

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
JEAN BRUNE,

Complainants

v.

DOCKET NO. 15-BEM-02613

THE MARTIN GROUP, INC.

Respondent

Appearances: Greg Krikorian, Esq. for Complainant  
Lana Sullivan, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On September 16, 2015, Complainant, Jean Brune, filed a complaint of discrimination against Respondent, The Martin Group, alleging that Respondent failed to hire him on account of his race, color, national origin, ancestry, and religion.<sup>1</sup> The Complainant specifically alleged that Respondent rescinded a verbal and written offer of employment to him after discovering that he had changed his name some thirteen years earlier from an Arabic/Muslim sounding name to his current name. Respondent denied all allegations of discrimination and asserted that the offer of employment was rescinded for Complainant's failure to disclose his name change and because of other information it uncovered in a background check.

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<sup>1</sup> Contrary to Respondent's assertion, neither Complainant nor his counsel made any affirmative representations on the record that he was abandoning his claims of race or religious discrimination.

The Investigating Commissioner found probable cause to credit the allegations of the complaint and efforts at conciliation were unsuccessful. The case was certified for a hearing which took place before the undersigned Hearing Officer on August 1 and 2, 2017. The parties submitted post-hearing briefs. Based on the credible evidence in the record and having considered the parties' post-hearing submissions, I make the following Findings of Fact and Conclusions of Law.

## II. FINDINGS OF FACT

1. Complainant, Jean Brune, is of Arab Middle Eastern ancestry and national origin. He was born in Syria of a Syrian father and Lebanese mother and was raised by his mother in Lebanon. His religion is Islam. (Tr. 28-29, 33) Complainant moved to the United States from Lebanon in 1996 to join his mother and two brothers who were already living in California. (Tr. 25, 27, 67) At the time his name was Abdunnasser Mustafa Majzoub. (Tr. 28)

2. In 2001 and 2002, Complainant was studying fine arts at U.C. Davis in California and worked at a retail sales clothing establishment. (Tr. 26, 27, 34) In 2002, after the events of 9-11, Complainant decided to become a naturalized U.S. citizen. (Tr. 26, 29) As part of the process of applying for U.S. citizenship, Complainant decided to change his name to Jean Francois Brune because he felt there was an atmosphere of hostility toward individuals with Arabic or Muslim sounding names and Middle Eastern ancestry after 9-11. (Tr. 25, 26, 27-28) Complainant's petition for citizenship and his name change were approved through the Federal District Court in Sacramento and he was issued a U.S. Passport in 2003 under the name of Jean Francois Brune, which he has used since that time. (Ex. C-3) He was advised that he need answer inquiries about his prior name only for a period of seven years. (Tr. 29, 30) Complainant testified that he chose his new name because, having been raised in Lebanon, he

spoke French and the name Brune roughly translated to his mother's name in Arabic. (Tr. 28, 31, 32) Complainant is multi-lingual and speaks English, French and Arabic. (Tr. 31)

3. Complainant moved to Boston in 2004 and beginning in 2009, studied at Bunker Hill Community College, where he received an S.B. degree in business administration and accounting in 2011. (Tr. 37, 38) Complainant was unemployed for a year in 2008 or 2009. Subsequent to receiving his degree, he worked for four years as a concierge and beginning in 2014 was employed by an organization called Grassroots Campaign. (Tr. 39, 40) In June of 2015, Complainant answered an advertisement for an administrative assistant/accounting clerk posted by Respondent on a web-site called Indeed.com. (Ex. R-5; Tr. 41)

4. Respondent, Martin Group, Inc. is a family-owned and operated business that serves the design community as a manufacturer's representative. Respondent represents a variety of international manufacturers of high-end, expensive fabrics, furnishings and lighting to designers, architects, and specifiers for hotels in all of New England. Its income derives from commissions paid on sales generated. Respondent was described as a whole-sale business with a large show room. (Tr. 311, 318, 319)

5. Marion Martin is Respondent's Executive Vice President of Operations and a co-owner of the company with her husband Gary Martin who is semi-retired after running the company for 25 years. (Tr. 198, 203, 348-349) Ms. Martin first came to work for the company on January 1, 2015 and had not worked prior to that time. (Tr. 198- 199, 313) Kelly Kelly is the company's Executive Vice-President of Sales and Ms. Martin's sister. (Tr. 312) She joined the company at the same time as Ms. Martin after working for an electrical distributor. (Tr. 312) Both came on board in 2015 to assist with running the family business which had suffered a significant downturn and had decreased in size after the recession of 2007-2008. (Tr. 315)

6. In January of 2015 the company's bookkeeping and accounting functions were handled by a number of different people in different components, a structure that had been in place when the company was twice its current size. Ms. Kelly testified that this outmoded structure made it difficult to determine the company's actual income and they began to dismantle it. Consequently, the decision was made to bring someone on board to assist Ms. Martin with bookkeeping and accounting work. (Tr. 315-317) The Martin Group also expanded the role of a company called Paychex, Incorporated to assist with human resources functions at Respondent, since neither Ms. Martin nor Ms. Kelly were familiar with Massachusetts employment laws. This included updating the company handbook. (Tr. 199-200)

7. In June of 2015, the Martin Group placed an ad on the website Indeed.com seeking an administrative assistant for accounting. Ms. Martin sought to have this new hire handle the company's administrative bookkeeping tasks and the bookkeeping software which was new to her. (Tr. 200-201; Ex. R-4) Complainant responded to the Indeed.com ad on June 20, 2015 and sent his resume. (Ex. R-5; R-6) He received a phone call from Kelly Kelly who told him the company was a small family owned design firm. This interested Complainant because he had studied architectural technology and design while in school in California. (Tr. 41-42) Kelly described the call as a pre-screening interview and stated that Complainant met the criteria of an Associate's Degree in accounting or bookkeeping and demonstrated he had the initiative to learn additional things. (Tr. 317) Thereafter Complainant was asked to come to the company for an in-person interview with Kelly and Martin. The interview was scheduled for June 24, 2015. (Tr. 43; 210-211, 318)

8. Complainant arrived for his interview on June 24, 2015, and was given a tour of the facilities by Ms. Kelly who also described the nature of the company's business. (Tr.43- 44, 318, 319)

9. Complainant was then brought to Martin's office where the interview continued. Kelly stated that they had some discussion about a French line of fabric shown by Respondent and Complainant was excited about this because he spoke French. (Tr. 319-320) According to Kelly, they also discussed their backgrounds, family, and where they were from. Kelly did not testify that Complainant informed them he was from Syria. (Tr. 320) Ms. Martin testified that in the interview, Complainant introduced himself as Syrian-born with a French mother. (Tr. 222) Complainant denied mentioning Syria in any context. He stated that despite having been born in Syria, he does not consider himself Syrian because he left that country when he was six months old, never knew his father, and never lived there. If asked, he generally tells people he is from Lebanon, because that is where he grew up. (Tr. 66-67) I credit Complainant's testimony that he did not tell Martin or Kelly that he was from Syria.<sup>2</sup> Complainant recalled that as part of the discussion in Martin's office there was some mention of a background check being required. (Tr. 45)

10. Complainant was asked to fill out an application form designed by Paychex, Inc. (Ex. R-7; Tr. 43, 200, 319) The form requested that the applicant "list any other name by which you have been known which may be necessary to allow us to confirm your work and educational record...for example change of name." (Ex. R-7) Complainant did not list his former name nor the fact that he had undergone a name change because all his school transcripts and records dating back to 1997 and his records of employment were under his current name. He testified as to his understanding that he need only provide the information if it was necessary for Respondent

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<sup>2</sup> Complainant's passport which he later submitted to Respondent indicates that he was born in Syria.

to confirm his educational or work record, and that was not the case. His employer in California prior to the name change had a record of his new name. (Tr. 47, 53, 54, 55, 60) The application also required that he submit employer information for at least the most recent 10 year period.

(R-7) I credit Complainant's testimony that he read the application literally and sincerely believed that no information about his name change was necessary to confirm his education and work record. He also sincerely understood there was no legal requirement to disclose his name change after seven years. (Tr. 60) Complainant listed a number of professional and personal references on the application, including his best friend from California who had been a roommate of his at some point, but who was not a relative. (Tr. 61-63; R-7)

11. Complainant's introduction to Respondent was continued at an Au Bon Pain café in the building where he was invited to meet with co-owner Gary Martin, Ms. Martin and Ms. Kelly. (Tr. 64-65; 221, 320-321) Ms. Martin testified that during that conversation, Complainant was asked about some gaps in his resume prior to 2007, and between April 2010 and January 2011, and they discussed his having struggled with his mother's death, something Mr. Martin was currently experiencing. (Tr. 221-222) Ms. Martin stated they did not discuss Complainant's national origin or religion during the discussion at the Au Bon Pan, which she described as a "meet and greet." (Tr. 222)

12. During the discussion at Au Bon Pain, Complainant was asked by Mr. Martin about his salary requirements and he replied that he was seeking thirty six thousand dollars annually. (Tr. 65) According to Complainant, upon hearing this, Mr. Martin immediately told him he was hired, Ms. Martin agreed and they shook hands. (Tr. 65-66) Martin testified that at the end of the interview, her impression of Complainant was "very favorable." She left feeling high regard

for him, thought she could place confidence in him, and hoped he would be a great hire. (Tr. 224)

13. On July 2, 2015, Ms. Martin sent Complainant an email with a letter offering him the job with an expected start date of July 16, 2015 and attachments outlining the benefits that Respondent provided. (Ex. C-2; C-7; C-8) She welcomed him to the company and stated her hope that he would become a valued member of the company. This offer did not state that it was subject to verifying Complainant's credentials. Complainant filled out the documents that required information and his signature and emailed them to Martin. (Tr. p. 73-74) He also provided a copy of his passport which stated his birthplace as Syria and his Massachusetts State ID. (Ex. C-3; Tr. pp. 74-76)

14. Ms. Martin was about to leave on vacation and she testified that she anticipated completing a background check of Complainant while on vacation. She testified that having never made a job offer before she did not realize that an offer letter is typically sent after a candidate's credentials are verified. (Tr. pp. 224 -225) I did not find her testimony about this being a rookie mistake to be credible. This is inconsistent with her earlier testimony that Respondent's applications asked questions about Complainant's employment for the past ten years because they needed to have a thorough background, especially from someone they never met before to ensure that the person would be a good candidate. (Tr. 214-215) Ms. Martin also testified that she had concerns related to gaps in Complainant's resume, but this was knowledge Respondent had prior to interviewing Complainant and making the offer of employment. (Tr. pp. 208-211) I find that Respondent essentially made Complainant an offer of employment based upon the information they had from his application and their interviews with him and did not indicate the offer was contingent upon a background search.

15. Martin testified that while on vacation she used the hotel's internet to review information provided by Complainant on his application. She testified that began by typing Complainant's name in Google but "didn't come up with an awful lot." She then used his name in conjunction with his social security number and discovered he had some unresolved debt in Massachusetts. (Tr. 225-226) It is unclear from the documents introduced at the hearing that Complainant provided his social security number to Respondent, but he did provide a Massachusetts Identification Card number. (Exs. C-1, C-3) Respondent was unable to produce the actual document that Ms. Martin claims to have seen during her on-line search, but her best recollection is that it looked like a "revolving charge card of some kind." (Tr. p. 227) Respondent offered a court document into evidence indicating that Complainant was the defendant in a small claims action in Chelsea District Court in 2005 with a judgment for Centurian Cap Corp. in the amount of \$1,555.78, which judgment was fully satisfied in 2007. (Ex. R-1) Ms. Martin testified that she did not recall seeing at the time that the judgment was satisfied. She did not state to Complainant that this discovery was a reason for withdrawing her offer of employment.

16. Complainant listed a personal friend and former roommate as a reference on his application. Martin stated that when she did a Google search of that person's name, she found information that he had been a roommate of Complainant's and thus believed that he was possibly a sibling of Complainant. (Tr. Vol. I, pp. 227-228) She did not tell Complainant that this was a reason for withdrawing her offer of employment and I did not find this assertion to be credible.

17. Ms. Martin testified that she continued her search and uncovered an Arab sounding name that matched Complainant's date of birth. She testified that she does not remember the



exact name that came up and she was unable to recreate her search process. She stated that uncovering this name gave her pause because the application Complainant completed asked for any other names the applicant was known by. She had a sinking feeling that she was hiring someone that was not who he said he was. (Tr. p. 228-229; 278)

18. Martin called her sister Kelly and told her she had some serious reservations about Complainant because she had found some inconsistencies on his application for employment. She testified that she told Kelly about her search that uncovered someone with a different name and the same birthdate as Complainant. (Tr. p. 229) Kelly advised her to call the company's HR contractor, Paychex, for advice on how to proceed. Martin was informed that she was within her legal rights to rescind the offer to Complainant and it was suggested that she do so immediately. (Tr. pp. 229-230)

19. Martin advised Kelly that she was going to rescind the offer to Complainant and Kelly advised her to do it right away. She told Kelly the reason was because Complainant had not revealed an alias on his application. Kelly advised her to state the reason in an email and read the email to Complainant.

20. One or two days before Complainant was to start working for Respondent, Martin phoned Complainant and advised him that she was rescinding Respondent's offer of employment because he had made an omission of his prior name on his application. She told him she was very sorry, didn't chat, said good-bye and hung up. She also stated that Complainant told her that according to the law, he was not required to reveal his prior name because he had changed it so many years before and that he seemed well versed in the legality of his position. She testified that she knew nothing about the state of the law on this issue. (Tr. Vol. 233-234) On July 15, 2015, Ms. Martin sent Complainant an email stating that the offer of employment was rescinded

because he had failed to list any other names by which he was known on his application and that this was considered a falsification or misrepresentation. (Ex. C-9) Martin had no further communication with Complainant. (Tr. p. 235) She testified that Respondent did not hire anyone for the position and she took on the duties. (Tr. p. 235)

21. Complainant's version of his phone call conversation with Martin is consistent with her testimony that the issue was his "name." Complainant testified that she kept referring to the "name," and it dawned on him that this was about his name change. At this point he told her that he had legally changed his name and that he had done nothing unlawful. Complainant had already given notice to his current employer that he was leaving. He stated that Martin told him they would probably agree to take him back. (Tr. p. 78) Complainant contacted his current employer but they had already hired someone to replace him. (Tr. 78)

22. Complainant began looking for another job immediately. He worked briefly as a bookkeeper for a massage company at Logan Airport in August of 2015. The salary for that job was \$30,000 annually but he worked there only three weeks. He then contacted Winter & Wyman, an employment agency, and was placed in a job with Sokolove Law in Chestnut Hill, MA. from September 2015 to December of 2015 earning \$17.10 per hour. (Tr. pp. 78-79) Complainant also worked part-time (2 days per week) as a concierge for Palladion Services LLC, earning \$16 per hour from September 2015 until April 2016. He was unemployed for approximately one month. (Ex. C-4; Tr. 83-850) On January 19, 2016, Complainant began working, through Ruchman & Associates, as an Accounting Clerk for the Federal Drug Enforcement Agency after undergoing a rigorous security clearance. (Tr. 85; 113-114; Ex. C-4) Complainant's title is data analyst and he deals with very sensitive information that he cannot

discuss. He continues to work for the DEA earning \$17.10 per hour. (Tr.100-101) He earns more than \$36,000 annually working for the DEA. (Tr. 116)

23. Complainant testified that he was very hurt by the experience with Respondent and became very fearful again of discrimination and of being treated badly based on his ethnicity. He reiterated that Martin told him three times that the offer of employment was rescinded because of the issue with his name. Complainant believed that he was the victim of discrimination based on his Arabic/Muslim-sounding name, and stated that he lost confidence in a system that could exclude you for any reason. He had not experienced such strong feelings since the period immediately after 9-11 when he decided to change his name. He testified compellingly that his work gives meaning to his life, because he is not married and does not have children. He stated that his work is his identity, and without it, he is lost. I found Complainant's testimony to be credible and compelling.

24. Complainant stated that after the experience with Respondent, he had difficulty sleeping and eating and didn't know what to do. He also began having panic attacks and would sometimes feel like he was having a heart attack. When this occurred he would take himself to the emergency room with shortness of breath and numbness in his hands. While working at Sokolove law in December of 2015, he was taken by ambulance to Brigham and Women's Hospital after one such attack and was treated for anxiety, heart palpitations and lightheadedness. Complainant also described symptoms of depression. Follow up with a primary care physician was recommended. (Tr. pp. 87-90; 94-95; Ex. C-6) Thereafter, Complainant sought out a PCP and was prescribed Wellbutrin and Propranolol for anxiety. His PCP suggested he consult a therapist for his symptoms of anxiety and depression. (Tr. pp. 96-97)

25. Complainant began seeing a therapist in August of 2016 and continues to see her weekly. (Tr. 98) He stated that he currently is able to manage his anxiety, but still has fears occasionally at work that he is going to be fired for no reason and believes that this is tied to his lack of confidence stemming from the events with Respondent. (Tr. 99-101) Complainant testified that prior to the events of 2015, he enjoyed going out and participating in outdoor activities, but has become more withdrawn and disinterested and is now happy if he is just able to go to work. He stated Respondent's planted a fear in him, that he doesn't know how to rid himself of, but is managing. Complainant testified that he never experienced panic attacks of the sort he began having in 2015 and had never previously been treated with medication for anxiety. (Tr. 106-107)

26. Respondent introduced Complainant's therapy records and asked him a number of questions about other sources of emotional distress in his life. Complainant did discuss other sources of stress and depression in his life, many of which pre-dated the incidents with Respondent, including his mother's death in 2001 which was very difficult loss for him and which he still grieves. He attended some counseling sessions at the time. He also discussed with his therapist growing up in a country that was wracked by war and violence, struggling with his cultural identity and the difficulties of adjusting to life in a new city and not feeling connected. Complainant also discussed his stress related to the ongoing litigation with Respondent. (Ex. R-3)

### III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 151B s. 4 (1) makes it an unlawful practice to refuse to hire or employ an individual on account of, among other things, race, color, national origin and religious creed. In order to establish a prima facie case of failure to hire, Complainant must show

that: (1) he is member of one or more protected classes; (2) that he was qualified to perform the position sought; (3) that he was rejected for the position under circumstances that give rise to an inference of discrimination based on one or more protected classes. The elements of a prima facie case may vary depending on the case. Blare v. Husky Molding Sys. Inc., 419 Mass. 437, 441 (1995); Abramian v. Pres. and Fellows of Harvard College, 432 Mass. 107 (2000) *citing*, Wheelock College v. MCAD, 371 Mass. 130, 135 nt. 5 (1976). In cases such as this one where the position was ultimately not filled, Complainant need not show as part of his prima facie case that Respondent filled the job with someone not of his protected class. Establishing a prima facie case is not meant to be onerous and merely requires Complainant to demonstrate that the employer's actions "if otherwise unexplained, are more likely than not based on consideration of impermissible factors." Sullivan v. Liberty Mutual Ins. Co., 444 Mass.34, 40 (2005).

Complainant is a member of several protected classes based on his ancestry, national origin and religion. Complainant is of Middle Eastern ancestry and national origin, having been born in Syria and raised in Lebanon. His parents were Syrian and Lebanese. He is of the Muslim faith.<sup>3</sup> Complainant was qualified to perform the duties of the position as determined by Respondent after reviewing his educational background and work experience and interviewing him. Respondent's owners and agents were very impressed with Complainant and his qualifications, particularly his ability to speak French and his background in design, and were satisfied that he could perform the duties. Respondent offered Complainant the job believing that he would be a good fit for the position.<sup>4</sup>

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<sup>3</sup> Complainant's skin color could best be described as olive, but he introduced no evidence as to his race and there is no evidence that his color was an issue in this matter.

<sup>4</sup> Respondent asserts that Complainant was rendered unqualified for the job because he was "untrustworthy" and failed to pass a "background check." In fact, other than her "google" search, Martin conducted no background check. I do not conclude that Respondent's assertion of untrustworthiness negates Complainant's prima facie case.

After having received an offer of employment in writing and given a start date, Complainant was rejected for the position under circumstances that give rise to the inference that discrimination was the reason for the rejection. It was only upon discovery of Complainant's prior Arab/Muslim-sounding name coupled with Martin's assumption that he improperly failed to disclose this name to Respondent, that the offer of employment was rejected. Both Complainant and Martin testified that his failure to disclose his prior name was the reason given for rescinding the offer of employment. I conclude based on these facts that Complainant has established a prima facie case of discrimination.

Once Complainant has established a prima facie case, Respondent must articulate a legitimate non-discriminatory reason for its actions based on some credible evidence that the reasons advanced were the real reasons. Blare v. Husky Molding Sys. Inc., supra. at 441-442 (1995). Respondent asserts that it rescinded the job offer to Complainant because it determined that he was untrustworthy based upon information uncovered by Ms. Martin in an internet search. Martin testified that the information she uncovered indicating a past unpaid debt, the discovery of another name for Complainant, and the fact that one of his personal references had resided with him and might be a relative, all caused her to question his trustworthiness and his actual identity. For this reason she did not feel comfortable employing him in a position dealing with Respondent's financial information. She asserted that these were the legitimate non-discriminatory reasons that justified her decision to rescind the offer. I conclude that Respondent has met its burden at the second stage to articulate a legitimate non-discriminatory reason for rescinding the offer of employment to Complainant.

At stage three, Complainant must demonstrate that the reasons articulated by Respondent are not the real reason, but a pretext for discrimination. Martin could not recall the exact details

of the information she uncovered in her search, she did not print out any documents from her search, and could not recreate her search. She did remember that she found an “Arab-sounding” name. It is apparent that discovering Complainant’s former name was Abdalnasser Mustafa Majzoub<sup>5</sup> gave Martin pause and caused her to be fearful and suspicious of Complainant’s background and identity. Martin articulated that she felt she did not know who Complainant was and was uncertain about who she was dealing with when she received what she viewed as conflicting information. In essence, she determined Complainant was untrustworthy based on the name she uncovered. It is unclear Martin knew from her search that Complainant had changed his name, but Complainant was forthright about this and told her he had done so legally in their phone conversation. It is clear Complainant was not trying to hide anything from Martin. Indeed, many immigrants have changed their names for a variety of reasons including fear of discrimination and stereotyping. Complainant also discussed the legality of his failure to disclose his prior name, and Martin testified he seemed well versed in the legality of his position, yet she remained unpersuaded.

The only reason that Martin articulated to Complainant for rescinding the offer was his name, and the failure to disclose the prior name. She did not mention any information about a debt or an inappropriate personal reference and I find that these were not her primary concern.<sup>6</sup> While these may have played some part in Respondent’s decision to rescind the offer of employment, there is no requirement that Complainant “disprove every reason articulated by the [Respondent] or suggested in the evidence.” Lipchitz v. Raytheon Co., 434 Mass. 493, 506 (2001). Hiring decisions may be made for more than one reason, including non-discriminatory

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<sup>5</sup> Although Martin claimed she could not remember the name, she admitted that it was Arab sounding and I make the reasonable presumption that Complainant’s former name is what appeared in her search.

<sup>6</sup> In fact, the document submitted at hearing regarding a debt owed, indicated that the judgement had been fully satisfied in 2007 some eight years prior, although Martin could not recall whether she noted this.

reasons, but “the decision may still be unlawful if discriminatory animus was a ‘material and important ingredient’ in the decision-making calculus.” Chief Justice for Admin. and Mgt. of Trial Court v. MCAD, 439 Mass. 729, 735 (2003) *citing* Lipchitz v. Raytheon Co., *supra.* at 506 nt. 19) I am persuaded that the issue of Complainant’s name was the primary reason for the decision to rescind the offer of employment.

Martin did not ask Complainant if he had been known by another name, nor did she ask him to explain why he had failed to disclose a prior name. It was obvious she did not want to know. When he indicated that he had changed his name legally and was within his rights not to disclose his prior name, she did not consider this information. She merely indicated the offer was being rescinded because he failed to disclose this information on his application. She did not check Complainant’s references, but relied solely upon a “Google” search wherein another name appeared. Given that the Martins had bonded with Complainant during the interview process, liked him very much, and were sufficiently impressed to offer him a job on the spot, prior to any background or reference check, it defies logic that Martin would not have had some discussion with Complainant about any inconsistencies in his background, absent some other concerns. This leads me to conclude that Complainant’s former name aroused great fear and suspicion in Martin.<sup>7</sup>

The issue is whether such fear and suspicion were justified or based on unfounded stereotypes and bias about persons of Arab ancestry or the Muslim religion. It is reasonable to conclude that such emotions may be attributable to common stereotypes associated with persons of the Muslim religion and Arab or Middle Eastern ancestry/ national origin particularly after the

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<sup>7</sup> Respondent argues that since they knew Complainant was of Middle Eastern origin before they offered him the job, they could not possibly have rescinded their offer based on his national origin or ancestry. Nonetheless, I conclude that discovery of Complainant’s former name aroused fear and suspicion surrounding his identity that was related to his national origin, ancestry and religion.



events of 9/11 and in the ensuing years. Persons of Middle Eastern and Muslim identity have been associated with acts of terrorism committed worldwide, often leading to unjustified fear and suspicion of any persons within or associated with these groups. I conclude that Martin's concerns led to unjustified assumptions about Complainant's honesty and trustworthiness.<sup>8</sup> She did not seek an explanation and made no effort to correct those assumptions. Relying on unfounded assumptions and stereotypical thinking may result in "categorizing people on the basis of broad generalizations." Lipchitz, supra. at 503. This is often the essence of discrimination.

To be sure, sometimes unfounded assumptions may be the reflective of bias that is not overt, but unconscious and subtle. See Bulwer v. Mt. Auburn Hospital, 473, Mass. 672, 686-687. However, courts have recognized that such unconscious bias is actionable. Thomas v. Eastman Kodak Company, 183 F.3d 38 (1st Cir.1999) citing Hopkins v. Price Waterhouse, 825 F.2d 458, 469 (D.C. Cir. 1987) Even if Martin did not act with conscious awareness of a bias based on Complainant's national origin or religion, "this neither alters the fact of its existence, nor excuses it." "Unwitting or ingrained bias is no less injurious or worthy of eradication than blatant or calculated discrimination." *Id.* There is no question but that Complainant was injured by the unexpected and precipitous rescinding of the job offer.

Given Complainant's highly positive interactions with Respondent prior to the discovery of his former name, the fact that Respondent felt sufficiently confident in his abilities and his personal attributes to offer him the job on the spot with a definite start date, and Martin's comments to Complainant about the issue being his name, I am left to conclude that it was discriminatory bias associated with his former name that caused Martin to act to immediately

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<sup>8</sup> These assumptions were clearly unjustified since Complainant passed a very stringent background investigation to be eligible to work for the federal DEA.

rescind the offer of employment. I conclude that Respondent's actions constituted a violation of the proscriptions in G.L. c. 151B against national origin, ancestry and religious discrimination.

#### IV. REMEDY

Upon a finding that Respondents have committed an unlawful act prohibited by the statute, the Commission is authorized to award damages to make the victim whole. G.L. c. 151B §5. This includes damages for lost wages and benefits if warranted and emotional distress. *See Stonehill College v. MCAD*, 441 Mass 549 (2004).

Complainant is entitled to back pay for the period of time he was out of work as a result of Respondent's unlawful action. Complainant has a duty to mitigate his damages for lost wages by seeking other employment. Having given notice to his then current employer in anticipation of his imminent start date with Respondent, Complainant began immediately seeking other employment. Had Complainant began working for Respondent in mid-July of 2015, he would have earned an annual salary of \$36,000 or \$3000 per month. During the six month period from July 2015 to January 2016 Complainant earned in excess of what he would have earned working for Respondent by working at three different jobs. He was unemployed for approximately one month in January 2016 when he began working full time for the DEA. His lost wages for the period from mid-July 2015 to late January 2016 are approximately \$3000.

In addition to damages for lost wages, I conclude that Complainant is entitled to damages for emotional distress caused by Respondent's unlawful act. Awards for emotional distress must be fair and reasonable and proportionate to the harm suffered. A complainant must also show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress. Stonehill College v. Massachusetts Commission Against

Discrimination, supra, at 576. “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.*

Complainant’s testimony about the emotional distress he suffered resulting from rescission of the job offer was compelling. He was grievously insulted and hurt by Respondent’s actions because he felt they were directed at his very identity. He lost confidence in a fair and unbiased hiring system. The fact that he had given notice to his former employer meant that he was facing being unemployed as a result of Respondent’s actions. He testified that for someone whose work was his life, this was a very difficult time, marked by frequent panic attacks lasting several months. He became more withdrawn and uninterested in daily activities. Complainant ultimately sought medical attention and therapy and was prescribed medication for anxiety and depression. He testified that he now is generally able to manage his anxiety, but still sometimes experiences fear that he might be fired for any reason. It is apparent from Complainant’s records of therapy sessions that there existed other issues in his life that contributed to and compounded his emotional distress. Nonetheless, I am persuaded that he suffered significantly from Respondent’s rejection of him. Given his compelling and credible testimony, I find that Complainant is entitled to an award of \$35,000 in damages for emotional distress.

#### V. ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, Respondent is hereby Ordered:

- 1) To cease and desist from any acts of discrimination based upon national origin, ancestry or religion in its hiring practices.

- 2) To pay to Complainant, Jean Brune, the sum of \$35,000 in damages for emotional distress 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 until this Order is reduced to a court judgment and post-judgment interest begins to accrue.
- 3) To pay to Complainant, Jean Brune, the sum of \$3000 for back pay 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 until this Order is reduced to a court judgment and post-judgment interest begins to accrue.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission pursuant to 804 CMR 1.23. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order. Pursuant to § 5 of G.L. c. 151B, Complainant may file a Petition for attorney's fees.

So Ordered this 22<sup>nd</sup> day of December, 2017.



Eugenia M. Guastaferrri  
Hearing Officer