COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
KASHA AMBROISE,
Complainants

V. DOCKET NO. 18-BEM-02913

LAW OFFICE OF HOWARD KAHALAS
AND HOWARD KAHALAS,
Respondents

Appearances:

For Complainants: Bryn A. Sfetsios, Esq. and Rebecca G. Pontikes, Esq.
For Respondents: Richard M. Welsh, Jr., Esq.

DECISION OF THE HEARING OFFICER

Complainant, Kasha Ambroise, filed a complaint with the Commission against Respondents Howard Kahalas and the Law Office of Howard Kahalas ("Firm"). The Investigating Commissioner issued a probable cause finding and certified the matter for a public hearing. The claims addressed at public hearing were set forth in a Revised Supplement to Certification Order, and affirmed by counsel during the first day of the public hearing, and were: (a) whether Ambroise was subjected to a hostile work environment based on her race or color by Respondent(s) in violation of M.G.L. c. 151B, Section 4(1); (b) whether Ambroise was subjected to disparate treatment based on her race or color by Respondent(s) in violation of c. 151B, Section 4(1); (c) whether Respondent(s) retaliated against Ambroise for complaining about an alleged hostile work environment by terminating her employment with the Firm or speaking negatively of her to a prospective subsequent employer in violation of c. 151B, Section 4(4); and (d) whether Kahalas violated c. 151B, Section 4(5). Ambroise claims that during the three months she worked for the Firm, she was subjected to comments based on race or color by co-worker, Rachelle Ltayf, and by Kahalas. Ambroise claims because of her race or color she was not positioned where she could move from a non-attorney to an attorney position at the Firm, and was not considered for an available attorney position at the Firm when she applied. Ambroise further claims that after she complained about

certain comments, she received a verbal warning and was fired and that after her termination, Kahalas interfered with her efforts to obtain subsequent employment.

I presided over the public hearing on September 19-21, 2022 by Zoom video conference due to the COVID-19 pandemic. Eight persons testified. There were six exhibits. The audio recording of the public hearing was the official record. The parties filed post-hearing briefs on June 30, 2023. In this decision, *unless stated otherwise*, where testimony is cited, I find such testimony credible and reliable, and where an exhibit is cited, I find such exhibit reliable to the extent cited. Evidence contained in the record which is not cited within does not alter my findings of fact or conclusions of law.

I. FINDINGS OF FACT

1. Kasha Ambroise ("Ambroise") is a Black female who received her law degree from Suffolk University Law School in May 2017. She took the Massachusetts Bar Examination ("Bar Exam") in July of 2017, 2018, 2020 and 2021 but has not passed it. (Ambroise Testimony; Exhibit 2)
2. During law school, Ambroise had internships including with the Suffolk County District Attorney's Office. After she took the Bar Exam in July 2017, Ambroise contacted Connie Valenti ("Valenti"), who was in Human Resources at the Suffolk County District Attorney's Office. As a result of speaking with Valenti, Ambroise applied for what she believed was an associate attorney position with the Firm. (Ambroise Testimony)
3. Howard Kahalas ("Kahalas") is an attorney and has owned the Firm for more than 40 years. He has always had the final decision on who to hire and on whether to fire an employee. The Firm's focus was personal injury and workers' compensation cases. (Kahalas Testimony)
4. At the time Ambroise applied to work at the Firm, the Firm had two available positions. One was an associate attorney position and the other was a legal assistant position.[1] The associate attorney position required the chosen applicant to have personal injury law experience and maintain a case load of approximately 100 cases. (Kahalas Testimony)

[1]Witnesses used legal assistant and paralegal interchangeably.

5. In August 2017, Ambroise interviewed with the Firm. At that time, Ambroise did not have any experience in personal injury law. Ambroise had interviews with Firm attorneys Lisa Aronson ("Aronson"), Connie Guerriero ("Guerriero") and Kahalas. After her interview with Aronson, Ambroise sent an email to Aronson stating that she enjoyed meeting to discuss the associate attorney position. Because Ambroise had not passed the Bar Exam, she did not qualify for an attorney position. (Ambroise Testimony) The Firm did not correct Ambroise's email. (Kahalas Testimony)
6. During Kahalas' interview of Ambroise, he told Ambroise that he was not hiring her for the attorney position, (Kahalas Testimony), and stated he needed a legal assistant and was offering her that position. (Ambroise Testimony) Kahalas hired Ambroise because his friend, Valenti, asked him to help Ambroise and he believed Ambroise was capable of being a legal assistant. (Kahalas Testimony)
7. Kahalas told Ambroise during her interview that he was considering Kevin O'Connor ("O'Connor") for the Firm's open attorney position. O'Connor was an attorney with over five years of experience in personal injury law. (Exhibit 5; Kahalas Testimony; Ambroise Testimony) On September 18, 2017, the Firm hired O'Connor (White) as an attorney and terminated his employment one year later for poor work performance. (Kahalas Testimony)
8. Kahalas does not recall any black attorneys applying for a position with the Firm. The Firm has never hired a black attorney. (Exhibit 1; Kahalas Testimony)
9. Ambroise worked for the Firm from September 11, 2017 through December 13, 2017. (Exhibit 1)
10. During her employment, the Firm had eight attorneys: Kahalas, Guerriero, Aronson, Caitlin Hicks ("Hicks"), O'Connor, Michael Welsh ("Welsh"), Phil Bongiorno ("Bongiorno") and Steve Bergel ("Bergel"). (Exhibit 4; Welsh Testimony)
11. During Ambroise's employment, the Firm had six support staff: Ambroise; Rachelle Ltayf ("Ltayf"), a claims adjuster (Lebanese and White); Briona Ellison ("Ellison"), a paralegal (Black and Latina); Kendra Calloway ("Calloway"), a receptionist (Black); Emily Clancy ("Clancy"), a paralegal (White); and Dania Novia ("Novia"), a paralegal (Hispanic). (Exhibit 1)

12. In the three months Ambroise was employed at the Firm, while there were other black employees, she was the employee with the darkest skin. (Ambroise Testimony; Kahalas Testimony)

13. Guerriero, (White) was Ambroise's direct supervisor at the Firm. (Exhibit 1)

LTAYF'S ALLEGED COMMENTS

14. Professional appearance in the office was important to Ltayf. If Ltayf believed an employee's appearance was inappropriate, she would tell the employee. Ltayf told Clancy, when she dyed her hair blue, that her hair was nice but inappropriate for the office. Ltayf believed attire was important to Kahalas and did not want Clancy to get in trouble. (Ltayf Testimony) Clancy corroborated Ltayf's focus on professional appearance and belief that Kahalas required professional appearance, by testifying that Ltayf told Clancy that her blue hair looked silly and Kahalas would not allow it. (Clancy Testimony)

15. Ltayf considered Ambroise's overall appearance to be disheveled. Ltayf believed Ambroise's hair looked unhealthy and her attire unprofessional as it was not office-wear. Ltayf made comments to others about Ambroise's unprofessional appearance at work. (Ltayf Testimony)

16. Ambroise became offended about something Ltayf said about Ambroise's hair. I credit Ltayf's recollection of that incident. On one day, Ltayf noticed there was something, perhaps a piece of lint, in Ambroise's hair, told Ambroise there was something in her hair, and removed it from Ambroise's hair, who "totally took [the situation] out of context." (Ltayf Testimony)

17. On another occasion, Ltayf asked Ambroise if she used hair conditioner during a discussion regarding hair products with Ambroise, Ellison and Clancy. (Ltayf Testimony) Although Clancy did not recall the discussion, (Clancy Testimony), I credit Ltayf's testimony that it occurred, because I find persuasive Ltayf's testimony that she and Ambroise did not have the kind of relationship where Ltayf would just walk up to Ambroise and ask her whether she used hair conditioner. (Ltayf Testimony)

18. I credit Ambroise's testimony that in October 2017, Ltayf made a comment about Ambroise's skirt in front of Guerriero, who snickered, (Ambroise Testimony), as it is corroborated by Ltayf's testimony that she considered the things that Ambroise wore to be unprofessional. (Ltayf Testimony)

19. At times, Ltayf commented about how beautiful Ellison was, and how nice her hair looked. (Ambroise Testimony)

20. I do not credit Ambroise's testimony that early in her employment, at a time when she was looking for supplies in a closet, Ltayf told Ambroise to "come out of the closet already," because Ambroise filed a statement with the Commission within one month after her employment at the Firm ended that did not reference such a comment. (Ambroise Testimony)

21. I do not credit Ambroise's testimony that in late September/early October 2017, Ltayf asked her if she ever combed her hair nor do I credit her testimony that in mid-November 2017, Ltayf again asked her if she ever combed her hair. Ambroise testified that she believed both comments were made in front of Clancy's desk and that Clancy overheard them. (Ambroise Testimony) Clancy credibly testified she never heard such comments. (Clancy Testimony)

"HATE NICKELS BECAUSE THEY ARE NOT DIMES COMMENT"

22. On or about November 3, 2017, Ambroise was working late in the paralegals' room. (Ambroise Testimony) Kahalas saw her and said to Ambroise that he was going to call her nickels, because she hates nickels, because they are not dimes, and asked if she was trying to get ahead ("hate nickels because they are not dimes comment"). I credit Kahalas' testimony that he was making a joke that he had made for years. Kahalas explained its meaning. The joke was that one who hates nickels because they are not dimes is a person who wants to make more money. (Kahalas Testimony) Based on Kahalas' credible testimony concerning what he said to Ambroise, I do not credit Ambroise's testimony to the extent it implies Kahalas only said that he was going to call her nickels.

23. Ambroise did not know what Kahalas meant by his comment. After speaking to a friend, she had an understanding that it was a term relative to the value of an enslaved black person. Ambroise then performed a Google search and one of the results was the Urban Dictionary, a website where people submit their own definition of cultural slang. She searched the Urban Dictionary and found about a page and a half of definitions of "nickels" with five to ten definitions per page. Nowhere under the definitions of "nickels" was there a definition with racial connotation. None of the definitions of

"nickels" stated that it meant "nickels n-word" or referenced the n-word.[2] After the definitions of "nickels", there were words containing the term "nickel(s)" like "nickels n-word" and "nickel dollar" which had their own definitions. According to Urban Dictionary, "nickels n-word" meant a poor black person who pays in change. (Ambroise Testimony)

24. At the time Ambroise heard Kahalas' comment, she did not associate it with "nickels n-word." At hearing, Ambroise admitted that she had no reason to believe that Kahalas has ever used the Urban Dictionary. It was only after speaking with a friend, and looking up the term "nickels" on Urban Dictionary that she concluded the comment had racial connotations. (Ambroise Testimony)
25. Ambroise discussed Kahalas' comment with Welsh. Welsh was familiar with Kahalas using a phrase that included "nickels" and remembered it was something to the effect of rubbing two nickels to get a dime. Welsh told Ambroise that he was certain that Kahalas did not mean the comment in reference to race. Ambroise told Welsh that she agreed. (Welsh Testimony) I do not credit Ambroise's testimony that she did not talk to Welsh about the comment in light of Welsh's credible testimony that they discussed it.
26. The day after Kahalas made the comment, Ambroise told Aronson about the definition of "nickels n-word" in the Urban Dictionary. Ambroise told Aronson that "nickels" was somewhat connected to "nickels n-word" and she was not comfortable with Kahalas using the term "nickels." She asked Aronson to tell Kahalas not to call her "nickels" again. (Ambroise Testimony)
27. Kahalas learned from Aronson that Ambroise had complained about his comment. He could not understand how the joke he had told for years could be interpreted as a racial comment, and was livid that he was being accused of making a racist comment. (Kahalas Testimony) I credit Kahalas' testimony that he felt Ambroise was trying to make him look like he had said something racist when he had not. Kahalas never used the Urban Dictionary and did not know it existed until after he was told Ambroise looked something up on it. (Kahalas Testimony)

[2]Witnesses used the term "n-word" to reference the word "nigger" and it is used herein to connote the same.

28. Kahalas never used the term “nickels” again and told Ambroise that he didn't mean anything other than a joke. (Kahalas Testimony)

LEAVING THE OFFICE WITHOUT PERMISSION

29. The Firm had a verbal policy (“Policy”) regarding leaving the office other than during lunch hour. There were no breaks and non-lawyers were not allowed to leave the office outside of their lunch hour without permission. Kahalas did not similarly monitor the attorneys because they went to court and had obligations outside the office. (Kahalas Testimony) Ltayf understood that paralegals were not permitted to simply leave the office outside of their lunch hour. (Ltayf Testimony) Calloway understood that one could not leave the office other than during her lunch hour without having received approval. (Calloway Testimony) Clancy understood that if one was going to leave for more than five minutes, one needed to let her supervising attorney or office manager or receptionist know to ensure calls were forwarded whereas permission was not needed if it was a “two-minute thing” like a quick trip to the bathroom. (Clancy Testimony)

30. On November 1, 2017, Ambroise was at her desk in the paralegals’ room when she received a personal telephone call from a debt collector who claimed she owed money; informed her that her check had “bounced”; and was threatening litigation. (Ambroise Testimony) Clancy, whose desk was outside the paralegals’ room, heard Ambroise talking during that phone conversation and heard Ambroise say in a loud voice that if she had a “white girl name”, like if her name was Becky, the person would not be checking to see if there was money in the account. Clancy then saw Ambroise leave the paralegals’ room and leave the office. Ambroise did not say anything to Clancy about leaving. A couple of minutes after Ambroise left the office, Guerriero paged Ambroise. Clancy told Guerriero that Ambroise had stepped out. Clancy, who saw Ambroise leave and return to the office, estimated that Ambroise left the office for 40 to 45 minutes. After Ambroise returned, Clancy told Ambroise that she should tell somebody if she was going to leave the office. (Clancy Testimony; Exhibit 4) During the time Ambroise was not in the office, Kahalas and Guerriero called the front desk asking Calloway if she knew where Ambroise was. (Calloway Testimony) Kahalas heard staff

and Guerriero looking for Ambroise. Kahalas estimated that Ambroise returned to the office within 30 to 45 minutes. The period in which Ambroise had left the office was not during her lunch hour. When she returned, Kahalas told Ambroise that no one leaves the office without asking. Ambroise did not tell Kahalas that she had asked someone before leaving. Ambroise received a verbal warning from Kahalas. Kahalas instructed Aronson to make a note on Ambroise's attendance records. The notation was "11-1-17 left office for 30 minutes – didn't tell anyone." (Kahalas Testimony; Exhibit 6)[3] In light of these findings, I do not credit the following testimony by Ambroise regarding this incident, specifically, that Guerriero walked into the paralegals' room while her conversation with the collector was ongoing; Ambroise told Guerriero that she needed to get some fresh air and wash her face; and Ambroise did not tell the collector that if she had a name like Becky, there would not have been a call over a bounced check, but because she had a "black girl name" her money was not good.

31. On November 10, 2017, Ambroise left the office to pick up a coffee from Starbucks outside of her lunch hour. (Ambroise Testimony) During the period in which Ambroise was not in the office, Guerriero asked Ltayf if she knew where Ambroise was. Clancy asked Ltayf if she knew where Ambroise was. (Ltayf Testimony) As a result of this incident, Kahalas directed Aronson to make a note in Ambroise's timesheet records. The notation was made - "11-10-17. Left for coffee – didn't tell anyone she was leaving." Ambroise received another verbal warning. (Kahalas Testimony; Exhibit 6) In light of these findings, I do not credit the following testimony by Ambroise regarding this incident: Ambroise was going to tell Guerriero that she was leaving but Guerriero was behind closed doors; Ambroise told Clancy and Novia that she was stepping out for approximately ten minutes to get a coffee; and when Ambroise returned, she asked Guerriero if she was looking for her and Guerriero said no.

[3]Calloway spoke to Ambroise that same day after Ambroise had received the verbal warning. Ambroise told Calloway she had been reprimanded. Ambroise was visibly upset about being reprimanded. (Calloway Testimony)

32. I do not credit Ambroise's testimony that Ellison and Clancy left the office outside of their lunch hours for coffee without permission. Ellison and Clancy left the office outside of their lunch hours when directed to get coffee for others, (Ambroise Testimony), which evidences they had permission. I credit Clancy's testimony that Clancy did not leave the office other than during her lunch hour without first asking for permission unless she was leaving for a short bathroom break. (Clancy Testimony)

33. One day, Calloway and Kahalas had an argument and she "stormed" out of the office. They did not talk for over a week. Eventually they resolved a misunderstanding. She was not reprimanded. (Calloway Testimony)

NOVEMBER 13-14, 2017

34. I credit the following testimony by Ambroise. On November 13, 2017, there was a meeting between Ambroise, Kahalas and Guerriero. During that meeting, Kahalas told Ambroise that she was being hypersensitive for complaining about the "hate nickels because they are not dimes comment" and needed to lighten up; asked Ambroise whether she had a personal issue with Guerriero; and notified Ambroise that she was receiving a warning for leaving the office without notifying a supervisor. (Ambroise Testimony) I infer that warning was for the November 10, 2017 incident since Kahalas had already notified Ambroise of the warning for the November 1, 2017 incident. (Kahalas Testimony; Calloway Testimony). I credit Ambroise's testimony regarding the November 13, 2017 meeting for the following reasons: Kahalas was upset over Ambroise's reaction to his comment; the Ambroise-Guerriero relationship had deteriorated by that point (see below); and just three days before, Ambroise had left the office without permission. In light of Ambroise's credible testimony regarding this meeting, I do not credit Kahalas' testimony to the extent it implies that: (a) after November 10, 2017, he did not discuss with Ambroise her leaving the office without permission; or (b) the only conversation he had with her regarding the "hate nickels because they are not dimes comment" was telling Ambroise that he didn't mean anything other than a joke.

35. The next day, November 14, 2017, Ambroise overheard a conversation in which Kahalas was telling Bergel that Ambroise was accusing him of being a racist; he was not stupid enough to call her anything bad; he gave money to Suffolk University Law School for minority scholarships; and guessed Ambroise received a scholarship. (Ambroise Testimony) I credit Ambroise's description of what she overheard, as it is corroborated by the following. Kahalas graduated from and donated funds to Suffolk University Law School for minority students who could not afford to attend law school. (Kahalas Testimony)
36. Kahalas' comments on November 13 and 14, 2017 made Ambroise uncomfortable. (Ambroise Testimony)

ALLEGED LUNCHROOM INCIDENT

37. Ambroise testified that on November 17 or 18, 2017, Ltayf commented that Ambroise's hair looked like a Brillo pad, Ambroise was ugly or "fucking ugly," black women were ugly, and made a sound of disgust regarding Ambroise. (Ambroise Testimony) Based on paragraphs 38-43, I do not credit Ambroise's testimony, and I find that Ltayf made a joking comment about Bongiorno's hair and not a derogatory racial comment about anyone.
38. Guerriero, Bongiorno and Ltayf had a close relationship with a lot of laughter and joking often directed at Bongiorno. Welsh remembered that Bongiorno had a fairly new and short haircut at the time. (Welsh Testimony) Calloway remembered that Bongiorno wore a lot of gel in his hair and looked like a porcupine as his hair was often matted together. (Calloway Testimony)
39. I credit the following testimony by Ltayf. At the time in question, Ltayf was in the lunchroom with Guerriero and Bongiorno talking about a woman Bongiorno was interested in. Ltayf asked Bongiorno something like - does this woman know you wear your hear like a fucking porcupine - which caused the three of them to laugh. Ambroise appeared in the doorway. Ltayf stopped talking because she thought Ambroise wanted to talk to Guerriero. Ltayf did not make a comment about Ambroise; did not say Ambroise or black people were ugly; and did not make a sound of disgust about Ambroise. (Ltayf Testimony)

40. After Ambroise spoke to Welsh regarding the alleged lunchroom incident, Welsh asked Bongiorno what happened. Bongiorno told Welsh that Guerriero and Ltayf were making fun of him and commenting about his new hairstyle. What Bongiorno told Welsh was "right in line" with the relationship and interactions that Welsh had observed between Guerriero, Ltayf and Bongiorno. Welsh told Ambroise what Bongiorno told him. (Welsh Testimony)
41. After the alleged lunchroom incident, Ambroise told Clancy that she heard something about her body weight and that she was ugly, or that her hair looked ugly. (Clancy Testimony)
42. Ambroise's report to Welsh and to Clancy about what she claimed she heard in the lunchroom was inconsistent with Ambroise's testimony. Ambroise did not tell Welsh that someone said black people are ugly. (Welsh Testimony) Ambroise did not testify that anyone made comments about Ambroise's weight. These inconsistencies further lead me to credit Ltayf's testimony about the lunchroom comments and reject Ambroise's testimony.
43. Ltayf made positive comments about Ellison's hair, (Ambroise Testimony), and Calloway's hair. (Ltayf Testimony)
44. In making the findings in paragraph 37, I have taken into account the following: Ltayf believed Ambroise's hair looked unhealthy and her attire unprofessional; Ltayf made comments about Ambroise's appearance at work; and neither Bongiorno nor Guerriero testified. However, I find this outweighed by the testimony on this incident by Ltayf, Welsh and Clancy which I have found persuasive.

AMBROISE REPORTS ALLEGED LUNCHROOM INCIDENT

45. Ambroise told Aronson the same day what she claimed she heard in the lunchroom. Aronson told Ambroise that she would investigate. (Ambroise Testimony) There is no evidence that Aronson investigated.
46. Calloway believed that Ambroise's reaction to what she thought she heard in the lunchroom changed the office atmosphere making it uncomfortable. (Calloway Testimony)

AMBROISE'S RELATIONSHIP WITH HER SUPERVISOR

47. Guerriero had a larger caseload than most attorneys at the Firm. During the six plus years that Calloway worked at the Firm, it was common for the paralegal that worked for Guerriero to complain about the heavy workload, and Guerriero had a number of paralegals leave. (Calloway Testimony)

48. Almost a month after Ambroise started working at the Firm, the relationship between Ambroise and Guerriero developed tension. At some point, Guerriero would not even say hello to Ambroise, but would just drop off files on Ambroise's desk, and walk away. (Ambroise Testimony)

49. Initially, Guerriero was satisfied with Ambroise's work quality. Guerriero expressed her satisfaction with Ambroise's work to Ltayf and Kahalas. After a period, Guerriero began to feel Ambroise was not doing what Guerriero needed her to do. Guerriero told Ltayf that Ambroise would say that she did things when she did not. Guerriero told Kahalas that she was not happy with Ambroise's work performance, and that instead of doing her work, Ambroise was making notes about Guerriero. (Ltayf Testimony; Kahalas Testimony) At one point, Ltayf heard Guerriero ask Kahalas to fire Ambroise because of poor performance. (Ltayf Testimony)[4]

END OF AMBROISE'S EMPLOYMENT

50. Within a month after Ambroise started her employment at the Firm, she told Calloway that she wanted to leave the Firm and was overwhelmed by the workload. Ambroise described her stressors to Calloway which included, in part, her workload and working with Guerriero. On at least two occasions, Ambroise told Calloway that she had drafted a two-week notice of her intent to resign although she did not tell Calloway a specific date on which she intended to resign. (Calloway Testimony)

51. Periodically, Ambroise discussed with Welsh her relationship with Guerriero. Ambroise told Welsh that she was overworked and did not get along with Guerriero. During those conversations, Ambroise

[4]Kahalas told employees if the quality of their work was lacking. At times, Kahalas was not happy with the quality of Ltayf's work and told Ltayf that. (Ltayf Testimony) In October 2017, Kahalas did not like the quality of a letter Ambroise wrote for him and called her incompetent. (Ambroise Testimony)

did not ask Welsh if she could work for a different attorney and did not tell Welsh that she felt she was being treated differently because of race. Before December 12, 2017, Ambroise had at least two discussions with Welsh in which she referenced a two-week notice. (Welsh Testimony)

52. On December 12, 2017, Ambroise and Guerriero had a disagreement. Guerriero could not find something in a file and did not believe Ambroise had put the item in the file. Ambroise testified that she had reached the point where she could not "do this anymore." Ambroise drafted a resignation letter that day that she intended to submit at a later date as she needed another paycheck to buy Christmas gifts, pay bills and cover expenses through the holidays. (Ambroise Testimony) Based on my findings in this paragraph, I infer that at the time she was drafting the resignation letter, there was a financial impediment to Ambroise's immediate resignation.
53. Later, on December 12, 2017, Ambroise told Welsh that she wanted to give her two-week notice and intended to resign because of her relationship with Guerriero. Welsh decided to bring the issue "to a head" and brought Ambroise into Kahalas' office. (Welsh Testimony) In light of Welsh's credible testimony depicted in paragraphs 51 and 53, I do not credit Ambroise's testimony in which she denied ever discussing a two-week notice with Welsh.
54. Welsh and Ambroise went to Kahalas' office and they had a meeting with Kahalas ("Meeting"). (Welsh Testimony; Kahalas Testimony; Ambroise Testimony)
55. Kahalas' account of the Meeting was credible and as follows. Welsh told Kahalas that Ambroise was unhappy. Ambroise said she was unhappy. Kahalas told Ambroise that he understood she was unhappy as that had been the scuttlebutt for weeks, and he understood she was looking for another job because she did not like working for Guerriero. Kahalas told Ambroise that "I will let you leave today" and would pay her for the remainder of the week and two additional weeks so she would not lose income while seeking another job. Ambroise did not say she wanted to stay at the Firm. She did not submit a letter of resignation. Kahalas did not say anything about race. (Kahalas Testimony)
56. Corroborating Kahalas' testimony regarding the Meeting was the following credible testimony by Welsh regarding the Meeting. Welsh told Kahalas that Ambroise wanted to submit her two-week

notice because of issues with Guerriero. When Welsh told Kahalas that Ambroise wanted to submit her two-week notice, Ambroise did not disagree. Ambroise told Kahalas that she had been unhappy working for Guerriero for a while. Kahalas told Ambroise "I'll accept your resignation."[5] When Kahalas told Ambroise that he would accept her resignation, Ambroise did not indicate that she was not resigning. Kahalas told Ambroise that he would pay her for the remainder of the week and the next two weeks, and she did not have to work during that period, so she could focus on trying to obtain employment. There was no discussion about race. Ambroise did not submit a letter of resignation. (Welsh Testimony)

57. I infer that once Kahalas presented Ambroise with an opportunity to stop working for Guerriero without a loss of pay, the above financial obstacle to her immediate resignation was removed.

58. Ambroise testified that during the Meeting, Kahalas told her that she was bringing up race too often, it was making people uncomfortable, she was difficult to work with, and she was "being let go." Based on the findings of paragraphs 55-57, I do not credit Ambroise's testimony,[6] and I find she resigned during the Meeting.

59. In finding that Ambroise resigned during the Meeting, I have taken into account the following. First, she did not sign the Severance and Release Agreement ("Agreement") presented to her. She wanted to talk to counsel before signing and promptly contacted counsel. (Ambroise Testimony; Exhibit 1) Because Ambroise was consulting with counsel, there is a distinct possibility she refused to sign on advice of counsel. Under these circumstances, her decision to not sign the Agreement does not indicate she was fired. Second, the Agreement states "[u]nfortunately, I must inform you that your employment … ends on December 13, 2017." (Exhibit 1) This language does not support Ambroise's

[5]Kahalas did not testify to using the phrase "I'll accept your resignation." I infer that Welsh interpreted Kahalas' statement "I will let you leave today" as Kahalas' express acceptance of Ambroise's resignation.

[6]In rejecting Ambroise's testimony that Kahalas stated during the Meeting that she was bringing up race too often and it was making people uncomfortable, I have taken into account that Calloway believed Ambroise's reaction to what she thought she heard in the lunchroom made the office atmosphere uncomfortable, (Calloway Testimony), and Clancy felt uncomfortable when Ambroise raised the issue of race. (Clancy Testimony) But I find this evidence outweighed by Kahalas' and Welsh's credible testimony regarding the Meeting.

argument that she was fired. It does not state she was fired, and inferring that is inapposite because the Agreement was drafted by a person (Welsh), who was not an employment lawyer, and who was working from a template agreement. (Welsh Testimony) Third, Kahalas was upset that Ambroise viewed his "you hate nickels because they are not dimes comment" as a racial comment. But *he* did not call for the Meeting. The Meeting was the result of Ambroise's continued expression of displeasure concerning working with Guerriero. Fourth, paying an employee for, but not requiring the employee to work during, the two-week notice period was not something Kahalas had previously done, (Kahalas Testimony), but it would be speculative to infer his offering that to Ambroise evidences she was fired. Although Kahalas testified he was not concerned Ambroise would sue the Firm, he indicated he was always concerned about potential lawsuits. (Kahalas Testimony) This suggests he was willing to pay Ambroise for a period in which she did not have to work to minimize the possibility of a lawsuit.[7] Lastly, in response to a question, Welsh referenced Ambroise's "termination." (Welsh Testimony) Based on Welsh's testimony in its entirety regarding the Meeting, I find that was not a "slip of the tongue" evidencing she was fired, but instead was an inadvertent and incorrect choice of words.

AMBROISE'S EFFORTS TO OBTAIN SUBSEQUENT EMPLOYMENT

60. After her employment with the Firm ended, Ambroise applied for a paralegal position with the City of Boston ("City"). Ambroise advanced to an interview with a three-person panel including Attorney Henry Luthin ("Luthin"). During the interview, Luthin stated that Ambroise had worked with Kahalas whom he knew. Ambroise did not get the job. (Ambroise Testimony)

61. Ambroise testified that Luthin said during the interview that Ambroise needed to get along with other people (a remark similar to what she alleged Kahalas stated during the Meeting) and that she had a conversation with a City employee whom she knew from law school who told her "some Howard guy" said something about her discrimination complaint. Based on the findings in paragraphs 62-64, I

[7]I do not credit Kahalas' testimony that he offered to pay Ambroise for a period in which she did not have to work because he felt bad she did not like Guerriero and was doing Ambroise a favor. (Kahalas testimony)

do not credit such testimony, and I find Kahalas and the Firm took no action to affect the outcome of Ambroise's efforts to find employment with the City.

62. Kahalas denied ever receiving a phone call from a prospective employer asking about Ambroise's employment with the Firm. Prior to receiving notice through Ambroise's counsel that Ambroise was alleging that Kahalas spoke with Luthin, Kahalas did not know she was applying for a job with the City. Kahalas never had a conversation with Luthin regarding Ambroise. (Kahalas Testimony)
63. After Ambroise's counsel claimed Kahalas interfered with Ambroise's efforts to obtain the position with the City, Welsh called Luthin and they spoke. Luthin told Welsh that Luthin had never spoken to Kahalas about Ambroise. Luthin told Welsh that many years earlier, Kahalas had helped Luthin on a matter, but he had not talked to Kahalas since. (Welsh Testimony)
64. When asked at the hearing, whether he received a call from the Firm with regards to Ambroise at any point during the interview process regarding Ambroise, Luthin answered "I did not. To the best of my recollection, I didn't." Luthin's last communication with Kahalas was prior to 2008. (Luthin Testimony)
65. In the six months after her employment with the Firm ended, Ambroise unsuccessfully applied for over 70 other legal positions. Ambroise was asked if she was claiming she was not offered those legal positions because of Kahalas and initially indicated she was, and subsequently stated "it's 50-50", "I feel yes and I also feel no." (Ambroise Testimony) In any event, there is no credible evidence Kahalas or the Firm took any action to affect the outcome of Ambroise's efforts to obtain those positions.
66. In making my findings in paragraphs 61-65, I have taken into account that Kahalas was upset about the letter he had received after Ambroise's employment ended from Ambroise's counsel threatening litigation which he believed was unfounded; and that Kahalas discussed it with Valenti and employees of the Firm. (Kahalas Testimony)
67. After Ambroise's employment, and within slightly over a year, the Firm hired three white females as support staff. (Kahalas Testimony)

FIRM'S TREATMENT OF BLACK EMPLOYEES

68. Clancy never observed anyone at the Firm treat Ambroise differently than other employees and never heard anyone make comments about her skin color. (Clancy Testimony) Calloway never heard anyone at the Firm make comments about Ambroise's race or skin color. (Calloway Testimony) Welsh never heard anyone in the Firm say anything about Ambroise's skin color. (Welsh Testimony) Ltayf did not hear any comments about Ambroise's skin tone, or observe any person in the Firm treat Ambroise differently than other employees. (Ltayf Testimony) Kahalas never observed anyone in the Firm being treated differently because of their color or skin tone and never heard anyone in the Firm comment on someone else's skin tone. (Kahalas Testimony)

69. During the time Calloway worked at the Firm, no one made a comment to her about her race. Calloway never felt the Firm treated her differently than other employees. (Calloway Testimony) Ltayf never heard anybody comment about Calloway's skin tone. (Ltayf Testimony)

70. Welsh never heard anyone in the Firm say anything negative about Calloway's hair or skin color. (Welsh Testimony) At times, Calloway wore her hair in its natural "Afro" fashion. (Calloway Testimony) Kahalas never made any comments about Calloway's hair when it was in this fashion. (Kahalas Testimony) Ltayf never heard anyone make any comment about Calloway's "Afro." (Ltayf Testimony) No one at the Firm made comments about Calloway's hairstyle during the period Ambroise worked at the Firm other than commenting that she had changed her hairstyle. (Calloway Testimony) Regarding whether he commented on Calloway's hair, Kahalas expressed he did not, although he candidly kept open the possibility that if Calloway made a comment to him, he may have responded as a joke that she had a different hairstyle. (Kahalas Testimony) Kahalas was aware Calloway wore braids in her hair and never criticized her about that. He does not believe it is unprofessional to wear braids at work. (Kahalas Testimony) Based on these findings, I do not credit Ambroise's testimony that Kahalas commented about Calloway wearing a head wrap or having her hair braided.

71. Ltayf never observed any person in the Firm treat Ellison differently than other employees. (Ltayf Testimony)

MOVING FROM A NON-ATTORNEY TO AN ATTORNEY POSITION AT THE FIRM

72. At times, an employee in a non-attorney position with the Firm was moved to an attorney position, but it was only after the employee passed the Bar Exam and if an attorney position was then available. Michael Hernandez, a Hispanic male, worked at the Firm while a law student and was hired as an attorney after he passed the Bar Exam. Larry Nusbaum, who was not Black, worked as an intern for the Firm during law school and was hired as an attorney after he passed the Bar Exam. (Kahalas Testimony) Hicks, who was not Black, was hired by the Firm as a legal assistant and did not receive an attorney position until after passing the Bar Exam. (Kahalas Testimony; Ambroise Testimony)
73. At the time Ambroise was hired by the Firm as a paralegal, she had not passed the Bar Exam. At the time Ambroise's employment ended, she had not passed the Bar Exam. (Ambroise Testimony)[8]

OTHER CLAIMS AGAINST RESPONDENT(S)

74. Ltayf is no longer employed by the Firm. After Ltayf gave birth, the Firm asked her if she would change to a part-time position. Ltayf declined. When her parental leave was over, Ltayf was denied the opportunity to return to the Firm. Ltayf sued alleging pregnancy discrimination. That case settled. (Ltayf Testimony; Kahalas Testimony)
75. A Ms. Cartagena worked at the Firm at some point and filed a complaint against Respondent(s) with the Commission alleging sexual harassment and retaliation. (Kahalas Testimony; Oral Stipulation Day Two)

[8]Ltayf graduated from law school but did not pass the Bar Exam. Before working at the Firm, Ltayf worked for a law firm during which she was a claims adjuster for approximately one and a half years and acquired personal injury law experience. Ltayf was hired at the Firm as a claims adjuster. (Ltayf Testimony)

CREDIBILITY

76. Notwithstanding how her employment ended and the lawsuit she brought against Respondent(s), I did not detect bias by Ltayf against Respondents. My impression throughout Ltayf's testimony was that she testified to the best of her recollection without bias.

77. Calloway started working at the Firm in 2015 and worked there for more than six years until she was laid off as a result of the pandemic. (Calloway Testimony) Notwithstanding how her employment ended, I did not detect bias by Calloway against Respondents. I also did not detect bias by Calloway in favor of Respondents. In making this assessment, I have taken into account: she was the primary caretaker for her child; Kahalas gave her flexibility to care for her child; she intends on using the Firm as a reference in searching for a new job; and she sent Ambroise a harshly worded text after learning about something Ambroise said during an unemployment hearing. (Calloway Testimony) My impression throughout Calloway's testimony was that she testified to the best of her recollection without bias.

78. Clancy started working at the Firm in 2015 and left in 2021 when she resigned. (Clancy Testimony) My impression throughout Clancy's testimony was that she testified to the best of her recollection without bias. In making this assessment, I have taken into account: after Clancy's child was born, Kahalas enabled Clancy to work on a full-time basis by allowing Clancy to bring her child with her to the office and providing her with a private space so the child could nap; Kahalas helped Clancy with parking so she could drive to work instead of taking the train with her newborn during the pandemic; and Clancy believes she can return to work at the Firm if she chooses. (Clancy Testimony)

79. Welsh is the brother of Respondents' counsel (who works at the Firm). After ten years at the Firm, Welsh became a district court judge in Massachusetts. On his judicial application, Welsh listed five persons including Kahalas to speak to his professional competence. Kahalas spoke on behalf of Welsh at the Governor's Council meeting. Welsh was grateful to Kahalas for his support. (Welsh Testimony) I am persuaded Welsh would not risk his judicial position by testifying other than to the best of his recollection notwithstanding his relationship with Respondents' Counsel and the assistance

Kahalas provided Welsh when seeking appointment to the judicial bench. I found Welsh's testimony throughout to be a reflection of his best recollection of events without bias.

80. I found Luthin testified to the best of his recollection of events without bias as evidenced by his candor that he refreshed his memory by reviewing old emails. My impression is not altered by Luthin's statement that he appreciated the advice that Kahalas had provided him many years ago. (Luthin Testimony)

81. In assessing credibility, I am cognizant Kahalas and Ambroise have a financial interest in the outcome of this case.

II. LEGAL CONCLUSIONS[9]

A. CLAIMS OF HOSTILE WORK ENVIRONMENT BASED ON RACE OR COLOR

To prevail on a claim of hostile work environment, Ambroise must prove that: (1) she is a member of a protected class; (2) she was the target of speech or conduct based on membership in the protected class; (3) she found the speech or conduct offensive; (4) the speech or conduct was sufficiently severe or pervasive to alter the terms or conditions of employment or create an abusive working environment for a reasonable person in Ambroise's position considering all the circumstances;[10] and (5) the harassment was carried out by a supervisor, or by an co-employee in a situation where the employer knew or should have known of the harassment and failed to take prompt remedial action designed to end the offensive conduct and prevent future harassing conduct. Dahms v. Cognex Corp., 455 Mass. 190, 205 (2009); Muzzy v. Cahillane Motors, Inc., 434 Mass. 409, 411–12 (2001); 15 LaGrange St. Corp. v. Massachusetts Comm'n Against Discrimination, 99 Mass. App. Ct. 563, 572, review denied, 488 Mass. 1106, (2021); Patricia A.

[9]The Firm had six or more employees during Ambroise's employment and is an employer under M.G.L. c. 151B.

[10] "'The point at which a work environment becomes hostile or abusive does not depend on any 'mathematically precise test.'' Billings v. Grafton, 515 F.3d 39, 48 (1st Cir. 2008), quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 22, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993). Rather, the fact finder must consider the totality of the circumstances, which 'may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.' Harris, supra at 23, 114 S.Ct. 367." 15 LaGrange St. Corp. v. Massachusetts Comm'n Against Discrimination, 99 Mass. App. Ct. 563, 572, review denied, 488 Mass. 1106 (2021)

Coppenrath v. Michael S. Casey, 28 MDLR 119, 122 (2006) As a Black person, Ambroise falls within a protected class under c. 151B. There is ample evidence that Ambroise was offended by comments and actions made during her employment at the Firm.

I next assess which comments and actions were based on race or color. I determine that the following comments and actions were not based on race or color. First, as detailed below in the *disparate treatment* section, the two verbal warnings Ambroise received were not based on race or color. Second, there is no evidence the skirt comment was based on race or color. Third, derogatory comments about physical features linked to race can constitute race discrimination and/or create a hostile work environment, but Ltayf asking Ambroise, as part of a group discussion regarding hair products, if she used a hair conditioner is not a derogatory comment based on race or color. Fourth, Ltayf's comment about Ambroise having something in her hair and taking it out was rude, but under the circumstances in this case, not based on race or color. Fifth, Ltayf's positive comments about Ellison and her hair do not imply derogatory comments about Ambroise's hair or race or color. Sixth, Kahalas calling Ambroise incompetent in the context of her drafting a letter was not based on race or color as evidenced by his expressing displeasure at times regarding quality of work by Ltayf. Because these comments and actions were not based on race or color, they cannot support the hostile work environment claims.

I determine the "hate nickels because they are not dimes comment" itself was not based on race or color. It was a joke about money Kahalas had used for years. Ambroise had no reason to believe he ever used the Urban Dictionary; admitted that nowhere under the definitions of "nickels" in the Urban Dictionary was there any definition with a racial connotation; and agreed with Welsh that Kahalas did not mean the comment in reference to race.

There may be circumstances where an employee being told she was hypersensitive and should lighten up over a comment she thought had racial connotations are not themselves comments based on race. However, under the circumstances of this case, which include Kahalas speculating the next day after he said such comments that Ambroise received a scholarship designed for underprivileged minority students,

I determine the hypersensitive, lighten up, and scholarship comments are sufficiently connected to race or color. I shall collectively refer to those three comments as "Kahalas' reactionary comments."

Lastly, I analyze whether the comments connected to race or color, when considered in their totality, were sufficiently severe or pervasive to alter the terms or conditions of employment or create an abusive working environment for a reasonable person in Ambroise's position considering all the circumstances. Even though I determined that the "hate nickels because they are not dimes comment" was itself not based on race or color, it is inherently entangled with Kahalas' reactionary comments, and under the circumstances, I deem it appropriate to consider the combined effect of that comment and Kahalas' reactionary comments in assessing whether there was an actionable hostile work environment.

The n-word is one of the most vile and devastating words in the English language. Its single utterance, by itself, is more than sufficient to establish a hostile work environment by race and color. But in this case, the n-word was not used, and any connotation to it is too attenuated to have meaningful impact. The "hate nickels because they are not dimes comment" was a joke about money that Kahalas had used for years. When Ambroise heard the comment, she did not associate it with "nickels n-word." None of the definitions of "nickels" she found in the Urban Dictionary had a racial connotation, meant "nickels n-word" or referenced the n-word. In the Urban Dictionary, the term "nickels n-word" was a separate term from the term "nickels" with its own definition. Ambroise had no reason to believe Kahalas ever used the Urban Dictionary and agreed with Welsh that Kahalas did not mean the comment in reference to race. Kahalas telling Ambroise that she was being hypersensitive and should lighten up regarding his comment was insensitive. Kahalas complaining to another employee about Ambroise's reaction to his comment and speculating she had received a scholarship designed for underprivileged minority students was insensitive and insulting. However, Kahalas' reactionary comments combined with each other and the underlying "hate nickels because they are not dimes comment" fail to create a sufficiently severe or pervasive hostile work environment to rise to the level of race or color harassment. Thus, the hostile work environment claims of race and color are dismissed.

B. CLAIMS OF DISPARATE TREATMENT BASED ON RACE OR COLOR

To prevail on her disparate treatment claims of race or color discrimination under M.G.L. c. 151B, Ambroise must show: (1) she is a member of a protected class; (2) she was subject to an adverse employment action; (3) Respondent(s) bore discriminatory animus in taking that action; and (4) that the discriminatory animus was the determinative cause for the action. Adams v. Schneider Elec. USA, 492 Mass. 271, 280 (2023); Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016); Lipchitz v. Raytheon Co., 434 Mass. 493, 502, 504-506, n. 19 (2001) Ambroise is a member of a protected class who argues that based on her race or color: she was not considered for an available attorney position at the Firm or positioned where she could move from a non-attorney to an attorney position at the Firm; twice was verbally reprimanded; and was fired. Because Ambroise was not fired, but resigned from the Firm, that act cannot support her disparate treatment claims. I agree Ambroise received two verbal warnings, was not considered for the available attorney position at the Firm, and shall *assume arguendo* that she was not positioned where she could move from a non-attorney to an attorney position at the Firm. These acts are adverse actions. I now address whether discriminatory animus towards her race or color was a determinative factor in any of those actions.

I determine Ambroise's race or color was not a factor in her receiving two verbal warnings. The Firm required support staff to obtain approval before leaving the office outside of their lunch hour. Ambroise twice walked out of the office outside of her lunch hour without approval resulting each time in her receiving a verbal warning. The record does not support her argument that Ellison and Clancy were treated differently from Ambroise regarding the Policy. Clancy and Ellison were directed at times to get coffee for others which implies permission and is entirely different than an employee going to get coffee for one self. I did not credit Ambroise's testimony that Ellison and Clancy would leave the office to get their own coffee without permission. Finally, even assuming Calloway's storming out of the office after an argument with Kahalas is analogous to Ambroise leaving the office without permission, Kahalas' decision to not reprimand Calloway, and instead to work things out with her, undermines an argument of discriminatory animus towards black employees as pertains to disciplinary action.

Based on the following, I determine Ambroise's race or color was not a factor in Ambroise not being considered for the available associate attorney position at the Firm and was not a factor relative to her ability to move from a non-attorney position to an attorney position within the Firm. First, at the time she interviewed with the Firm, Ambroise had taken the Bar Exam, but not passed it, and had no experience with personal injury law. The person who was hired into the available attorney position was a White male, O'Connor, who was an attorney with over five years' experience in personal injury law. Ambroise's and O'Connor's experience and qualifications at that time were not remotely comparable. Ambroise's argument that O'Connor could not have had superior qualifications because he was terminated within a year for poor performance misses the mark as to whether Respondents took race or color into account when hiring Ambroise as a legal assistant and O'Connor as an attorney. Second, Ambroise and Ltayf were hired into different support staff positions at the Firm (paralegal and claims adjuster, respectively), but under the circumstances, that does not suggest discriminatory animus towards black persons. At the time Ltayf became employed at the Firm, she had one and one half years' experience in personal injury law as a claims adjuster. Ambroise had no experience in personal injury law and no experience as a claims adjuster when Ambroise started working at the Firm. Third, Ambroise posits that there was a glass ceiling at the Firm: four of the six support staff were people of color, and there had never been a black attorney. I reject this theory because the Firm had never received an application for an attorney position from a black attorney who had passed the Bar Exam. The fact that the Firm had hired a majority of people of color to work as support staff does not suggest the Firm acted with discriminatory animus toward Ambroise when it chose not to hire her for an attorney position. Ambroise had not passed the Bar Exam and had no personal injury law experience when she applied for a position with the Firm.[11] Fourth, Hernandez, Hicks and Nusbaum (who were not Black) became attorneys at the Firm after starting in non-attorney positions at the Firm. However, that is not indicative of racially motivated discriminatory animus. Each passed the Bar Exam before they became an attorney at the Firm. Ambroise never was

[11]The record is silent as to whether Novia, Calloway or Ellison graduated from law school, passed the Bar Exam, and were eligible for an attorney position.

eligible to become an attorney at the Firm, because she did not pass the Bar Exam as of the time that her employment at the Firm ended. Fifth, the hiring of three white females as support staff within a little bit over a year after the end of Ambroise's employment does not persuade me that there was discriminatory animus against Ambroise or black employees at the Firm in light of the Findings of Fact section *Firm's Treatment of Black Employees*, which I incorporate without need to restate, and which evidence there was not an adverse atmosphere regarding Ambroise in particular or black employees in general at the Firm.

In conclusion, Ambroise has failed to prove she suffered an adverse action because of discriminatory animus towards her race or color. As a result, I dismiss the disparate treatment claims.

C. CLAIMS OF RETALIATION

Ambroise alleges four retaliatory adverse actions: (a) she received a verbal warning after complaining about the "hate nickels because they are not dimes comment;" (b) she was fired for complaining about alleged racial comments; (c) Kahalas and the Firm interfered with her efforts to obtain subsequent employment with the City; and (d) Kahalas and the Firm interfered with her other efforts to obtain subsequent employment. Ambroise was not fired, but resigned. Kahalas and the Firm took no action to affect the outcome of her efforts to find employment with the City. There was no credible evidence that Kahalas or the Firm took any action to affect the outcome of Ambroise's efforts to find any positions after working at the Firm. Thus, Ambroise's theory of retaliation fails unless she can prove she received a verbal warning because she complained about the "hate nickels because they are not dimes comment."

To prove retaliation, Ambroise must prove: (a) she reasonably and in good faith believed Respondent(s) was engaged in wrongful discrimination; (b) she acted reasonably in response to that belief through acts meant to protest or oppose such discrimination (protected conduct); (c) Respondent(s) took adverse action against Ambroise; and (d) the adverse action was in response to the protected conduct. Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405–06 (2016)

Ambroise reasonably and in good faith believed Respondent(s) was engaged in wrongful discrimination when she reported the "hate nickels because they are not dimes comment" to Aronson on or about November 4, 2017. She acted reasonably by making the internal complaint to Aronson. The

verbal warning received on November 13, 2017 was an adverse employment action. However, I determine that Ambroise has failed to establish a causal link between complaining to Aronson on or about November 4, 2017 about the "hate nickels because they are not dimes comment" and being notified of her second verbal warning on November 13, 2017 during a meeting with Kahalas and Guerriero. The brief period (approximately nine days) between the two events is supportive of a retaliatory causal link. Further supportive are the facts that during the November 13, 2017 meeting, Kahalas told Ambroise that she was being hypersensitive and needed to lighten up regarding his comment, and the next day Kahalas was complaining in the office about Ambroise's reaction. However, this evidence is outweighed by the following. There was a significant and intervening event that occurred between November 4 and November 13, 2017. On November 10, 2017, for the second time within 10 days, Ambroise left the office outside of her lunch hour without permission in violation of the Policy. Just as Ambroise had received a verbal warning, before reporting Kahalas' comment to Aronson, for leaving the office without permission on November 1, 2017, Ambroise similarly received a verbal warning during the November 13, 2017 meeting for again leaving the office without permission on November 10, 2017. The requisite causal link has not been proven.[12] As such, Ambroise's retaliation claims are dismissed.[13]

[12]In making this determination regarding retaliation, I have taken into account Cartegena's claim of retaliation against Respondent(s) and Ltayf's claim against Respondent(s).

[13]I have not used the burden-shifting paradigm set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) in the disparate treatment or retaliation sections. Recently, in addressing a disparate treatment claim filed in court pursuant to Section 9 of M.G.L. c.151B, the Supreme Judicial Court stated the "McDonnell Douglas test is not used at trial. Instead, '[w]e encourage trial judges to craft instructions that will focus the jury's attention on the ultimate issues of harm, discriminatory animus and causation.' Lipchitz, 434 Mass. at 508." Adams, 492 Mass. at 281, n. 5 Although not bound to apply the Court's logic to this decision issued under Section 5 of c. 151B, the Court offers useful guidance, especially because a Hearing Commissioner or Hearing Officer in issuing a decision pursuant to Section 5 acts as a fact-finder akin to a jury issuing a verdict in a case under Section 9. Further, in two recent Commission decisions, a Hearing Commissioner and Hearing Officer respectively decided not to apply the *McDonnell Douglas* framework in analyzing disparate treatment claims: Johnson and Massachusetts Commission Against Discrimination v. Arabic Evangelical Baptist Church, Inc. d/b/a Lighthouse Early Learning Center, 45 MDLR 47 (2023) (Hearing Commissioner); Jenson and Massachusetts Commission Against Discrimination v. Rockdale Care & Rehabilitation Center, 45 MDLR 54 (2023) (Hearing Officer). I find the reasoning in those decisions to not apply the *McDonnell Douglas* framework in analyzing disparate treatment claims persuasive, and I do not see a valid reason to treat retaliation claims differently in this context. After a discrimination or retaliation claim is fully tried on the merits, the ultimate question of discrimination or not, or retaliation or not, is directly before the finder of fact who has all the evidence needed to decide whether the employer unlawfully discriminated against the employee or unlawfully retaliated against the employee.

D. CLAIM AGAINST KAHALAS UNDER SECTION 4(5) OF M.G.L. C. 151B

Section 4(5) of M.G.L. c. 151B provides that it is an unlawful practice for "any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so." An aiding and abetting claim under Section 4(5) is "'entirely derivative of the [main] discrimination [or retaliation] claim.' Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 122 (2000)." Lopez, et al. v. Commonwealth et al., 463 Mass. 696, 713 (2012) Because I have determined that the hostile work environment claims, disparate treatment claims and retaliation claims fail, there is no actionable main claim. As a result, there is no actionable individual liability claim against Kahalas under Section 4(5), and the claim is dismissed.

III. ORDER

As detailed above, the hostile work environment claims, the disparate treatment claims, the retaliation claims and the claim pursuant to Section 4(5) of M.G.L. c. 151B are dismissed. Thus, I hereby **dismiss the complaint in its entirety**.

IV. NOTICE OF APPEAL

This Decision represents the final Order of the Hearing Officer. Any party aggrieved by this Order may appeal this Decision to the Full Commission. To do so, a party must file a Notice of Appeal within ten (10) days of receipt of this Decision and must file a Petition for Review within thirty (30) days of receipt of this Decision. 804 CMR 1.23(1) (2020) If a party files a Petition for Review, each of the other parties may intervene in the appeal. To do so, such party must file a Notice of Intervention within ten (10) days of receipt of the Petition for Review and must file a brief in reply to the Petition for Review within thirty (30) days of receipt of the Petition for Review. 804 CMR 1.23(2) (2020) All filings referenced in this section shall be made with the Clerk of the Commission in the Boston office, with a copy served on all of the other parties.

So ordered this 17th day of November, 2023 Jason B Barshak

Jason Barshak
Hearing Officer