

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
MARILDA COLON,
Complainants

v.

DOCKET NO. 09-BEM-03013

EAST BOSTON
SAVINGS BANK,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty E. Waxman in favor of Complainant Marilda Colon. Following an evidentiary hearing, the Hearing Officer concluded that East Boston Saving Bank was liable for discrimination based on national origin in violation of M.G.L. Chapter 151B § 4 (¶1). Respondent appealed the decision of the Hearing Officer to the Full Commission.

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); School Committee of Norton v. MCAD, 63 Mass. App. Ct. 839 (2005). The Full Commission’s role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.23.

BASIS OF THE APPEAL

Respondent has appealed the decision on grounds which include that a sentence in one of the Hearing Officer’s finding of fact¹ that “Complainant’s mother knew Torres from Torres’s former assignment at the Everett branch” was incorrect. Even assuming, arguendo, that this single sentence was incorrect, the misstatement does not constitute a reversible error and a review of the record and the decision, reveals that the Hearing Officer’s decision remains supported by substantial evidence. Respondent also generally appeals the Hearing Officer’s conclusions of law, by inserting its own interpretation of the evidence before the Hearing Officer. Since the Hearing Officer is charged with weighing the evidence and evaluating credibility of witnesses, Respondent’s interpretation of the testimony and evidence, while it may differ, essentially challenges the Hearing Officer’s credibility determinations and does not merit reversal of the decision, absent error of law, abuse of discretion, or substantial evidence to

¹ Hearing Decision, Finding of Fact, ¶32.

support the Hearing Officer's findings.

We have carefully reviewed Respondent's grounds for appeal and the record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. We find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them. With regard to challenges to the Hearing Officer's determinations of credibility, we reiterate that it is well established that the Commission defers to these determinations, which are the sole province of the fact finder. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). Our review, also reveals no material errors of fact or law with respect to the Hearing Officer's findings and conclusions.

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision.

REQUEST FOR ATTORNEY'S FEES and COSTS

Complainant's attorney's affidavit of March 24, 2014 sought \$47,950 in fees and \$1,874 in costs. The affidavit indicates that he expended 137 hours in prosecution of the case, and at his usual hourly fee of \$350, supports an award of \$47,950. The affidavit also provides support for \$1,874 in expenses. Respondent and Complainant stipulated to Complainant's Attorney's Fees and Costs on October 29, 2014,² agreeing that the fees and costs to be awarded amounted to \$35,000 and to \$2,000 in the event Complainant prevailed.

M.G.L. 151B allows prevailing complainants to recover reasonable attorney's fees for the claims on which Complainant prevailed. The determination of whether a fee sought is reasonable is subject to the Commission's discretion and includes such factors as the time and

² Stipulation of the Parties as to Reasonable Attorney Fees and Costs filed with the Commission October 31, 2014.

resources required to litigate a claim of discrimination in the administrative forum. The Commission has adopted the lodestar methodology for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by an hourly rate it deems reasonable. The Commission then examines the resulting figure, known as the “lodestar,” and adjusts it either upward or downward or determines that no adjustment is warranted depending on various factors, including complexity of the matter.

The Commission has reviewed the Complainant’s affidavit filed in support of the request for attorneys’ fees and costs. We conclude that the tasks performed are sufficiently documented to support the stipulated fee agreement amounting to 100 hours of time spent on preparation and litigation of this claim. The affidavit provides no evidence that the hours spent were duplicative, unproductive, excessive or otherwise unnecessary to successful completion of the individual task or the overall prosecution of the claim.

Counsel seeks reimbursement at the hourly rate of \$350.00, a rate which is fully consistent with the rates customarily charged by attorneys with comparable experience and expertise in such cases and is well within the range of rates charged by attorneys practicing employment law within in the area.

We therefore conclude that the total amount of fees and costs sought by Counsel pursuant to Stipulation of the Parties is appropriate and hereby award fees in the amount of \$35,000.00 and costs in the amount of \$2,000.00.

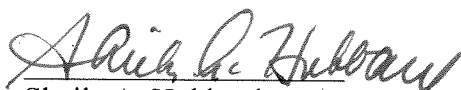
ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer in its entirety and issue the following Order:

- (1) Respondent shall cease and desist from all acts of discrimination;
- (2) Respondent shall pay Complainant \$97,528.38 in lost income and out-of-pocket costs of \$2,200.00 for moving expenses, with interest at the rate of twelve per cent per annum. Said interest shall commence on the date that the complaint was filed and continue until paid or until this order is reduced to a court judgment and post-judgment interest begins to accrue;
- (3) Respondent shall pay Complainant the sum of \$50,000.00 in emotional distress damages with interest at the rate of twelve per cent per annum. Said interest shall commence on the date that the complaint was filed and continue until paid or until this order is reduced to a court judgment and post-judgment interest begins to accrue;
- (4) Respondent shall conduct, within one hundred twenty (120) days of the receipt of this decision, a training of Respondent's managers and supervisors. Such training shall focus on discrimination based on race, color and national origin. Respondent shall use a trainer provided by the Massachusetts Commission Against Discrimination or a graduate of the MCAD's certified "Train the Trainer" course who shall submit a draft training agenda to the Commission's Director of Training at least one month prior to the training date, along with notice of the training date and location. The Commission has the right to send a representative to observe the training session. Following the training session, Respondent shall send to the Commission the names of persons who attended the training.
- (5) Respondent shall pay Complainant attorneys' fees and costs in the amount of \$37,000.00, with interest thereon at the rate of twelve per cent per annum from the date the petition for attorney's fees and costs was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

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 service of this decision and must be filed in accordance with M.G.L. c.30A, c.151B, §6, and Superior Court Standing Order 96-1. Failure to file a petition in court within thirty (30) days of service of this order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c.151B, §6.

SO ORDERED³ this 9th day of October, 2018



Sheila A. Hubbard
Commissioner



Monserrate Quiñones
Commissioner

³ Chairwoman Sunila Thomas George was the Investigating Commissioner in this matter, so did not take part in the Full Commission Decision. See 804 CMR 1.23(1)(c).