

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION & BROOKE
ANIDO,
Complainants

v.

DOCKET NO. 07-BEM-02151

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

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith Kaplan in favor of Complainant Brooke Anido on her charges of sexual harassment and retaliation. Complainant alleged violations of MGL c. 151B, Sec. 4(4A), 4(5), and (16A). At the hearing, Complainant's motion to dismiss her hostile environment claim was granted, and the matter proceeded on her claim of quid pro quo sexual harassment against both Respondents. The Hearing Officer found Respondents liable for quid pro quo sexual harassment and Respondents have appealed to the Full Commission.¹

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 *et. seq.*) and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing

¹ Commissioner Thomas George was the Investigating Commissioner in this matter, and pursuant to 804 CMR 1.23(c) she did not participate in the Full Commission deliberations and did not cast a vote on the matter.

Officer. M.G.L. c. 151B, §5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding...." Katz v. Massachusetts Comm'n Against Discrimination, 365 Mass. 357, 365 (1974); G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. Massachusetts Comm'n Against Discrimination, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The role of the Full Commission is to determine, inter alia, whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion or was otherwise not in accordance with the law. See 804 CMR 1.23.

BASIS OF THE APPEAL

Respondents have appealed the decision on the grounds that the Hearing Officer's findings are not supported by substantial evidence, are inconsistent, arbitrary, and not in accordance with the law. Respondent also asserts that the Hearing Officer erred as a matter of law in her decision, and that her award of emotional distress damages was arbitrary, capricious and excessive. Respondents argue that the findings of the Hearing Officer with regard to quid pro quo sexual harassment and constructive discharge are not supported by substantial evidence because there is no testimony that Respondent Bellanti made Complainant's submission to sexual advances a condition of her employment. Bellanti maintains that the most the record shows is that several advances were made and rebuffed with no consequences to Complainant's

employment. He further argues that when he confronted Complainant concerning her involvement with a musician client on June 16, 2007, Complainant returned her keys to the workplace the following day and never returned. He asserts that this chronology of events demonstrates that he could not have adversely altered Complainant's duties because she never returned to work. Further, Respondents contend that Hearing Officer's ruling with respect to quid pro quo sexual harassment should be overturned because the Hearing Officer's discredited some portion of Complainant's testimony, and therefore her findings that Complainant was credible on the ultimate issues relating to sexual harassment is unreasonable.

We have carefully reviewed Respondents' grounds for appeal and the full record in this matter and have weighed all of the objections to the decision in accordance with the standard of review stated herein. We find no material errors with respect to the Hearing Officer's findings of fact and conclusions of law. We properly defer to the Hearing Officer's findings which are supported by substantial evidence in the record. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). Substantial evidence is such evidence that a "reasonable mind" would accept as adequate to form a conclusion. M.G.L. c. 30A, s. 1(6). See also, Gnerre v. MCAD, 402 Mass. 502, 509 (1988). The standard does not permit us to substitute our judgment for that of the Hearing Officer even if there is evidence to support the contrary point of view. See O'Brien v. Director of Employment Security, 393 Mass. 482, 486 (1984).

We conclude that there is substantial evidentiary support for the Hearing Officer's determination that Respondent Bellanti, as owner of the company, engaged in quid pro quo sexual harassment of Complainant and that Respondents should be held jointly and severally liable. The Hearing Officer's decision is based on her crediting Complainant's testimony about Bellanti's repeated sexual advances, and her testimony that subsequent to rejecting such

advances, her duties were significantly altered and her job became much less desirable. She also credited Complainant's testimony that despite her prior friendly relationship with Bellanti, she came to fear him and reasonably believed she could not return to work for him. The Hearing Officer also credited Complainant's testimony that when Bellanti believed her to be involved with a client, he became furious and told her she was "done" and that others would take over her duties. These actions were sufficiently adverse to Complainant and occurred within a time frame that would satisfy the elements of a quid pro quo harassment claim. The fact that the Hearing Officer discredited some of Complainant's testimony that she was made to feel embarrassed and uncomfortable by certain raucous and lewd behavior of Bellanti's, does not render all of Complainant's testimony unworthy of credence. The Hearing Officer found that Complainant participated with others in the office in sexually explicit comments and gestures and that the work environment was crude and unprofessional. This fact does not alter the Hearing Officer's findings that at some point her job was adversely impacted by her rejection of Bellanti's explicit sexual and romantic overtures to her and that his subsequent fury and irrational behavior caused her to fear for her life and safety and justified her leaving the job.

Finally, the Hearing Officer credited evidence that subsequent to Complainant leaving her employment, Bellanti repeatedly called and sent text messages to her, causing Complainant to fear for her safety and her life. The Hearing Officer concluded that Bellanti's threats to Complainant while alternately begging her to return to work justified her view that he was dangerously obsessed with her and confirmed her belief that she could not return to work for him. The Hearing Officer carefully considered Bellanti's text messages and found that his behavior was sufficiently irrational and obsessive to cause Complainant serious concerns about her safety and to justify her not returning to work.

The Hearing Officer's conclusions with regard to quid pro quo sexual harassment and constructive discharge are supported by testimony from the Complainant which the Hearing Officer found credible. The Hearing Officer discredited much of Bellanti's testimony and credited Complainant's version of events that occurred over his. Where the decision is based upon the credibility of witnesses, as the trier of fact who heard the witness testimony first hand, and observed the demeanor of witnesses while they testified, the Hearing Officer is in the best position to decide who is telling the truth. A reviewing body is not permitted to make a de novo determination of the facts, to make different credibility choices, or to draw different inferences from the facts found by the trier of fact. See Retirement Board of Brookline v. Contributory Retirement Appeal Board, 33 Mass. App. Ct. 478, 480 (1992) [quoting Pyramid Co. v Architectural Barriers Bd., 403 Mass. 126, 130 (1988)] (interpreting superior court's role in reviewing administrative agency decisions pursuant to G.L. c. 30A. Therefore the decision a hand should be affirmed as it is supported by substantial evidence.

Respondents also contend that the Hearing Officer's award of \$75,000 for emotional distress is unsupported by the evidence, arbitrary, excessive and not proportionate to the nature, extent, and length of time of Complainant's distress.

We are not persuaded by this argument. The Hearing Officer who is in the best position to assess the Complainant's emotional harm, found that Complainant suffered significant emotional distress. She feared for her safety as a result of Bellanti's threats and felt anxious about being stalked by him. The Hearing Officer credited Complainant's testimony relating to her feelings of anger and sadness over her losing her job, her fear of Bellanti, and loss of confidence and trust in her own judgment about people. The Hearing Officer also credited the

testimony of Complainant's mother and her roommate that after these events, Complainant withdrew from friends, was moody and lost her confidence and self-esteem. Complainant did not seek out the services of a therapist because she had no health insurance and could not afford to do so. We find that the award of the hearing officer is supported by substantial evidence and should not be disturbed.

We conclude that the Hearing Officer's decision was rendered in accordance with the law and that there is substantial evidence in the record to support her findings of fact. We therefore deny the appeal and affirm the decision of the Hearing Officer in its entirety.

COMPLAINANT'S PETITION FOR ATTORNEY FEES AND COSTS

Having affirmed the Hearing Officer's decision in favor of Complainant we conclude that Complainant has prevailed in this matter and is entitled to an award of reasonable attorney fees and costs. See M.G.L. c. 151B, § 5.

The determination of what constitutes a reasonable fee is within the Commission's discretion and relies upon consideration of such factors as the time and resources required to litigate a claim of discrimination in the administrative forum and the degree of success achieved, which may include the relief awarded. In reaching a determination of what constitutes a reasonable fee, the Commission has adopted the lodestar method for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). This method requires the Commission to undertake a two-step analysis. First, the Commission calculates the number of hours reasonably expended to litigate the claim and then multiplies that number by an hourly rate considered to be reasonable. The Commission then examines the resulting figure, known as the

“lodestar”, and adjusts it either upward or downward or not at all depending on various factors. The Commission’s efforts to determine the number of hours reasonably expended involves more than simply adding up all the hours expended by all personnel. The Commission carefully reviews the Complainant’s submission and will not simply accept the proffered number of hours as “reasonable.” See, e.g., Baird v. Bellotti, 616 F. Supp. 6 (D. Mass. 1984). Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours that are insufficiently documented. Grendel’s Den v. Larkin, 749 F.2d 945 (1st Cir. 1984); Brown v. City of Salem, 14 MDLR 1365 (1992). Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission considers contemporaneous time records maintained by counsel and reviews both the hours expended and tasks involved.

Complainant’s counsel has filed a petition seeking attorney fees in the amount of \$61,038.16 for 203.45 hours of work at the rate of \$300.00 per hour. Given the experience of counsel as outlined in the petition, we find the hourly rates reasonable and well within the rates charged by experience employment counsel in the area.

Having reviewed the contemporaneous time records that support the attorney fees request, and based on this and similar matters before the Commission, we award attorney fees in the amount of \$61,038.16 and costs in the amount of \$1737.96 to Complainant.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact and conclusions of law of

the Hearing Officer and issue the following Order of the Full Commission:

- (1) Respondents shall cease and desist from discriminating on the basis of sex and sexual harassment.
- (2) Respondents shall pay Complainant the sum of \$75,000.00 in damages for emotional distress as set forth in the Hearing Officer's decision, with interest thereon at the rate of 12% per annum from the date the Complaint was filed, until such time as payment is made or this order is reduced to a court judgment and post-judgment interest begins to accrue.
- (3) Respondents shall pay Complainant the sum of \$9,763.76 in lost wages with interest thereon at the rate of 12% per annum from the date the Complaint was filed, until such time as payment is made or this order is reduced to a court judgment and post-judgment interest begins to accrue.
- (4) Respondents shall pay attorneys fees in the amount of \$61,038.16 and costs in the amount of \$1737.96 with interest thereon at the rate of 12% per annum from the date the petition for attorneys fees was filed until such time as payment is made or this order is reduced to a court judgment and post judgment interest begins to accrue.

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. Respondents' appeal to the Full Commission is hereby dismissed. This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this Decision may file a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of receipt of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996

Standing Order on Judicial Review of Agency Actions. Failure to file a petition in court within thirty (30) days of receipt of this order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED this 4th day of June, 2013

Julian Tynes
Chairman

Jamie Williamson
Commissioner