

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & KATHERINE BLEAU,
Complainants

v.

DOCKET NO. 08-SEM-02674

MOLTA FLORIST SUPPLY,
DANIEL MOLTA & DEAN MOLTA,
Respondents

Appearances:

Matthew L. Donohue, Esq. and Mary C. Clark, Esq. for Katherine Bleau
Scott Hibbert, Esq. for Respondents

I. PROCEDURAL HISTORY

On September 18, 2008, Katherine Bleau filed a complaint with this Commission charging Respondents with discrimination on the basis of handicap and retaliation. The Investigating Commissioner issued a probable cause finding with respect to the handicap claim and dismissed the retaliation claim for lack of probable cause. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on September 27, 2012 at the Commission's Springfield office. After careful consideration of the entire record before me 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 Molta Florist Supply is a family owned wholesale floral business located in Springfield Massachusetts, which employed approximately 15 people at the time of Complainant's employment. Daniel Molta is the general manager and primary floral buyer; his brother Dean Molta is the buyer of supplies. The Molta brothers share other managerial duties, including the authority to hire and fire.

2. Complainant Katherine Bleau began working for Respondents as a floral salesperson in 2003.

3. Complainant's co-worker Kim Labonte¹ was also a floral salesperson. Complainant and Labonte had known one another for 22 years through the floral industry and were friends. According to Complainant, Labonte was subject to outbursts of yelling and screaming and they sometimes argued. Daniel Molta testified that Complainant and Labonte argued frequently and he was often called upon to resolve conflicts between them. I credit the testimony of Complainant and Molta that Complainant and Labonte had a history of quarreling with one another.

4. By all accounts, Complainant was a good employee and successful salesperson who received regular raises and was never reprimanded. Labonte's annual gross sales far exceeded Complainant's annual gross sales.

5. Complainant and Labonte worked in a small office containing several cubicles. They shared a computer used primarily for sending emails that was located at Labonte's desk.

6. Complainant testified that on the morning of Monday, January 7, 2008, she was sitting at Labonte's desk composing an email to a customer while Labonte was performing another task. Labonte returned to her desk and began screaming at Complainant about the fact that she made

¹ Labonte did not testify at the public hearing.

more money than Complainant, that Complainant was nothing and did not belong at the company. Labonte then grabbed an office chair and repeatedly shoved it into Complainant's body, pushing Complainant against the cubicle wall. Complainant stated to her "What is the matter with you, Kim? I'll be done in a minute." I credit Complainant's testimony.

7. As Complainant turned to send the email, Labonte struck her on the face with a telephone receiver, breaking her glasses and hitting her right eye socket. Complainant backed away, stunned, left Labonte's cubicle and returned to her own cubicle. I credit Complainant's testimony.

8. After collecting her thoughts, Complainant reported the incident to Daniel Molta. Molta testified that he then talked to Labonte, who told Molta that she accidentally backed into Complainant who was behind her and denied purposely hitting Complainant. Two other employees who were in the area at the time told Molta that they did not witness the incident. Molta testified that the company's employees work closely with one another and are like family and although it is stressful environment, he could not imagine one employee intentionally assaulting another. He stated that although he did not believe that Complainant made up the story, he believed her injury was accidental.

9. Complainant continued to work for the rest of the day, despite developing a headache and pain and swelling around her right eye. She testified that an employee of Respondents took pictures of her injury that afternoon.

10. The following day, January 8, 2008, Complainant saw her primary care physician, who diagnosed a contusion on her right eye socket with blurred vision, referred Complainant to an eye doctor and advised her to remain out of work until January 16.

11. After her doctor's appointment, Complainant called Dean Molta to inform him of her status and that she would bring in the relevant paperwork the next morning.

12. On Wednesday, January 9, Complainant saw an eye doctor who confirmed her primary care doctor's diagnosis and concurred with his recommendation of one week out of work.

13. After seeing the eye doctor, Complainant went to the Springfield Police Department and filed assault and battery charges against Labonte.² She then brought her medical information to Molta Florist. While there, Complainant completed a workers' compensation form with respect to the incident with Labonte.³

14. On January 15, Complainant's primary care physician provided her with a note clearing her to return to full duty the following day, January 16. Complainant required no further medical treatment.

15. On the morning of Wednesday, January 16, when Complainant turned on her cell phone, there was a voice mail message from Dean Molta, expressing concern about the company's potential liability for the incident with Labonte, as well as future incidents and stating that it was unsafe for Complainant to return to work. Complainant called Molta and explained that she had been medically cleared to return to work. Dean Molta denied leaving any such message. Complainant did not go into work that day. Complainant testified that after talking with Molta she contacted the Division of Employment and Training regarding her situation and was advised to report to work the following day.

² On January 13, 2009, in Springfield District Court, Labonte admitted to sufficient facts to warrant a finding of guilty, her case was continued without a finding for six months and she was ordered to stay away from Complainant. (Ex. J-3)

³ Complainant's workers' compensation claim was initially rejected on January 23, 2008. Complainant ultimately reached a settlement of her claim on May 1, 2008, whereby she received a week's wages plus medical expenses.

16. On Thursday, January 17, Complainant reported to work at approximately 8:00 a.m. and began performing her usual duties. At about 8:15, Dean and Daniel Molta called her into the office and told her they were concerned that another incident could occur between her and Labonte and told her not to work in the shop until she and Labonte signed an agreement to work civilly together. Complainant agreed to meet with Labonte; however, Labonte refused to meet with Complainant and at about 9:00a.m., the Moltas sent Complainant home.

17. On Friday January 18, 2008, Complainant and Labonte worked a full day together without incident.

18. Complainant testified that the Moltas told her they were going on a ski trip from January 19 through 22 and did not want her working with Labonte in their absence. They directed Complainant to work from home during this time. Daniel and Dean Molta each denied telling Complainant any such thing. I credit Complainant's testimony.

19. Dean and Daniel Molta denied telling Complainant she could not work at the shop or that they required her to sign an agreement with Labonte as a condition of returning to work. They each testified that it was Complainant's idea to work at home and that she refused to return to work until Labonte apologized to her and attended anger management training, which Labonte refused to do. Complainant acknowledged that she wanted Labonte to apologize and testified: "I think we wouldn't be here today if she had apologized the next day."

20. Complainant testified that on the evening of Tuesday, January 22, 2008, Complainant received a voice mail message from Dean Molta stating that a lawyer had advised him not to allow her and Labonte to work together. Dean Molta denied leaving her such a voice mail.

21. Complainant testified that on Wednesday, January 23, she called Dean Molta and asked him when she could return to work. Molta told her to work only from home.

22. For the remainder of the week, Complainant worked from home. It was difficult for her to perform her job duties as she was unable to access Respondents' inventory, requiring her to call customers and the shop numerous times in order to complete each order, making it burdensome and time-consuming to fill customer orders. The Moltas testified that their company was not set up for employees to work at home because of the lack of access to the inventory.

23. Complainant testified that when she picked up her paycheck on January 26, Daniel Molta again suggested she sign an agreement with Labonte and drop the criminal charges against Labonte before she would be permitted to return to work. Complainant agreed to meet with Labonte but refused to drop the criminal charges against her. I credit Complainant's testimony in this regard. The Moltas denied telling Complainant that dropping criminal charges against Labonte was a prerequisite for her returning to work. Daniel Molta testified that he wanted Complainant and Labonte to work things out. He stated that Complainant was a good employee whom they wanted to retain. The Moltas stated Complainant's continued absence hurt their business and it was in the company's interest to persuade Complainant and Labonte to work together.

24. According to Complainant, the following week, Respondents did not allow her to work in the shop, nor was she allowed to work from home.

25. On Friday February 1, 2008, Complainant went to the office to pick up her paycheck and inquire about a commission check she believed was owed her. Dean Molta then told her that the current situation was unworkable and they were laying her off and would not contest unemployment compensation.

26. Daniel Molta testified that it was he and not Dean who terminated Complainant's employment because she refused to work with Labonte and her working from home was untenable.

27. On March 7, 2008 Complainant wrote Daniel Molta a letter concerning a dispute over payment of a \$30 commission. Molta denied knowledge of such a letter. I credit Complainant's testimony.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 151B, §4(16) makes it unlawful to dismiss from employment or otherwise discriminate against a qualified handicapped person who is capable of performing the essential functions of the job with or without a reasonable accommodation. A prima facie claim of handicap discrimination may be proved by showing that the Complainant (1) is handicapped within the meaning of the statute; (2) is capable of performing the essential functions of the job with or without a reasonable accommodation; (3) was terminated or otherwise subject to an adverse action by her employer; and (4) the adverse employment action occurred under circumstances that suggest it was based on his disability. Tate v. Department of Mental Health, 419 Mass. 356, 361 (1995); Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1, (1998).

M.G.L. c. 151B§1(17) defines a handicapped person as one who has a physical or mental impairment, a record of such impairment, or is regarded as having an impairment, which substantially limits one or more of the individual's major life activities. Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination in the Basis of Handicap-Chapter 151B at 7; Rapoza v. Ocean Spray, 21 MDLR 43(1999).

Chapter 152, s. 75B (1) states that "[a]ny employee who has sustained a work-related injury and is capable of performing the essential functions of a particular job, or who would be capable of performing the essential functions of such job with reasonable accommodations, shall be deemed to be a qualified handicapped person under the provisions of chapter one hundred and fifty-one B." Since Complainant's injury was work-related, she is entitled to the *rebuttable* presumption that she is handicapped within the meaning of the law. She was terminated from employment and was capable of performing the essential functions of her job without accommodation when Respondents terminated her employment. Therefore, Complainant has established a prima facie case of handicap discrimination.⁴

In a disparate treatment case, the Commission employs a three-stage burden of proof. Abramian v. Pres. & Fellows of Harvard College, 432 Mass. 107, 116 (2000). Once the Complainant articulates a prima facie case, Respondent must then articulate a legitimate non-discriminatory reason for its actions, supported by credible evidence. *Id.* at 116-117. The employer's burden is one of production and not proof and the burden of proof on the ultimate issue of discrimination remains with the Complainant. Wheelock College v. MCAD, 371 Mass. 130, 139 (1976). Once the employer has articulated a legitimate non-discriminatory reason for its actions, the Complainant must prove that the employer's stated reason or reasons are a pretext for discrimination. Abramian, 432 Mass. at 117. The employee may meet this burden by proving that the employer acted with discriminatory intent, motive or state of mind. Lipchitz v. Raytheon Co., 434 Mass 493, 504 (2001). An inference of discriminatory animus may be drawn from proof that one or more of the reasons advanced by the employer is false. *Id.* Respondents

⁴ The facts in this case do not support a claim of failure to accommodate. Other than one week off work, there is no evidence that Complainant sought to work at home as an accommodation to her injury, or that Respondents denied her an accommodation of working at home because of the injury.

have articulated legitimate, non-discriminatory reasons for terminating Complainant's employment. Respondents stated that Complainant's employment was terminated because of her refusal to return to the workplace until Labonte apologized to her and was trained in anger management. Respondents further assert (and Complainant does not dispute) that her working from home was unsuccessful for logistical reasons and she was required to return to the workplace. I conclude that Respondents have established legitimate, non-discriminatory reasons for their conduct.

If the Respondents meet this burden of articulating legitimate, non-discriminatory reasons for their conduct, then the burden shifts back to the Complainant to demonstrate that the articulated reasons were not the real reasons for discharge but were a pretext for unlawful discrimination. In this case, Complainant contends that Respondents required her to work from home and terminated her employment out of concern for their liability for injuries if Complainant and Labonte were in the workplace together. Complainant argues that Respondents abdicated their responsibility for supervising their employees, and treated Complainant and Labonte differently by terminating Complainant and not Labonte, based on Complainant's handicap. While I concur with Complainant that she was treated less favorably than Labonte, and that Respondents showed a surprising inability to resolve the standoff between Complainant and Labonte, Complainant has failed to establish that Respondents' actions were motivated by animus related to disability.

The evidence suggests that Complainant and Labonte were unable to resolve their dispute. Labonte refused to apologize for her actions and Complainant refused to dismiss the criminal charges against Labonte. Rather than attempt reasonable resolution to the impasse, Respondents forced Complainant to negotiate her own agreement with Labonte and ultimately

terminated Complainant's employment when it became clear the matter could not be resolved amicably. The evidence suggests that Respondents bore some ill will toward Complainant because she filed a workers' compensation claim against the company and a criminal complainant against Labonte. However, this does not constitute discrimination based on disability. Given that Labonte brought in far more sales than Complainant, the evidence further suggests that Respondents felt that between the two, Complainant was more expendable. There is no evidence in this case that the reasons cited for Complainant's termination are a pretext for unlawful handicap discrimination. Nor is there any evidence that Respondent was motivated by discriminatory intent, motive or state of mind. Lipchitz v. Ratheon Company, 434 Mass. 493, 503 (2001) Rather the evidence is that the termination of Complainant's employment resulted from a determination by Respondents that the situation with Labonte was unworkable and would lead to further conflict and disruption in the workplace.

Even if I were to conclude that Complainant's termination was unfair under the circumstances, "it is not the [Commission's] job to determine whether Respondent made a rational decision, but to ensure it does not mask discriminatory animus." Sullivan v. Liberty Mutual, 444 Mass. 34, 56 (2005); see also Mesnick v. General Elec. Co., 950 F.2d 816, 825 (1st Cir. 1991), cert. denied, 504 U.S. 985 (1992) ("Courts may not sit as super personnel departments, assessing the merits - or even the rationality - of employers' nondiscriminatory business decisions"). Thus while Complainant was legitimately upset and angry that she was terminated, the facts and circumstances do not indicate that Respondents' decision to terminate Complainant, even if seemingly harsh or unfair, was motivated by discriminatory animus. I therefore conclude that Respondents did not engage in unlawful handicap discrimination and conclude that the complaint in this matter be dismissed.

IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final decision of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal within ten days of receipt of this order and a Petition for Review within 30 days of receipt of this order.

SO ORDERED, this 22nd day of February 2013

JUDITH E. KAPLAN,
Hearing Officer