

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
MELINDA E. CLARK,
Complainants,

v.

DOCKET NO. 11-NPH-03146

NEW BEDFORD HOUSING AUTHORITY,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty Waxman, dismissing Complainant’s claim of housing discrimination on the basis of handicap pursuant to M.G.L. c. 151B, §§ 4(6) and 4(7A). Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discriminating against Complainant when it denied her request to keep her pet snake in her apartment as an emotional support animal. Complainant has appealed to the Full Commission. For the reasons stated below, we affirm the Hearing Officer’s decision.

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 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. MCAD, 365 Mass. 357, 365 (1974); M.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. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). Fact-finding determinations are within the sole province of the Hearing Officer who is in the best position to judge the credibility of witnesses. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); MCAD and Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). The role of the Full Commission is to determine whether the decision under appeal was based on an error of law, or whether the decision was arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. See 804 CMR 1.23.

BASIS OF THE APPEAL

Complainant makes a number of arguments on appeal to the Full Commission. Specifically, Complainant asserts that the Hearing Officer erred by: (1) improperly concluding that permitting Complainant to maintain her pet snake despite a no snakes policy was not a reasonable accommodation; (2) making findings of fact that are not supported by substantial evidence and failing to give proper weight to certain evidence; (3) improperly relying on the federal Americans with Disabilities Act (ADA); (4) improperly concluding that Respondent engaged in the interactive process with Complainant regarding her request for an accommodation; and (5) suggesting at the hearing that a snake could never be an acceptable companion animal. After careful review 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 that are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42. 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).

Complainant claims that the Hearing Officer erred in finding that Complainant's snake was not a reasonable accommodation. Specifically, Complainant argues that the Hearing Officer improperly concluded that the benefits of Complainant keeping a snake in her residence were outweighed by the undue hardship on Respondent. We agree with the Hearing Officer's determination that Complainant's request to keep her snake in her apartment was not a reasonable accommodation.

In order to establish a prima facie case of housing discrimination on the basis of disability a complainant must establish that (1) she has a handicap; (2) Respondent was aware of the handicap or could have reasonably been aware of it; (3) the accommodation sought is reasonably necessary to afford complainant an equal opportunity to use or enjoy the premises; and (4) Respondent refused to make the accommodation. Kacavich v. Halcyon Condominium Trust, 30 MDLR 109 (2008). "A 'reasonable accommodation' is one which would not impose an undue hardship or burden on the entity making the accommodation." Peabody Properties, Inc. v. Sherman, 418 Mass. 603, 608 (1994). Determining whether an accommodation is reasonable involves balancing the overall costs and anticipated benefits of the proposed accommodation. See Whittier Terrace Associates v. Hampshire, 26 Mass. App. Ct. 1020, (1989).

The Hearing Officer accepted that Complainant was disabled based on her doctor's testimony that she suffered from "Major Depressive Disorder, severe and psychotic features, and Anxiety Disorder" for purposes of her analysis. The Hearing Officer recognized that Respondent

was made aware of Complainant's disability when she asked the Respondent to allow her to keep her snake in her apartment as a reasonable accommodation. The Hearing Officer credited the written opinion of Complainant's doctor that the removal of the pet snake might worsen Complainant's anxiety and allowing her to retain the snake as a pet would "alleviate her anxiety." However, the Hearing Officer also credited Respondent's witness's testimony that he was told by Complainant's doctor that it would be "speculative" to comment on the particular benefits that the snake provides to Complainant. The Hearing Officer also found that Complainant experienced mental health issues requiring inpatient emergency treatment even with the snake's presence. The Hearing Officer correctly balanced the speculative benefits that the snake provides to the Complainant with the undue hardship on Respondent associated with allowing Complainant to keep the snake in her apartment.

The Hearing Officer credited Respondent's witness's testimony regarding the snake's potential harm to other residents, because it could get loose and harm other residents, especially small children, it could carry salmonella, ticks and mites, which undermines Respondent's efforts to keep the development in a sanitary condition. Complainant acknowledged that she takes her snake out of its container for baths, for exercise, for freedom, for shedding, to feed it dead rats, and to permit it to play in the grass in front of a nearby bowling alley. The Hearing Officer did not err in concluding that, on a balance, it would have been an undue hardship on Respondent to grant Complainant's request to keep her pet snake in her apartment as an accommodation due to the public health and safety risks to Respondent and its other tenants.

Complainant argues that the Hearing Officer erred by making findings of fact that are not supported by substantial evidence, failing to give proper weight to the evidence, and failing to credit the testimony of specific witnesses. This argument is unpersuasive and ignores our

standard of review. Absent an abuse of discretion, error of law, or a determination that the decision was arbitrary or capricious, the Full Commission defers to the Hearing Officer's credibility determinations and findings of fact. School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007 at 1011. We will not disturb the Hearing Officer's findings of fact, where, as here, they are fully supported by the record.

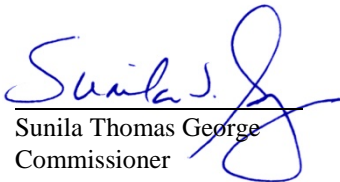
Complainant argues that the Hearing Officer erroneously relied on the definition of service animal provided by the American with Disabilities Act (ADA) when analyzing whether Complainant's snake contributed to Complainant's use and enjoyment of her residence. Complainant asserts that she sought an accommodation to keep her snake in her residence as a "companion animal" and not a service animal. While Complainant correctly asserts that the ADA standard does not apply to her request to keep her snake as a companion animal, we find no error in the Hearing Officer's analysis which merely referenced the ADA in a footnote, but did not rely on the ADA's standard.


Complainant's remaining arguments do not warrant reversal of the Hearing Officer's decision. The Hearing Officer did not suggest at the hearing that a snake could never be an acceptable companion animal; instead, she correctly determined, given the facts of this case, that Complainant's requested accommodation was unreasonable. Further, the Hearing Officer did not err in finding that Respondent engaged in an interactive process with Complainant. The Hearing Officer specifically found that Respondent contacted Complainant's doctor to seek written and verbal input about Complainant's accommodation request and met with Complainant several times to discuss the reasons for her requested accommodation. We see no reason to disturb the Hearing Officer's decision.


ORDER

We hereby affirm the decision of the Hearing Officer. This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing 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 11th day of February, 2019.


Sunila Thomas George
Commissioner


Sheila A. Hubbard
Commissioner


Monserrate Quiñones
Commissioner