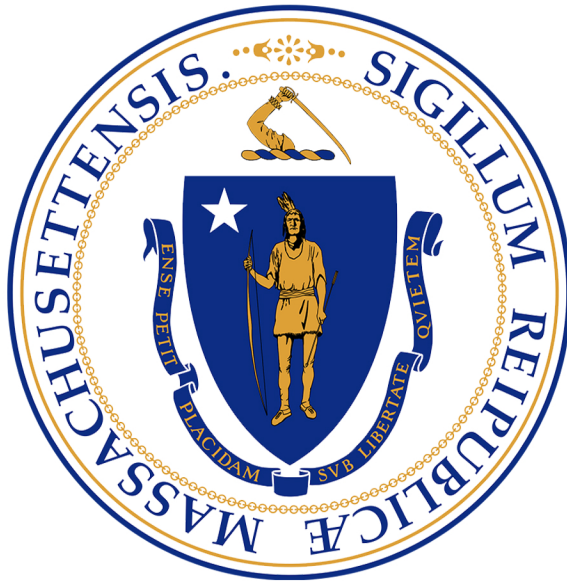
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