

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & BROOKE ANIDO,
Complainants

v.

DOCKET NO. 07BEM02151

ILLUMINA MEDIA, LLC., D/B/A
ILLUMINA RECORDS & RONALD
BELLANTI,
Respondents

Appearances: Elisabeth M. LeBrun, Esquire for Brooke Anido
Ronald Bellanti, pro se for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about August 1, 2007 Brook Anido filed a complaint with this Commission charging Respondents subjected her to unlawful sexual harassment and retaliation in violation of MGL c. 151B §4(4A), 4(5) and (16A). The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on November 2-6 and 10, 2009. During the course of the public hearing, Complainant motion to dismiss her hostile work environment claim was granted, and the matter proceeded on her claims of quid pro quo sexual harassment against both Respondents. After careful consideration of the entire record in this matter and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Respondent Ronald Bellanti is the owner, along with Andrew Swaine, of the Respondent Illumina Media, LLC., d/b/a Illumina Records, located at 3 Broadway, Beverly, Massachusetts. Illumina Records was incorporated in 2005. Its business and mission are to manage musical talent groups and to raise awareness of drunk driving prevention.

2. Complainant Brooke Anido resides in Boston, Massachusetts. Complainant graduated from Gloucester High School in 2001, and attended Salem State College and the University of New Hampshire. She subsequently returned to live in Gloucester, working at various restaurant jobs and resumed her studies at Salem State College in the Fall of 2006. At that time, Complainant was residing in an apartment in Gloucester with a friend Amy Montenero.

3. In October 2006, Complainant obtained a job with Company X, a sales acquisition company headed by Randy Bernard and Jason Diamato. Her job involved selling advertising packages to music bands through email, phone and MySpace solicitations, in connection with Illumina's Dedications Program. At the time, Company X operated at the same location as Illumina Records and Complainant saw Ronald Bellanti on a daily basis. Bellanti was very friendly and they frequently talked during Complainant's employment at Company X.

4. After Complainant worked for several weeks in the sales position at Company X, the owners informed her that she was not "making her numbers," but that Bellanti was interested in hiring her for an administrative position at Illumina Records.

5. Complainant discussed the position with Bellanti and he hired her as an associate producer for Illumina on January 7, 2007. At the time, Complainant was 24 years old. One of Illumina's advertising initiatives was called the "Dedications" program, which involved the sale of a public relations package to music bands for \$600.00 and included publishing a song on compilation CD. Each CD was dedicated to the memory of a young person who had died in a drunk-driving accident. Complainant's duties were to assist in the creating the compilation CD's by collecting materials from music bands, and copying photographs, songs and band logos. She also answered telephones and organized the production office.

6. After several weeks in the position, Bellanti told Complainant that she was over-qualified for the position, and by late January 2007, he promoted her to manager of the public relations department and increased her salary to \$500.00 per week. Complainant testified that she loved her job because of its focus on creating awareness of drunk-driving prevention. She also loved being part of the music industry and found the job interesting and challenging. The staff consisted primarily of young adults who joked and laughed and worked collaboratively to get the job done. Other employees included Jennifer Beliveau, Dawn Catalini, Rachelle Heinonen, and Jennifer Gillis, who left the company in May 2007. Complainant recommended her friends Aurelia Eisenzopf and Jennifer Kurupka for positions at Respondent and Bellanti hired them in the spring of 2007. Eisenzopf booked bands and started an on-line magazine "Cusp." Kurupka was hired for Complainant's previous position in production.

7. In early February 2007, Bellanti again promoted Complainant to the position of vice president of operations, and her salary was increased to \$600.00 per week. In this

position she oversaw the operations and managed the production office and public relations office. She supervised Jennifer Kurupka, Dawn Catalini and Rachelle Heinonen and three interns reported to her. Complainant was also the company's event planner, and she performed research and handled customer complaints.

8. Jennifer Beliveau has worked at Respondent since it began operating in 2005 and has been a vice president throughout her employment. After Complainant became a vice president, Beliveau and Complainant performed separate functions and did not report to one another.

9. Nicole Van Eden has worked for Respondents for three years. She currently shares the title of vice president with Beliveau. She worked next to Complainant during her employment.

10. Rachelle Heinonen worked at Respondent from 2005 until October 2007. Before Complainant's promotion, Heinonen worked in the same small back office with Complainant, Dawn Catalini, and Jennifer Kurupka.

11. Complainant testified that her promotion resulted in a heavier workload. She began working with the management division of the company, assisting Bellanti in his attempt to sign as a management client Margot MacDonald, then a 17-year-old singer from the Washington D.C. area. At that time, due to Complainant's involvement in the recruitment of MacDonald, Van Eden took over many of her duties.

Office Atmosphere

12. By all accounts the workplace environment at Illumina was free-wheeling and included constant sexual banter and conduct in which Complainant and other employees freely participated. Complainant testified that the employees of Illumina

records, who were all young women, “spoke like truckers.” Although Bellanti would occasionally admonish Complainant and others for their conduct, I find that Bellanti also participated in the conduct and his admonitions never resulted in any discipline to anyone.

13. Van Eden and Complainant were friendly and socialized together outside work. In the office they discussed sexual matters and their private lives. Van Eden observed Complainant touch Bellanti twice on the buttocks and once Complainant sat on his lap when helping him with a computer matter. Complainant denied voluntarily sitting on Bellanti’s lap and stated that he pulled her onto his lap while she fixed his computer. She also denied ever touching Bellanti’s buttocks.

14. Van Eden testified that she was present at a restaurant with Complainant and Bellanti when Complainant discussed masturbation and other sexual matters. She also testified that on occasion, Complainant would grab her own breasts and juggle them, and would grab her own buttocks and simulate masturbation. On one occasion, she opened her shirt and showed Bellanti her breasts, and on other occasions, she joked that she was having “a dry spell.” On one other occasion at a restaurant, Complainant swore so loudly that Bellanti told her to be quiet.

15. Heinonen testified that there was a “family-like” work atmosphere at Illumina Records. She stated that everyone in the office made sexual jokes, including Complainant and Bellanti. She stated that Complainant frequently used sexually explicit language, frequently touched her own breasts and grabbed Kurupka's and Catalini's breasts. She once observed Complainant slap Heinonen’s buttocks. Complainant acknowledged using sexually explicit language. However, she denied simulating

masturbation, exposing her breasts, grabbing co-workers and touching Bellanti's buttocks. I do not credit her testimony that she never engaged in such conduct. However, I also find that Van Eden and others likely exaggerated the extent of Complainant's conduct at the behest of Bellanti, who, after Complainant filed her MCAD complaint, gave detailed instructions to Van Eden and others as to what information to provide to the Commission in order to support his claim that Complainant participated in a sexually charged atmosphere. I find that their testimony may have been influenced by Bellanti's directives.

16. On one occasion, Bellanti called Complainant into his office and laughingly showed her a video of Carmen Electra, fully clothed, sitting on a sex toy, simulating masturbation. Complainant told him it wasn't "that funny." Later that same day, she found Bellanti sitting in her office, in her chair, watching video of Kermit the Frog engaged in a sex act. Complainant and Van Eden, who was also present, both laughed and told Bellanti he was "sick." He then showed Van Eden the Carmen Electra video.

17. Bellanti, Van Eden and Complainant all testified that they attended a mini-training session for Illumina employees led by Jason Diamato of Company X, to learn about a new web function. They testified that each time Diamato used words that could have a sexual connotation, Van Eden and Complainant laughed and joked with each other, turning Diamato's comments into sexual innuendos and causing him to become extremely embarrassed. Van Eden testified that Complainant also pretended to grab Diamato's buttocks. By all accounts, Bellanti was angry about their behavior at this meeting and reprimanded Van Eden and Complainant about their behavior but did not discipline them.

18. While the testimony regarding the atmosphere in the office differed somewhat, I find that throughout Complainant's employment there existed an atmosphere where all of the employees, including Complainant and Bellanti, made sexually explicit comments, on occasion viewed sexually explicit images on web sites and made sexually explicit gestures on a regular basis. I find that neither Complainant nor Bellanti was offended by such language or conduct and it was an accepted and not unwelcome practice in this workplace.

Relationship between Complainant and Bellanti

19. Complainant testified that during the first two or three months of her employment her relationship with Bellanti was professional. As she began to prove herself as a manager she would meet with Bellanti on a frequent basis. They worked closely together six days a week, had fun together, and were a "good team."

20. Complainant testified that she began to feel somewhat uncomfortable with Bellanti on February 16, 2007, when he invited her to accompany him to Derry, New Hampshire to scout out a band named Entrain, that Illumina hoped to acquire as a management client. On the way to the concert, they stopped for dinner at a restaurant in Salem, New Hampshire, where Bellanti "opened up" and told her many stories, including that his father was a former state trooper and that he had gone on tour with the band Metallica and sometimes had to beat people up in order to retrieve stolen merchandise. In addition, Bellanti told Complainant that he was having sex with 19-year-old twins and that he had sex with a 20 year old girl the previous week. Complainant testified that the conversation was "kind of weird," but she accepted it as part of the "rock and roll" environment. At the end of dinner, Bellanti told Complainant, "You know, this is our

first date.” She responded, “I don’t f---ing think so.” She then got up and walked into the ladies’ room. I credit her testimony.

21. Complainant testified that later in the evening, as they continued on toward Derry, it began to snow. After driving for two hours they were unable to locate the concert venue and drove back to Andover where Complainant had left her car at Bellanti’s apartment complex. After stopping briefly at Bellanti’s apartment, Complainant drove home to Gloucester.

22. Bellanti denied telling Complainant that they were “on a date” or discussing his sex life. He testified it was not “written in stone” that he and Complainant would attend the concert that evening, and stated they were simply two friends having dinner. In his deposition, however, Bellanti testified that he may have told Complainant about having sexual encounters with women as young as 19 up to age 40. I credit the deposition testimony of Bellanti as it corroborates the credible testimony of Complainant that he made these comments.

23. Complainant testified that in March 2007, about two weeks after the dinner in Salem, New Hampshire, the band Entrain was playing at a club in Newburyport. Bellanti suggested Complainant bring her roommate Amy Montenero along for dinner and then to the show. According to the testimony of both Complainant and Montenero, at dinner, Bellanti asked Complainant and Montenero if they had ever “hooked up,” which each took as an inquiry into whether they ever had a sexual relationship with each other. Complainant thought the question was weird, but brushed it off. After dinner they attended the Entrain show.

24. In April 2007, in conjunction with Bellanti's attempt to finalize a deal to manage the singer Margot MacDonald, who resided in the Washington, D.C. area, Bellanti asked Complainant to accompany him on a trip to D.C., and to make travel arrangements, telling her to book "a room." According to Complainant, she responded that she would book two rooms instead. They were to fly into Washington on Friday April 20 and return to Boston on Monday April 23. Complainant testified that it was during this trip that "red flags" went up about Bellanti's feelings toward her.

25. On Friday, April 20, 2007, Complainant and Bellanti arrived in Washington DC. Margot MacDonald and her mother picked them up at the airport and brought them to their hotel in Alexandria, VA. After registering, Complainant and Bellanti took a walk and had lunch at a nearby restaurant. Complainant testified that at the restaurant, Bellanti said to her, "It's not that I just want to have sex with you, because that's not the case. It's just that you exude this joy. It just comes out of your pores, and I just want to be inside that joy, feel that joy, that you exude so often." Complainant responded, "No way. F--- you. It's never gonna happen." Complainant testified that this conversation made her feel "pretty uncomfortable." Bellanti denied that this conversation occurred. I credit Complainant's version of this conversation.

26. Complainant testified that on Friday evening, during dinner, Bellanti grabbed her hands and said, "You know. I'm just happy that I met you; you're like a blessing in my life." Bellanti denied making this statement. I credit Complainant's testimony that Bellanti made these remarks. I found her testimony in this regard more reliable than Bellanti's.

27. On Saturday, April 20, Complainant and Bellanti went to MacDonald's show and later went out to dinner in Arlington, Virginia, believing that they had favorably impressed MacDonald's parents.

28. On Sunday, April 21, Complainant and Bellanti took Margot and her nine year old sister sight-seeing. Complainant testified that as Margot was about to take a picture of her and Bellanti, he leaned over and unexpectedly kissed her cheek. (Ex.C-1) Complainant was surprised and uncomfortable about the kiss. I credit her testimony.

29. On Sunday evening Complainant and Bellanti had a pizza delivered to Complainant's hotel room. They ate the pizza at a table. Complainant testified that when they were done eating, she sat on her bed watching TV. Bellanti came over and lay down beside her on the bed. She felt very uncomfortable and after a brief period of time, she got up, straightened out the room and sat at the table using her computer for a short time and then told Bellanti she was exhausted, was going to bed, and he left the room.

30. After arriving at Logan Airport on the morning of Monday April 22, they retrieved Bellanti's car at the airport parking lot. Complainant, who was sitting in the passenger seat, bent over to answer her cell phone which was in her bag on the floor. She stated that Bellanti started to yell, "Oh my God! Oh my God! I just saw your tit. The whole thing. It was the best thing I've ever seen!" Complainant felt uncomfortable and irritated and told Bellanti to shut up. When they arrived back at the office, Bellanti proceeded to inform employees that he had just seen Complainant's "tits" and they were the best thing he had ever seen. Complainant, who had previously arranged for a friend to pick her up and take her home, testified that she was embarrassed, uncomfortable, nervous, and incredulous at Bellanti's announcement. She claims to have run out of the

office as soon as her friend came to pick her up. Bellanti denied making any such remarks about Complainant's breasts. I believe Bellanti made these comments, but that these comments did not bother her, as she engaged in lewd behavior in the work place.

31. Bellanti and Complainant frequently ate lunch at the Ninety-Nine Restaurant. She testified that on one such occasion, after the Washington trip, Bellanti told her that he wanted to "go down on her," that other women have told him he is the best, and would be her best if she gave him a chance. She claims he told her she would never want to be with anyone else, and would move in with him the next day, to which she replied, "That will never happen." Bellanti denied ever telling Complainant he wanted to "go down on her" and denied that this conversation took place. He stated he would never have said anything like that to her because he would never jeopardize their friendship. I credit Complainant's version of this conversation and do not credit Bellanti's version of events.

32. On another occasion, Complainant was sitting in Bellanti's office and he gave her a glazed look and said to her, "I'm sorry. You're just so beautiful and you're my favorite person, and if you let me once, just once, we can do it on my desk right now." Complainant declined his request and changed the subject. Bellanti denied that this incident took place. I credit Complainant's testimony in this regard and do not credit Bellanti's testimony.

33. Bellanti called Complainant into his office several times a day, sometimes to discuss business and at other times to tell her a joke. Sometimes Bellanti would simply yell Complainant's name and when she entered his office he would say, "Okay. That's all. I just like to look at your tits." At other times he would comment about her "ass." Complainant claims to have been offended by these comments and stated that when

Bellanti made comments about her body, she found it hard to concentrate on her work, became distracted and it affected the way she dealt with clients and her staff. I do not credit her testimony in this regard, given her admittedly crude behavior around the office.

34. On another occasion, Complainant was driving Bellanti to pick up his car at a dealership after an oil change, when he told her, “I can’t deny it any more. I love you. I think we would be fools if we didn’t act on these feelings that we have for each other. Everybody knows it and I love you and I think we should be together.” Complainant was “in shock” and did not respond. Bellanti then told her to “say something,” because he felt like he was “standing naked in the middle of the mall and everyone’s looking at me.” Complainant told him it could “never happen,” and claims she was shaking. Bellanti then opened the car door and gave her a hug. She testified that she found this episode wherein he professed his love for her very disturbing. Bellanti denied telling Complainant at this time or any other time that he had romantic feelings for her. I credit Complainant’s version of events.

35. One day in May 2007, Bellanti asked Complainant to take a short walk up the street to a location near the ocean. They sat on a bench and Bellanti told Complainant that “her head was not in the game,” and asked her what was going on. Complainant testified that she told him that she had been feeling very uncomfortable since he professed his love for her and did not want to be punished for not acceding to a romantic relationship with him. He told her that he would not hold it against her and they would leave things as they were. Complainant testified that within ten minutes of returning to the office, Bellanti began to massage Van Eden’s back and remark that Complainant was jealous that he wasn’t paying attention to her. Bellanti denied that he discussed a

romantic relationship with Complainant. He testified that he did not recall the incident clearly but believed he asked her to go for a walk to get out of the office and to tell her that Company X was going to discontinue its relationship with Illumina Records. I credit Complainant's version of events

36. Complainant testified that Bellanti's demeanor changed after their talk. She stated that he appeared irritated with her and began assigning her tedious tasks such as cutting and pasting emails, deleting his junk emails and cleaning out binders.

37. According to Complainant, Bellanti also took the Dedications Program away from her and assigned it to Rachelle Heinonen and gave most of the public relations duties to Van Eden. Bellanti denied taking work away from Complainant and stated that Heinonen had assisted Complainant with Dedications from the beginning, that Complainant remained Heinonen's boss and stated that the vast majority of the work related to the Dedications program was administrative in nature. However, Heinonen testified that she took over the Dedications program a month before Complainant left the employ of Illumina which is consistent with Complainant's testimony. Bellanti also denied taking the public relations duties away from Complainant and stated that she continued to do a significant amount of public relations work. I credit Complainant's version of events

Weekend of June 15-17, 2007

38. In June 2007, a New York based band leader (hereinafter "the musician") called Complainant and asked her to book his band. Complainant testified that she was responsible for handling clients such as the musician who were dissatisfied with Illumina's Dedications program. She referred his request to Aurelia Eisenzopf, who

booked the band at a Beverly pub named “The Pickled Onion” for the evening of Friday, June 15 and Saturday, June 16, 2007. Bellanti encouraged the staff to attend the band’s performance.

39. Complainant and Amy Montenero attended the Friday night concert, and went home to Gloucester and along with Van Eden, who was staying at Complainant’s apartment that night. Heinonen also went to the concert but went home immediately afterwards.

40. Complainant testified that on Saturday at 1:30 a.m. Eisenzopf called and invited Complainant to her house where the musician and his band members were having a party. Complainant agreed and walked to Eisenzopf’s house which was only minutes away from her apartment. At the party some people were drinking and using drugs. The musician along with his band mates were planning to stay at Eisenzopf’s place, and after a time, according to Complainant, Eisenzopf asked her to show the musician to his room. However, because the room was not clean, Complainant invited the musician and members of his band to stay at her house. Only the musician accepted her invitation.

41. Complainant testified that she and the musician left Eisenzopf’s and walked to her apartment. Complainant told the musician that he could sleep in her bedroom. The musician made sexual overtures to Complainant, but she declined them and she slept in the living room with Van Eden. Van Eden testified that the next morning, Complainant told Van Eden she had had sex with the musician. I find Van Eden’s testimony more credible in this regard. Complainant’s version of events regarding her rejecting the musician’s advances unlikely, given that she invited him to her house when he already had a place to stay.

42. Bellanti had invited the musician's band to the office on Saturday and wanted the staff present in order to "hang out" with the band because they had come from New York. After the musician and his band members arrived at the office, Complainant went out to have a cigarette and the musician followed her outside and according to Complainant, they discussed issues related to his band. While they were talking, Bellanti came "stomping down the stairs." He appeared irritated and annoyed and gave them a strange look.

43. Bellanti testified that he witnessed the musician and Complainant talking in a flirtatious manner and observed that the employees were gossiping about them. Van Eden also observed Complainant and the musician flirting with each other. After ordering lunch for everyone, Bellanti pulled Complainant into his office and told her to get the band "the fuck" out of there. Bellanti acknowledged telling Complainant to get the band out of the office and said it was because the band had been there too long. Bellanti then left for the bank and when he returned the musician was still talking with Complainant in the parking lot. The musician and his band followed Complainant's car back to Gloucester, where she left them at a park where the band could spend the afternoon before that night's concert. After directing the band to the park, Complainant she returned to her home.

44. On Saturday afternoon after everyone had left the office, Bellanti took Van Eden to dinner in Salem and asked her what was going on in the office. Van Eden testified that since Complainant had told her not to tell Bellanti about what happened between her and the musician, Van Eden told Bellanti that she did not know what was going on. Van Eden then went home.

45. At approximately 5:00 p.m. on Saturday, Bellanti called Complainant's cell phone and said that something was not right and no one was telling him the truth about what had happened Friday night. Complainant testified that at first she did not tell him that the musician had kissed her and stayed at her house. However, when Bellanti insisted she tell him what had happened and threatened to fire everyone involved, Complainant told him her version of what had happened with the musician. According to Complainant, Bellanti hung up then called her right back screaming, "I can't fucking believe you! You are a fucking groupie whore. You're a disgrace to this company." He told Complainant that she was "done" and when she asked him what he meant by "done," he responded: "I am the do-all and say-all of this company. You will do as I say." He told her that Heinonen would take over her duties related to Margot MacDonald and Van Eden would take over the public relations department. Complainant protested that she had acted in a professional manner with the musician, and that Bellanti was demoting her for being honest about what happened. According to Complainant, Bellanti responded. "You little bitch. I'll fucking kill you. I am packing up a bag of your shit right now, and I'm going to drop it off in your hallway." Complainant responded that he had no business coming to Gloucester and he responded that he would put her belongings in the "fucking dumpster." Complainant told Bellanti that she would drop off her work keys to Believeau, who lived close by, the following morning. He told her that she'd better and then hung up the phone. Complainant testified that she was surprised and angered by Bellanti's reaction. Later that evening, Bellanti called again, swearing and name-calling and asking for her key. Complainant told him she was having dinner and would call him back, but she did not do so.

46. Bellanti testified he had verbally admonished staff many times not to become sexually involved with band members and that when Complainant told him the musician had kissed her, he was furious and told her she was an embarrassment to the company. Complainant asked if her job responsibilities would be diminished and offered to transfer any responsibilities related to the musician's band to a co-worker. Bellanti became angry and hung up. I credit Complainant's version of this conversation, which Bellanti did not explicitly deny.

47. Complainant testified that Bellanti continued to call her and leave voice mail messages telling her to "fix this," and sent her text messages that she found "unnerving." According to Bellanti, Complainant called him back to apologize for letting him down, and asked his forgiveness, and he was anxious to resolve the matter. I do not credit his testimony that Complainant was calling to ask his forgiveness.

48. On Saturday, June 16 at 7:27 p.m. Bellanti sent the following text to Complainant: "Everything about this is either bull or forgivable. I am incapable of subjecting u 2 the embarrassment that the explanation of this would bring u. u have more than earned the right 2 have made a mistake. I will chalk up th lie 2 u freaking out. As 4 th rest of what u said u r so off base I cannot even begin. Call me soon. Brooke u really hurt my feelings. I could not even imagine u lying 2 my face."

49. On Sunday, June 17 12:56 a.m. he sent another text message to Complainant as follows: "I can not believ this is how u r choosing 2 deal with this. Don't u no that leavin me hangin like this is th kiss of death 4 this thing? Y would u not ll me? As mad as I am im way mor worried."

50. On Sunday, June 17 at 11:37 a.m. he sent the following text: “How can u possibly have gone from the best person who ever worked 4 me to THIS IN LESS THAN A HALF DAY? This will be resolved today or there will not b tomorrow. Im just sayin”

51. Complainant testified that she believed the phrase “there will not b tomorrow” was a threat to her life and after receiving this text she texted him “Don’t threaten me.” Bellanti testified that the phrase “there would not be tomorrow” referred to the future of the company because if it got out that Complainant was romantically involved with a client it would have negative consequences to the company. I do not credit Bellanti’s explanation of the expression and I find that Complainant reasonably believed it was a threat to her life.

52. On Sunday, June 17 at 11:43 am Bellanti sent the following text to Complainant: “I am NOT going into th most important week in ILLUMINA history with this over my head. This is Your Screw up and it will dealt with my way. This is not a threat. I will have my answer in the next thirty minutes or u will be replaced by 1 pm. So pick up the phone and call me.” Complainant did not respond to this text message and considered her employment with Illumina terminated.

53. On Sunday June 17, Complainant returned her work keys to Beliveau. Beliveau testified that when Beliveau asked what was going on and if she were ok, Complainant told her they would talk about it later. Complainant never told Beliveau that she had been fired. I credit Beliveau’s testimony.

54. On Sunday, June 17 at 12:40 p.m. Bellanti sent the following text to Complainant: “How can u b forcing of 2 do this? U r reating us, and the company apart! I don’t want this 2 happen yet hear I an drivin 2 th meeting that WILL make this Happen.

Why! I told u we could move forward. At this point th is ending jue to u not handling the situation properly. PLEASE BROOKE DON”T DO THIS. u r my favorite. Call me and fix this.”

55. On Sunday, June 17 5:49 pm Bellanti sent Complainant the following text: “Can’t you call me and work things out? This should have been a blip on th radar. Not an opera”

56. On Sunday, June 17 6:01 pm Bellanti sent the following text to Complainant: “For a Guy who has a company of people that I think of as family I sure do feel very alone right about now. Im just saying...)”

57. On Sunday, June 17, 2007, Complainant telephoned Bellanti’s business partner Andrew Swaine and left him a message that she needed to speak with him. Swaine never returned her call.

58. Bellanti testified that Complainant got back to him on Sunday, June 17 and told him she needed to think things over as to whether she would return to work at Illumina. He told her there was no time because Illumina was about to launch a big website.

59. On Monday, June 18 at 4:03 am Complainant sent Bellanti the following email message:

Hi... Sorry it has taken me a few days to get back to you in one way or another. It obviously has been a crazy last few days, and I need you to understand that I have not been just blowing you or anyone else off. I had to take some serious steps back, and completely re evaluate everything. I hope you can understand. I know this is a crucial week, and the timing really bites, but there is so much I need to say to you, uninterrupted. I would like to speak with you and Andy. I don’t want to get into this in any other way but face to face, and it would mean a lot if we can talk some place private, out of the office. Also, I have something for you to listen to. When you get a chance, let me know when you both can see me. Brooke.

(Ex. C-3)

60. Complainant testified that she requested a meeting with Bellanti and Swaine in order to discuss her termination and her allegations of sexual harassment by Bellanti and to negotiate a severance package.

61. On Monday, June 18 at 9:37 pm, Bellanti sent the following text message to Complainant: “How r u capable of this we all love and need u. I was so good 2 u. U worked so hard. I am so worried about u. I know u must feel so bad and so out of control. What about our family? Everyone wants u back. This is heart breaking. Just talk 2 me. We can fix this. Im so worried about you Brooke.”

62. On Tuesday, June 19 4:02 pm, Bellanti sent the following text message to Complainant: “Hi I left u a message I was not of th office all day and I never got ur email until just a while ago. I am so grateful that you contaced me brooke. EverYone just want u 2 b back with us. We all love u and every one just wants 2 move forward When do u want 2 meet us?”

63. On Tuesday June 19 at 6:08 pm Bellanti sent the following text to Complainant: “Brooke. Please just come in 2 work today. U have th power 2 make us all happy. We all love and miss u. I know u and I know u r regretting what u r doing. I am just so worried about what us must be going thru”

64. On Wednesday, July 20 at 9:22 a.m Bellanti sent Complainant an email message stating in part:

Brooke, I was hoping with all my heart that that there was going to be an email from you this AM in my inbox....I feel...that I am dealing with a perfect stranger, not one of my best friends that I have ever had, one of the most dedicated employees that I have ever hired, and hands down the best “right hand man” of my career....Brooke more than anything I am so worried about you... You have to bring this to a conclusion and begin communicating with us. This has been absolute torture for us and especially for

me...Brooke I am asking you this as a friend, please let me know your intentions. I have not been this sad and upset since my mother died...This is jeopardizing Illumina and all your friends' jobs. I cannot keep holding everyone together while I am under all this stress...I you are going to leave us we will all be crushed but we will move on. I all fairness after everything I did for you, don't you feel you owe us the right to...end this speculation? Please just tell me what you are going to do. ... please DO NOT leave us...PS the only thing that you may have to concern yourself with upon return is drowning in my tears of joy and being hugged to death....

(Ex. C-3)

65. On Wednesday, July 20 at 2:51 p.m., Bellanti emailed Complainant... I have now waited five hours for a response. ...If you want to discuss coming to work, then let's set up the meeting you want....I have literally not thought about anything but you for 4 days now. The endless speculating on what your intentions are is just wearing the whole company out...I am having a tough time keeping it together

66. On Wednesday, June 20 at 8:00 pm, Bellanti sent the following text message to Complainant: "Please. I am so worried. Just text me and say u r ok. I am sincerely BEGGING you. I am sick with worry. Please Brook I only care that u r ok."

67. On Wednesday, June 20 at 9:51 pm Bellanti sent Complainant the following text message: "Well I have tried everything. I guess it's time to give up. I hope you no matter what you can always turn to me for anything. Also I want to say thank you for being my best pal for a while. You did an amazing job Brooke as well. No matter what you do or where you go, I will always keep you safe in my heart. And not you or anyone else can take that away from me. I WILL NEVER FORGET YOU RABBITFACE. I'm just saying..Please take care of yourself"

68. Complainant testified that she became more frightened of Bellanti with each message she received from him. She was concerned that Bellanti described the company

as a family and used pet names for her. She was frightened because Bellanti knew where she lived and was a “very scary man” who told her he used to beat people up and owned a gun, which she claimed to have seen in his car. She feared that he would appear at her home. Complainant discussed the telephone calls with her parents and on Monday June 18 she discussed the matter with a Gloucester police officer, who contacted Bellanti and told him not to contact Complainant. I credit her testimony. Bellanti acknowledged that a Gloucester police officer called him and told him not to contact Complainant. He denied owning a gun. I credit Complainant’s testimony to the extent that she feared him; However I do not credit her testimony that she saw a gun owned by Bellanti. She mentioned the gun for the first time at the public hearing and I find that it highly unlikely that she would have omitted this significant detail from her complaint, had it been true.

69. Complainant was disgusted that Bellanti considered her his “best friend” instead of the company’s Vice President of Operations. Complainant was disturbed by the email that said he had not thought about anything but her for the past four days and was pouring his heart out all over again. She did not respond to his email and never contacted Bellanti again.

70. Bellanti testified that Complainant was the best employee who ever worked for him and he considered her his “right-hand man.” They worked together on nearly every aspect of the company. Bellanti testified that he and Complainant ate alone at restaurants together dozens of times and she never turned down an offer to go to lunch. If claimed that if he professed to love her, it was as a friend. He admitted in his deposition that he told Complainant he could not imagine his life without her. Bellanti claimed that his policy of employees not becoming involved with band members was “breaking a

cardinal rule.” However the policy was not contained in the company handbook and that even though he believed Complainant had acted, in his words, “like a slut,” he begged her to come back to work. He acknowledged that although the musician and his band had been at Eisenzopf’s house where drugs were used he did not demote Eisenzopf or terminate her employment, although he professed that he did not want his employees to socialize with clients or to be in situations where drugs were being used.

71. On August 2, 2007, Complainant began working at CBS radio on a part-time per diem basis. Her hours varied from five to twenty hours per week depending on the promotion she was working on. She worked there for two years, becoming a full-time employee on July 20, 2008.

72. In addition to her position at CBS radio, Complainant worked as a part-time bartender at Topside Grill in Gloucester from around Labor Day 2007 until January 1, 2008.

73. On February 20, 2008 Complainant was hired full-time by Accomplish Media at an annual salary of \$36,000.00.¹

74. At the time of her separation from Illumina Records, Complainant was receiving a salary of \$600.00 per week. In 2007, Complainant earned \$12,680.00 in wages from Illumina Records; \$2,943.05 from CBS Radio; and \$4,174.21 from the Topside Grill, LLC for a total of \$19,797.26. (Exs. C-5; C-6; C-7) Complainant also received \$900.00 in unemployment benefits in 2007.

75. If Complainant had continued to work at Illumina Records from June 17 through the end of 2007, she would have earned an additional \$16,800.00 (\$600.00/wk x

¹ Complainant seeks lost wages only up until February 20, 2008 when her salary then exceeded her Illumina salary.

28 wks). Subtracting Complainant's earnings at CBS and Topside and her unemployment benefits from what she would have earned, Complainant's lost wages for the year 2007 were \$8,782.74. ($\$16,800.00 - 7,112.26 - 900.00$)

76. Had Complainant continued to work for Illumina in 2008 her salary for the period from January 1, 2008 to February 20, 2008 would have been \$4,200.00 ($\$600.00/\text{wk} \times 7 \text{ wks}$) There is no evidence of Complainant's wages from CBS radio during this seven week period. However, she earned \$2,943.05 from CBS for 21 weeks in 2007, which is an average weekly wage of \$140.14. Based on this, I estimate her CBS wages for this time period to have been approximately \$981.02. ($\$140.14/\text{wk} \times 7 \text{ weeks}$). Therefore her lost wages in 2008 were \$981.02.

77. Complainant's total lost wages are \$9,763.76 ($\$8,782.74 + \981.02)

78. Complainant testified that she felt very angry about her termination. She blamed herself for being so blind that for six months she did not see Bellanti's conduct as harassment. She believed she had to endure Bellanti's comments, advances and banter in order to continue working at Illumina. She did not understand the extent of Bellanti's obsession with her until he appeared to threaten her life, but then immediately pleaded with her to come back to work because they were a family.

79. Complainant testified that she trusted Bellanti to guide her but that after her termination she could not trust anybody and could not trust her own judgment because she had misjudged his character. She felt sad at having to leave her co-workers and was afraid they would blame her for leaving. She never got to explain to her co-workers what had transpired between her and Bellanti and how she came to stop working for Respondent.

80. Complainant testified that for a month after her termination, Complainant drank a six-pack of beer or more every day because it was the only way she could get some rest. She also segregated herself from her friends and distanced herself from others. However, she frequently discussed with her mother, her anger that she could have allowed this to happen, and her fear of Bellanti. Since she had no health insurance, she could not afford the services of a therapist or mental health counselor.

81. Complainant's mother, Janice Anido, testified that prior to her termination, Complainant had always been a bright, motivated and happy person with many friends. However, following her termination she was not herself and was no longer bubbly, happy, confident or motivated. Anido observed that Complainant became distrustful, felt ashamed and distanced herself from her friends. She lacked confidence and self esteem and felt safe only in her own home. Anido noted that after obtaining employment at a radio station Complainant seemed happier but continues to lack the confidence she had prior to the events at Illumina.

82. Complainant's roommate and friend, Amy Montenero, testified that after Complainant's termination she became moody and Montenero walked on eggshells around her. For about a year following her termination, Complainant did not hang out with her friends, kept to herself and did not seem to want to talk about anything. Montenero recommended Complainant see a therapist but she did not do so.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

General Laws Chapter 151B, s.4, paragraph 1, prohibits workplace discrimination based on ones' sex, including sexual harassment and gender based harassment. Ramsdell v. Western Bus Lines, Inc., 415 Mass 673, 677 (1993). M.G.L.c. 151B, §4, (16A), also prohibits sexual harassment in employment. Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or sexually offensive work environment." Collegetown Division of Interco v. Massachusetts Commission Against Discrimination, 400 Mass. 156, 165 (1987).

Complainant has waived her hostile work environment sexual harassment claim. However, she has alleged that her supervisor and company owner Ronald Bellanti engaged in quid pro quo sexual harassment. Complainant has alleged that Bellanti sought a romantic relationship with her and after she rejected his romantic overtures, he removed her from significant projects. Complainant further alleges that when Bellanti believed her to be sexually involved with a musician client of the company, he became enraged because of his sexual obsession with her, threatened her and terminated her employment.

There is no doubt that Complainant freely participated in conduct that created a sexually charged workplace and while this conduct might imply that she did not find Bellanti's overtures unwelcome, In this case, the evidence shows that although Complainant often acted outrageously in the office, she always rejected Bellanti's advances and never welcomed a sexual relationship with him, which she continually made clear. Under the fact of this case, her conduct in the office does not negate her quid pro quo claim, as Respondents argue.

. I conclude that Complainant has established by direct credible evidence that Respondents engaged in quid pro quo sexual harassment of her. Complainant was subjected to continuous and pervasive romantic and sexual overtures from her employer. When she rejected Bellanti's romantic and sexual overtures, he reduced her duties and when he believed her to be sexually involved with a musician client, he threatened to significantly further reduce her duties, became enraged and acted in a hostile and threatening manner toward Complainant, called her a "fucking groupie whore," and a "little bitch," stated he would "fucking kill" her and told her there would "not be tomorrow." Following numerous threatening text messages and telephone calls to Complainant, Bellanti's tone became conciliatory and he literally begged Complainant to return to work. His irrational and obsessive behavior caused Complainant to become concerned for her safety and to feel she could not return to a work environment where her employer had developed an unhealthy and threatening obsession with her.

In this case, Respondent Bellanti denies that he ever sought a romantic relationship with Complainant or made sexual overtures toward her. He states that after she had a sexual encounter with a client in violation of company policy, she quit her job.

Bellanti denied diminishing Complainant's duties, states that he did not fire Complainant and in fact asked her to return to work several times. I did not find credible Bellanti's testimony in this regard.

I find credible Complainant's testimony that Bellanti pursued her romantically and that he repeatedly made sexual overtures to her and that she rebuffed his advances. I find that his consternation at her rejection of him coupled with his jealousy of the band leader she engaged with, caused him to diminish her duties significantly as a means of punishing her. I conclude that Bellanti's intense over-reaction to Complainant's liaison with a musician was akin to the reaction of an obsessively jealous suitor, as demonstrated by his bizarre and unprofessional text messages and emails to Complainant, wherein he was by turns threatening and hostile, and conciliatory and obsequious. I find credible Complainant's testimony that despite their past friendly relationship, at this point she came to fear Bellanti as she understood for the first time the frighteningly obsessive nature of his feelings for her. I am convinced that she reasonably believed that she could not return to work for Bellanti under those circumstances and was thus constructively discharged. In order to establish constructive discharge, Complainant must prove that her working conditions were so intolerable that a reasonable person would have felt compelled to resign. See GTE Products Corp. v. Stewart, 421 Mass 22, 34 (1995); Choukas v. Ocean Kai Restaurant, 19 MDLR 169, 171 (1997) See generally MCAD Sexual Harassment in the Workplace Guidelines, VIII - Constructive Discharge. I conclude that Bellanti's intense anger, bizarre over-reaction to her liaison with someone other than him, and the horrible things he called her would have compelled any reasonable woman in Complainant's position to resign. I conclude that regardless of

whether Bellanti intended to terminate Complainant's employment, she was constructively discharged. Therefore, I conclude that Respondents engaged in unlawful quid pro quo sexual harassment and caused Complainant to be constructively discharged from her employment in violation of MGL c. 151B.

B. Individual Liability

The Commission has held that individuals may be liable under M.G.L.c.151B§4(4A) if they coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter....” Where there is direct evidence of discrimination and the alleged perpetrator of discrimination was in a supervisory position in which he or she had direct control over complainant's employment, the individual may be named as acting in deliberate disregard of complainant's rights. Woodason v. Town of Norton School Committee, 25 MDLR 62, 63 (2003). In addition, G.L. c. 151B, s. 4(5) provides that it is unlawful for "any person, whether an employer or employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under [G.L. c. 151B] or to attempt to do so."

The evidence in this record establishes that Bellanti harbored the requisite intent to discriminate and there is sufficient direct evidence of his discriminatory actions to support a finding that he is individually liable for discrimination. Bellanti was the Complainant's direct supervisor and was owner of Illumina Records. He was the sole decision-maker with respect to establishing the terms and conditions of Complainant's employment and ultimately terminating her employment. The evidence firmly established Bellanti's intention to discriminate and to interfere with Complainant's rights

under c. 151B.§4(4a) and (5) I conclude that Ronald Bellanti shall be held individually liable for unlawful discrimination in this matter.

Therefore, I conclude that Respondents engaged in unlawful discrimination on the basis of gender and sexual harassment in violation of M.G.L.c.151B§4 and I find them jointly and severally liable for unlawful discrimination.

IV. REMEDY

Pursuant to M.G.L. c.151B § 5, the Commission is authorized to grant remedies in order to make the Complainant whole. This includes an award of damages to Complainant for lost wages and emotional distress suffered as a direct and probable consequence of her unlawful treatment by Respondent. Bowen v. Colonnade Hotel, 4 MDLR 1007 (1982), citing Bournewood Hospital v. MCAD, 371 Mass. 303, 316-317 (1976); See Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997).

A. Emotional Distress

An award of emotional distress “must rest on substantial evidence and its factual basis must be made clear on the record. Some factors that should be considered include: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm (e.g., by counseling or by taking medication).” Stonehill College vs. Massachusetts Commission Against Discrimination, et al, 441 Mass. 549, 576 (2004). In addition, complainant must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress. “Emotional distress existing from circumstances other than the

actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable.” Id. at 576.

Based on Complainant’s credible testimony and that of her mother and her friend Amy Montenero, I am persuaded that Complainant suffered emotional distress as a result of Respondent’s unlawful conduct. Complainant testified that while employed by Illumina she trusted Bellanti to give her guidance, but that after her termination she had difficulty trusting anyone and could not trust her own judgment because she had misjudged his character. She felt sad at having to leave her co-workers, and since she never got to explain the situation to them, was afraid they would blame her for leaving. Complainant testified that for a month after her termination, she drank alcohol to excess every day because it was the only way she could forget the situation and get some rest. She also segregated herself from her friends. She discussed her feelings of anger and her fear of Bellanti with her mother.

Complainant’s mother, Janice Anido, testified that prior to her separation from Respondent, Complainant was a bright, motivated and happy person with many friends, but that afterwards, she was not herself, was distrustful of others, was ashamed of herself, and distanced herself from her friends. She lacked confidence and self esteem and felt safe only in her own home. Her mother stated that after obtaining employment at a radio station, Complainant seemed happier, but she continues to lack the confidence she had before the events at Illumina occurred. Amy Montenero testified that after the events in question, Complainant became moody and Montenero walked on eggshells around her. For about a year following her termination, Complainant did not hang out with her friends, kept to herself and did not seem to want to talk about anything.

I conclude that Complainant suffered significant emotional distress, including fear and anxiety of being threatened and stalked by Bellanti after the events in question. She testified that she feared for her safety and what he might do to her after comprehending the nature of his bizarre obsession with her. Complainant was a young woman with little experience in the workplace. What had seemed like innocent sexual joking and banter in the office had become a much more serious and scary issue when it was clear she was the object of Bellanti's obsession. Complainant had enjoyed her job a great deal and felt sad to lose the position and the companionship of her colleagues. Given all of the above I believe an award of damages in the amount of \$75,000.00 is appropriate to compensate Complainant for the emotional distress she suffered as a direct result of Respondent's unlawful actions.

B. Back Pay

Since I have concluded that Complainant was terminated or constructively discharged from Respondent, she is entitled to a back pay award of \$9,763.76 to compensate her for the wages he would have earned had she remained at Illumina Records until February 2, 2008 when she began making earning more than she would have earned had she continued working at Illumina. (Findings of Fact nos. 90 to 95)

V. ORDER

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

- 1) Respondents immediately cease and desist from discriminating on the basis of sex and sexual harassment.

2) Respondents pay to Brooke Anido the sum of \$75,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

3) Respondents pay to Brooke Anido the sum of \$9,763.76 in lost wages with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

This constitutes the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this the 25th day of May, 2010.

JUDITH E. KAPLAN,
Hearing Officer