COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. &
ELIZABETH CASONI,
Complainants

v. DOCKET NO. 06-BEM-00609

EDGEWATER KITCHEN
& BATH, INC., BLACKWOOD DEVELOPMENT CORP.,
RIDGEWOOD DEVELOPMENT CORP.,
RIDGEWOOD CUSTOM HOMES, INC.,
R.C.HOMES, INC., RIDGEWOOD REALTY,
RIDGEWOOD ARCHITECTURAL,
LAURIE DICKY & JOHN WEBBY
Respondents

Appearances:
Dan V. Bair, II, Esquire for Elizabeth Casoni
Laurie Dickey, pro se

I. PROCEDURAL HISTORY

On or about February 13, 2006, Elizabeth Casoni filed a Complainant against Respondents alleging that they were liable for the acts of unlawful sexual harassment perpetrated by General Manager John Webby in violation of M.G.L.c.151B§1 and 16. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on June 26, 2012. Mr. Webby failed to appear at the public hearing and a default against him was entered on the record. Respondent, Laurie Dickey, a principal of the corporate Respondents, appeared pro se at the public hearing.

After careful consideration of the record before me and the post-hearing submission of Complainant, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. On July 19, 2004, Complainant Elizabeth Casoni was hired by Edgewater Kitchen and Bath for the position of kitchen designer and salesperson. Complainant's annual salary was $39,000 plus commissions and benefits. Complainant worked in that position until April 27, 2005.

2. Complainant's duties were to meet and greet showroom customers, demonstrate kitchen and bath product lines to customers, and to assist them in designing custom kitchens and baths. She also ordered products, and was involved in the shipping and receiving and installation of kitchens. Complainant also made cold calls to contractors and solicited contractors for kitchen and bath installation as part of her position. In addition, Complainant attended regular monthly contractor meetings with Laurie Dickey and John Webby that were held outside the office. The purpose of such meetings was to network with home building contractors in order to increase sales.

3. Respondent Edgewater Kitchen and Bath was located in Sagamore Beach, MA and was owned by Laurie Dickey and William Dickey. The Dickeys also owned Ridgewood Custom Homes, a construction company that had been in existence for 10 years. Laurie Dickey appeared and testified on her own behalf, stating that all of the corporate Respondents are defunct and no longer operating.

4. At the time of Complainant's hire, the Dickeys were starting several other small companies, including Edgewater Kitchen and Bath, Ridgewood Excavation and Bennington Floors, which "supported" Ridgewood Custom Homes. Laurie Dickey described Ridgewood Custom Homes alternatively as a separate entity that was connected to the other companies or a

large company composed of smaller companies. Laurie Dickey paid herself a salary from Ridgewood Excavation.

5. Laurie Dickey testified that customers of Ridgewood Custom Homes were referred to Edgewater Kitchen and Bath for their design services as part of its packages, to Bennington Floors for flooring and to Ridgewood Excavation for excavation of the building site.

6. Complainant testified that Laurie and William Dickey were in the process of divorcing and that during her tenure she had very little interaction with William Dickey who was rarely in the office. Laurie Dickey testified to the contrary that William Dickey was actively involved in the day-to-day operations of the company and attended meetings. I credit Complainant's testimony that she had little interaction with William Dickey.

7. Edgewater Kitchen and Bath was formed on May 12, 2004. Laurie Dickey testified that Edgewater Kitchen and Bath ceased operations sometime in 2005 or 2006 and was dissolved on June 18, 2012 (Ex. C-3; testimony of Laurie Dickey). Bennington Floors was formed on May 24, 2004. (Ex. C-4; testimony of Laurie Dickey) Ridgewood Development Corporation was formed on September, 8, 2004 and was dissolved on June 18, 2012. (Ex. C-5; testimony of Laurie Dickey)[1]

8. Complainant's direct supervisor was Mary Kay Roughneen, the showroom manager. Roughneen had been hired in April 2004 as the general manager of Edgewater Kitchen and Bath. Roughneen testified that she was first paid by Ridgewood Custom Homes, a d/b/a/ for Edgewater Kitchen & Bath, until Edgewater Kitchen and Bath was established as a separate corporation in May or June 2004, at which point she was paid by Edgewater Kitchen and Bath. Roughneen supervised Complainant and a part-time employee, Barbara. She testified that John Webby was

[1] No documents regarding any of the other corporate Respondents were offered into evidence.

hired in June or July 2004 as a supervisor to monitor the new homes Respondents were building and he then became the general manager of all Respondents' companies.

9. Complainant testified that Roughneen reported to John Webby, who was the overall manager of all the companies owned by the Dickies, including Ridgewood Custom Homes, Bennington Floors, Ridgewood Realty and Edgewater Kitchen and Bath. Complainant interacted with Webby on a regular basis. Laurie Dickey testified that Webby was originally hired as a manager within Ridgewood Custom Homes. Dickey confirmed that he was later appointed general manager of all of the Companies owned by the Dickies, including Ridgewood Custom Homes, and he interacted regularly with the employees of Edgewater Kitchen and Bath. Dickey claimed that Complainant and Roughneen reported to her and her husband and denied that Webby was Complainant's supervisor. While I credit Dickey's testimony to the extent that she was a supervisor of Complainant and Roughneen, I also credit Complainant's testimony that as supervisor of all of the Dickeys' companies, Webby was a supervisor of Complainant as well.

10. When Complainant commenced her employment, she worked in an open office with cubicles and a waiting room with a couch. Webby shared this space with Complainant, Roughneen and others. A larger building that was to house all of Respondent companies, including Edgewater Kitchen and Bath, was under construction in Sagamore Beach.

11. Complainant testified that almost immediately after she was hired, Webby began to make offensive and inappropriate comments to her. When they worked out of the old office, Webby would lie on the waiting room couch, grab his crotch, make gyrations simulating sexual intercourse and would remark, "Do you want some Lebanese in you?" and "You know I'm going to do you one of these days." This type of conduct happened on a regular basis. Roughneen corroborated Complainant's testimony about one such incident and testified that she and

Complainant were appalled by this conduct. Roughneen covered her eyes and indicated to Webby that she wanted him to stop. I credit Complainant's testimony that Webby behaved in this fashion regularly.

12. Complainant stated that Webby would walk around the office opening and closing his fingers in a pinching manner and remark to her, "Let me pinch your nipples. You know you like it." Roughneen corroborated Complainant's testimony that Webby would make pinching motions to her while stating that he wanted to squeeze her breasts. In the morning Webby would ask Complainant, "Did you get laid last night?" and "How many times did you come?" I credit Complainant and Roughneen's testimony that Webby made these remarks.

13. Roughneen testified soon after he was hired, Webby began making offensive comments and noises to her. He would lick his lips and make comments such as "mmm" and was very "creepy." Once, when the two of them had just left a client's home and were driving back to the office, Webby told Roughneen that he was going to "do her" someday. She protested Webby's offensive comments to her and Complainant. She testified that after that, Webby gave her the cold shoulder. Roughneen stated that after a while, the tension between her and Webby became so unbearable that in an attempt to call a truce, she and Webby went out for a drink and she asked him why he was not talking to her. Webby denied ignoring her and said he had no problems with her. After that, they tried to make the office atmosphere a little lighter, and things improved for a while, but after a time, Webby's comments started up again.

14. Roughneen stated that she is certain Laurie Dickey was aware of Webby's behavior because it was a small company and everyone knew about it. Roughneen testified that while several employees were dancing at the Christmas party, Webby grabbed her buttocks.

Roughneen never complained to Dickey about Webby's conduct and she did not witness any further comments by Webby to Complainant.

15. Laurie Dickey terminated Roughneen's employment in late March 2005. Roughneen filed an MCAD complaint alleging sexual harassment by Webby shortly after her termination. After a public hearing that matter was decided in Roughneen's favor with respect to her sexual harassment claim only. She did not prevail on her claim of retaliatory discharge. The matter is on appeal to the Full Commission.

16. Complainant testified that following Mary Kay Roughneen's termination in March 2005, Webby's sexually offensive conduct toward her intensified.

17. The new building at Sagamore Beach was configured as three connecting townhouses, with Ridgewood Custom Homes occupying the entire right-hand side. Edgewater Kitchen and Bath, Bennington Floors and Ridgewood Realty occupied the other buildings which could be accessed by inner doors.

18. Complainant stated that after moving into the new office space, Webby would come into the showroom and say to her, "Let me take you downstairs so you can suck me off. It will only take a minute." I credit her testimony.

19. Complainant testified that at a birthday party held at the showroom, Webby stated in the presence of staff, including Laurie Dickey, "You know how you get it up? You stick your thumb up your ass real hard." According to Complainant, Laurie Dickey giggled at this remark and told Webby to "knock it off." After Webby's remark, Complainant observed looks of disgust on people's faces and one co-worker, Barbara, left the room offended. I credit Complainant's testimony about this incident. Laurie Dickey denied hearing Webby make the remark, but I do not credit her testimony.

20. Complainant testified that on another occasion she, Laurie Dickey and Webby were going upstairs to a meeting at Ridgewood Excavation, when Webby stated, "You girls go up the stairs first so I can watch your asses." Dickey and Complainant proceeded up the stairs and Webby followed them, remarking, "I'd love to do you both." According to Complainant, Laurie Dickey giggled at this remark. I credit Complainant's testimony. Laurie Dickey denied hearing Webby's remark, but I do not credit her testimony. At the meeting that included several women who worked at Ridgewood, Webby remarked that he was lucky to work with such beautiful women and would love to see them all naked in fur coats and heels. Complainant stated that everyone sat in stunned disbelief and Laurie Dickey did not react. I credit Complainant's testimony. Dickey denied hearing Webby make this comment, but I do not credit her testimony.

21. On one occasion, when Complainant was walking through the building to Ridgewood to discuss a business matter, Webby walked toward her and grabbed and pinched her breasts. Complainant pushed him away and told him to "knock it off," and Webby walked away. Complainant testified credibly that she felt violated and totally betrayed by Webby's conduct.

22. Complainant stated that after this incident, Webby would come into the showroom when she was working and lean over her. On these occasions she feared he was going to grab her and she felt physically ill. I credit her testimony.

23. Complainant testified that one morning before the showroom opened, as she talked with a co-worker, Webby grabbed her right breast and said to her, "I want to fuck you up the ass." She took his hand and pushed him away and told him to "knock it off." I credit her testimony that this incident occurred and that she indicated her displeasure.

24. On April 4, 2005, Complainant wrote a letter of complaint to the Dickeys, which she handed to Laurie Dickey that day. Complainant stated that she made a written complaint because Laurie Dickey had witnessed Webby's conduct and had done nothing to stop it. The letter stated:

> I have to tell [sic]that the comments and groping from John have crossed the line of sexual harassment. He has told me in front of other employees, "I would like to fuck you up the ass." Also, he has openly groped my breast and making [sic] motions of pinching my nipples. This has made it very uncomfortable to work over the past weeks. I have to tell you because it has to stop. I enjoy working for you and want to continue working for you, not under these circumstances. My biggest fear about making any complaint is that ramification of harassment in other ways. I believe that we work through this to put an end to it all for the betterment of all your Company's. I know that we can move forward from this and begin a new with a professional environment for all.
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> (Ex. C-1)

25. Laurie Dickey agreed to look into the matter and within days she talked to Webby about Complainant's assertions. Dickey stated that Webby told her he did not know why Complainant felt so uncomfortable but agreed to cease his behavior. Laurie Dickey testified that she and William Dickey investigated Complainant's complaint and determined that it was not valid. Notwithstanding, they took action to tighten up their sexual harassment policies. I do not credit her testimony.

26. Complainant testified that a few days after giving her letter to Dickey, Dickey told her that Webby would cease his behavior, but it had been "all in good fun." Complainant testified that she felt disgusted and violated and was appalled and demoralized that Webby had perceived his actions as humorous. Dickey did not question or take statements from anyone else regarding Complainant's assertions of Webby's inappropriate behavior in the workplace. Dickey testified that Complainant had an outgoing personality and was easy to get along with. She stated that Complainant flirted with the contractors and Webby and often complimented Webby on his beautiful eyes. Dickey stated that the flirtation was not offensive or inappropriate. I

credit Dickey's testimony that Complainant was flirtatious. However, I find that she did not invite or welcome Webby's offensive conduct or touching. Dickey also denied ever witnessing Webby engage in any of the sexually offensive behavior testified to by Complaint and Roughneen. She stated that he never did or said anything inappropriate in her presence and would not do so because she was his boss. I do not credit her testimony that Webby did nothing inappropriate in her presence.

27. Complainant testified that on or about April 11, 2005, Webby asked her to go out to lunch with him. She agreed because she viewed his invitation as a chance to make amends and "move forward" for the benefit of workplace morale. However, at the restaurant, Webby never mentioned his prior conduct or her complaint and instead of discussing the matter, as Complainant had hoped they would, they instead watched the televised ceremony of the Red Sox receiving their World Series rings.

28. Complainant testified that in the three weeks following her complaint about Webby, she was black-balled in the workplace. She was not included in outside contractor meetings or internal meetings at Ridgewood Custom Homes. Complainant had attended the monthly contractor's meeting for the previous nine months, but during the same time period, Laurie Dickey took Joanne O'Keefe to a monthly contractor's meeting instead of her. Complainant was ignored by her co-workers and felt invisible. When she tried to talk to Laurie Dickey, Dickey was dismissive and short with her, and Webby did not speak to her. Her work duties were transferred but she doesn't recall to whom. She stated that she was given no new clients and received no referrals through Ridgewood Custom Homes. She acknowledged that all of her referrals came through Ridgewood Custom Homes, and if no customers came to Ridgewood Custom Homes during that time, she would get no referrals.

29. Laurie Dickey denied that Complainant was shunned or that she ever ignored Complainant. Dickey testified that following Roughneen's termination, Joanne O'Keefe was hired as the showroom manager and Complainant's direct supervisor. Laurie Dickey testified that she took Joanne O'Keefe to the meeting instead of Complainant because Complainant and Webby were not getting along and because of O'Keefe's new position. Complainant testified that she was never told that O'Keefe had become her manager and believed O'Keefe to be the Dickeys' nanny, a job O'Keefe had held in the past.

30. Complainant testified that as a result of the hostile work environment and her isolation she felt physically ill. Her hair was falling out, she was breaking out in hives, and she was nauseous and had intestinal problems. She felt physically sick at the thought of going to work. I credit her testimony.

31. On April 27, 2005, Complainant wrote a letter of resignation to the Dickeys, stating that she was leaving because she was being ignored at work and not invited the monthly builders' meeting. She believed that she was being ostracized as a direct result of the complaint she made against Webby and could no longer tolerate the stressful conditions in the workplace. (Ex. C-2)

32. That same day, Complainant filed a criminal complaint against Webby for indecent assault and battery. The matter went to trial and resulted in a mistrial. After a second trial, Webby was found not guilty.

33. Three weeks after her resignation, Complainant obtained employment in the kitchen design field, earning more than she earned at Respondents. After a year in that position, she worked as a freelance designer for about six months. Complainant then left the kitchen design field, earned a degree in criminal justice and worked briefly as a reserve police officer.

Complainant testified that she is doing "great." She currently works for the Massachusetts Lobstermen's Association, where she has a great job and is very happy. I credit her testimony.

34. Complainant testified that although she loved designing kitchens and still sometimes misses doing kitchen design work, she ultimately left the field because aspects of the business reminded her of the feelings of being violated, demoralized and demeaned by Webby. She testified that to this date whenever she sees a car similar to Laurie Dickey's or Webby's she feels sick to her stomach. I credit her testimony.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

G.L. c. 151B, s. 4 (1) prohibits discrimination in the workplace on the basis of sex. Sexual harassment is a form of sex discrimination actionable under G.L. s. 4 (1) and (16). See Collegetown, Division of Interco, Inc. v. MCAD, 400 Mass.156 (1987) M.G.L. c. 151B, s. 4(16A) prohibits sexual harassment in employment. 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, humiliating or sexually offensive work environment. See, College-town, supra. To establish a claim of sexual harassment constituting a hostile work environment, complainant must show that: (1) she was subjected to sexually demeaning conduct; (2) the conduct was unwelcome; (3) the conduct was subjectively and objectively offensive; (4) the conduct was sufficiently severe or pervasive as to

alter the conditions of her employment and create an abusive work environment; and (5) her employer knew or should have known of the harassment and failed to take prompt and effective remedial action. College-Town, supra., at 162; Ramsdell v. Western Mass. Bus Lines, Inc., 415 Mass 673, 678 (1993)

Complainant alleges that manager John Webby subjected her to a hostile work environment by engaging in unwelcome and conduct of a sexual nature, such as sexually explicit comments, crude requests for sexual favors and grabbing her breasts and buttocks. I credit Complainant's testimony that Webby engaged in sexually explicit behavior and find that his actions were unwelcome, severe and pervasive. College-Town, supra., at 162. Webby's repeated crude comments, requests for sexual favors, and his touching of Complainant's breasts and buttocks occurred frequently during the course of Complainant's employment and she protested Webby's behavior. His conduct caused her to feel so uncomfortable that she complained to the company owner and was subsequently ostracized and felt compelled to resign. I conclude that John Webby's conduct was egregious sexual harassment that created a hostile work environment for Complainant.

As General Manager of the various companies doing business under the rubric of, or related to, Ridgewood Custom Homes, Inc., Webby was a high level manager. As such, he was given substantial authority over his subordinates in all the related business entities operating in concert with or under the rubric of Ridgewood Custom Homes. "It is the authority conferred upon a supervisor by the employer that makes the supervisor particularly able to force subordinates to submit to sexual harassment." College-Town, supra. at 166. Complainant has testified that while she was hired by Ridgewood Custom Homes, she began being paid by Edgewater Kitchen and Bath, Inc. when the business was incorporated. All of Complainant's

clients were referred to Edgewater by Ridgewood Custom Homes, the entity which built custom homes. Ridgewood Custom Homes also referred clients to its other related companies for excavation, flooring and other architectural, design and construction related matters. Given that Webby was the General Manager of all the named business entities and the significant relationship among all these companies, including their shared ownership, location, shared employees, joint meetings and the shared customers, I find the named Respondents vicariously liable for Webby's actions. See id. at 167. The named business Respondents are therefore liable for violations of G.L.c. 151B ss. 4(1) and (16A).

B. Retaliation

In order to establish a prima facie case of retaliation, Complainant must show that she engaged in protected activity, that Respondents were aware of the protected activity, that Respondents subjected her to an adverse action and that a causal connection existed between the protected activity and the adverse action. Mole v. University of Massachusetts, 58 Mass.App.Ct. 29, 41(2003). In the absence of any direct evidence of retaliatory motive, as in this case, the Commission follows the three-part burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 972 (1973). Abramian v. President & Fellows of Harvard College, 432 Mass 107,116 (2000); Wynn & Wynn v. MCAD, 431 Mass 655, 665-666 (2000). Once Complainant has established a prima facie case of retaliation, the burden of production shifts to Respondent to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason for its actions. Abramian, 432 Mass at 116-117; Wynn & Wynn, 431 Mass. at 665. If Respondent meets this burden, then Complainant must show by a preponderance of the evidence that Respondent acted with retaliatory intent, motive or state of mind. Lipchitz v. Raytheon Company, 434 Mass 493, 504 (2001); see, Abramian, 432 Mass at

117. Complainant may meet this burden through circumstantial evidence including proof that "one or more of the reasons advanced by the employer for making the adverse decision is false." Lipchitz, 434 Mass at 504. However, Complainant retains the ultimate burden of proving that Respondent's adverse action was the result of retaliatory animus. Id.; Abramian, 432 Mass at 117.

For purposes of M. G. L. c. 151B, s. 4 (4), a plaintiff has engaged in protected activity if "he has opposed any practices forbidden under this chapter or . . . has filed a complaint, testified or assisted in any proceeding under [G. L. c. 151B, s. 5]." While proximity in time is a factor, "...the mere fact that one event followed another is not sufficient to make out a causal link." MacCormack v. Boston Edison Co., 423 Mass. 652, 662 n.11 (1996), citing Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996). That Respondents knew of a discrimination claim and thereafter took some adverse action against the complainant does not, by itself, establish causation, however, timing may be a significant factor in establishing causation. In this case, Complainant made an internal complaint to Respondents' owner regarding the offensive conduct by Webby resulting in a sexually charged atmosphere in her workplace. Complainant engaged in protected activity when she wrote to the Dickeys complaining of Webby's harassment. The fact that Complainant was ostracized and had some of her duties removed shortly after she made a written internal complaint of sexual harassment is sufficient to establish a causal link between Complainant's complaint of a hostile work environment and Respondents' subsequent adverse treatment of her. I did not credit Dickey's explanation for the change in Complainant's duties and the reason she was no longer invited to contractor's meetings and internal company meetings. I conclude that Complainant has

established sufficient proof of unlawful retaliation by Respondents in violation of M.G.L.c.151B §4(4).

C. Constructive Discharge

In order to establish a 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 following Complainant's written complaint about Webby's sexually harassing behavior, she was ostracized by Webby, Laurie Dickey and others in the workplace, and was not invited to a monthly contractor's meeting, something that had been part of her regular duties throughout her employment. Since her complaint to the company owner resulted in isolation and reduced job duties, and where it was clear from Dickey's response that she and Webby considered his offensive conduct as innocent flirtation that was "all in good fun," I conclude that Complainant had no reasonable expectation that her working conditions would improve. I conclude that Respondent's actions following her complaint would have compelled any reasonable woman in Complainant's position to resign. There is sufficient evidence that Respondents engaged in unlawful sexual harassment and caused Complainant to be constructively discharged from her employment in violation of MGL c. 151B.

D. Individual Liability

In order to hold Webby individually liable for discrimination where there is direct evidence, Complainant must show that, as the perpetrator of the harassment, he was a supervisor

with direct control over her employment who acted in deliberate disregard of her rights. Woodason v. Town of Norton, 25 MDLR 62, (2003) Complainant has proven that John Webby should be held individually liable for the acts of sexual harassment that he perpetrated against her pursuant to G.L.c. 151B s. 4(4A), which prohibits any person from intimidating or interfering with ones rights protected under the statute, including the right to be free of sexual harassment in the workplace. I also find that Laurie Dickey, as the employer and in her individual capacity, condoned Webby's inappropriate and offensive sexual comments and conduct in the workplace. Her inaction in the face of Webby's offensive behavior permitted and condoned the perpetration of an abusive and sexually hostile work environment for Complainant and acted as an aider and abettor pursuant to G.L. c. 151B s. 4(5). As a principal owner of the named business entities Dickey had the authority and the obligation to act to ensure that such conduct ceased. Thus, Dickey is individually liable, as an aider and abettor, for her actions in condoning and sanctioning conduct that led to a sexually charged work environment. See Beaupre v. Smith & Assocs. et al., 50 Mass. App. Ct. 480 (2000) (president of company found individually liable for harassment as aider and abettor); MCAD & Roughneen v. Bennington Floors, et al., 32 MDLR 197 (2010) I conclude that Dickey is liable for violation of section 4(5) of the statute.

Therefore, I find the above named corporate Respondents liable for violations of G.L. c. 151B s. 4(1) and (16A). Laurie Dickey is also liable for violations of s. 4(5). John Webby is liable for violations of s. 4(4A). All Respondents are jointly and severally liable for damages arising from their violations of c. 151B.

IV. REMEDY

Upon a finding of discrimination, the Commission is authorized to award remedies to make the Complainant whole, and to ensure compliance with the anti-discrimination statute. G.L.c. 151B s. 5; Stonehill College v. MCAD, 441 Mass. 549, 576 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172 (1988). The Commission may award monetary damages for, among other things, lost compensation and benefits, lost future earnings, and emotional distress suffered as a direct and probable consequence of the unlawful discrimination.

Complainant is entitled to damages for emotional distress she suffered from being subjected to a sexually hostile work environment, for having to endure Webby's egregious and offensive behavior over a period of time, and for being treated adversely and constructively discharged after she complained of the harassment. Complainant's claim for emotional distress need not be based on expert testimony and may be supported by her credible testimony as to the cause of the distress. Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. Stonehill, supra. at 576. An award must rest on substantial evidence that the distress is causally connected to the unlawful act of discrimination and should consider the nature and character of the alleged harm, the severity of the harm, the length of time Complainant has or expects to suffer and whether Complainant has attempted to mitigate the harm. Id. Complainant testified credibly that she found Webby's behavior to be abusive and offensive and that she protested his conduct by pushing him away. She stated that after she complained in writing to company owners, Laurie and William Dickey, she was ostracized by Webby and Laurie Dickey. Complainant testified that she broke out in a rash, lost hair, felt nauseous and had stomach problems resulting from Webby's conduct and for the retaliation for protesting such conduct. After leaving she felt unable to continue working in the

field of kitchen design because aspects of the business continued to remind her of the hostile environment at Respondents. Notwithstanding the above, I infer from Complainant's confident and unruffled demeanor at the public hearing that, while Webby's conduct was unwelcome and offensive to her, she was not intimidated by such conduct, nor was she devastated by the events at Respondents. Her distress was of short duration, she obtained employment immediately, earned a college degree and she is thriving at her current position. I therefore find that Complainant suffered emotional distress as a result of Webby's harassment and is entitled to damages for the harm she suffered as a direct result of Respondents' discriminatory acts and I conclude that an award in the amount of $35,000 is appropriate compensation for the emotional distress she suffered.

Since Complainant found subsequent employment relatively quickly at a salary greater than what she was earning at Respondents, she is not seeking compensation for lost wages.

V. CIVIL PENALTY

Under M.G.L.c.151B§5, the Commission is authorized to assess civil penalties for egregious violations of the statute. I conclude that the imposition of a civil penalty in the amount of $10,000 is warranted against John Webby for his egregious conduct constituting sexual harassment.

VI. ORDER

Based upon the above 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 engaging in unlawful sexual harassment.

2. Respondents pay to Complainant the sum of $35,000.00 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. Respondent John Webby pay to the Commonwealth of Massachusetts the sum of $10,000.00 as a civil penalty.

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 30th day of November 2012

Judith E. Kaplan

JUDITH E. KAPLAN
Hearing Officer