COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
DUANE DAYE,

Complainants

v. DOCKET NO. 13-WEM-00440

RTE. 2 HYUNDAI,

Respondent

Appearances: Justin M. Murphy, Esq. for Complainant
Ryan P. Smith, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On February 28, 2013, Complainant Duane Daye, filed a complaint of discrimination against his former employer, Respondent Rte. 2 Hyundai, alleging discrimination in employment based on his race and color and retaliation. Specifically, Complainant alleged that he was terminated from his employment because of his race and in retaliation for protected activity, i.e. complaining about racially inappropriate language. The Investigating Commissioner found Probable Cause to credit the allegations of the complaint and efforts at conciliation were unsuccessful. The matter was certified for hearing and a hearing was held before me on December 3 and 4, 2018. The parties filed post-hearing briefs on January 18, 2019. Having reviewed the record and the post-hearing submissions of the parties, I make the following Findings of Fact, Conclusions of Law and Order.

II. FINDINGS OF FACT

1. Complainant is an African American male who currently lives in Atlanta, GA. and works as a sales associate for Gravity Auto in Sandy Springs, GA. Complainant has had a successful career in auto sales for some 18 years, and is a very experienced sales person. He is the father of five children, four of whom attend college. (Complainant testimony)

2. Complainant was hired by Respondent as a car salesman on or about August 18, 2012. Complainant worked for Respondent for approximately six months. He enjoyed working there and, during his tenure, was a top sales performer. Complainant stated that he focused on good customer service and maintaining professional business ethics. He received no verbal or written warnings from Respondent prior to his termination on February 19, 2013. (Complainant testimony)

3. Respondent, Rt. 2 Hyundai, is an automobile dealership located in Leominster, MA. Respondent's Vice President and owner is Dilvo DiPlacido. His son Michael DiPlacido is also a co-owner. Respondent's General Manager is Michael Boccanfuso. Mr. Boccanfuso hired Complainant as a sales associate. Montague (Monte) Jones was the sales supervisor and was deceased as of the time of the hearing. Max Silvera was the Sales Manager. Susanne Pelletier was Respondent's Office Manager and her duties included human resource functions.

4. Complainant testified that Mr. Boccanfuso was in his mid-twenties at the time of the events at issue. According to Complainant, Boccanfuso was a weight lifter who could be aggressive and short-tempered. He testified that Boccanfuso suffered from "roid rage," presumably related to steroid use. Complainant witnessed Boccanfuso behave in a disrespectful and intimidating manner toward employees and swear at them. Complainant was sometimes an advocate for other employees who were treated badly by Boccanfuso when he felt Boccanfuso's

behavior was inappropriate. He encouraged these employees to be proud of their performance. He also counseled Boccanfuso not to behave in this manner and taught him a great deal about the car sales business. (Complainant's testimony, Boccanfuso testimony) Sales Manager, Silvera testified that he also witnessed Boccanfuso get angry at employees and use expletives. Complainant testified that except for occasional issues with Boccanfuso, he got along well with co-workers and managers and respected Respondent's owner for being a hard worker who was often out on the sales lot. He testified credibly that he bore Respondent's owner no ill will.

5. Complainant testified that at some point during his employment, an African American vendor who had business with Respondent heard two white technicians employed by Respondent make comments about joining a white supremacist group and going "coon hunting." The vendor relayed this to Complainant and complained to Respondent's management about the comments. Complainant testified that he followed up with Boccanfuso about the complaint and Boccanfuso responded that "he would handle it." At the hearing, Boccanfuso denied speaking to Complainant about this or being involved in it. Respondent's position statement asserted that a Puerto Rican technician commented that he was going hunting but denied the racially derogatory references. Mr. DiPlacido could not recall how he heard of the complaint, believed the vendor who complained to be Caucasian, and did not believe any derogatory, discriminatory or racist comments were made. He stated that he believed his questioning of the technicians constituted a verbal warning.

6. On February 18, 2013, Respondent took its sales team to an Asian restaurant for dinner to celebrate the previous year's successes. Persons present at the dinner included Complainant, Mr. DiPlacido, Mr. Boccanfuso, Ms. Pelletier, Mr. Jones, Max Silvera and Jermaine Phillips. (Complaint ¶ 2) Complainant testified that at the dinner he heard the Sales

Manager Monte Jones, who was also African American, use the word "nigger" in front of the other sales associates. Complainant told Mr. Jones to stop using the word because it was inappropriate and disrespectful and set a bad example. He stated that he did not make a "big deal out of it," and merely told Jones to "cool out." According to Complainant, Jones was a bit "tipsy," but he got the message and laughed. Respondent's owner Mr. DiPlacido was seated diagonally across from Complainant who believed him to be within earshot of the conversation. (Complainant ¶ 2) Complainant testified that Susan Pelletier and Boccanfuso were at the other end of the table and were unlikely to have heard his conversation. However, Boccanfuso testified that he heard Complainant tell Monte Jones to "chill out," but that no one was offended by the conversation and no one, including Susan Pelletier, complained to him. Boccanfuso also stated the Complainant does not use the "n-word." Pelletier testified that Complainant yelled at the waiter and that this made her uncomfortable and she relayed this to DePlacido the next day.

7. Respondent asserted that Complainant was rude to the wait staff, that he mocked an Asian waiter by imitating his accent, and made demands of the waiter that embarrassed other employees. At the hearing, Mr. DePlacido testified that he witnessed Complainant mocking the waiter and heard Complainant use the "n-word" all throughout the dinner. He stated that Pelletier told him the next morning that she was offended by Complainant's conduct and he agreed, but did not discuss this with Boccanfuso. This testimony was contradicted by Respondent's position statement, verified by Mr. DiPlacido, stating he did not hear the conversation nor did he hear Complainant use the derogatory word. (Position Statement p. 5 ¶5) It is also contradicted by Boccanfuso's testimony that he did not see Complainant mock the Asian waiter, that the waiters were funny and animated, and that Complainant was being funny and laughing. Complainant testified that many in the group were drinking and loud, but stated he

does not drink. Complainant denied mocking the waiter or having any inappropriate interaction with him, but merely asked the waiter not to reach over him and his food. (Complainant's testimony) He stated he did not make a scene and was not loud in his interaction with the waiter. Boccanfuso confirmed that Complainant did complain to a waiter about reaching in front of him. I credit Complainant's testimony that his behavior was not out of the ordinary, that he did not use the word "nigger," other than to counsel Mr. Jones not to say it, and that he did not behave inappropriately towards the waiter. Boccanfuso and DePlacido also denied at the hearing that Complainant's behavior at the dinner was a reason for his termination.

8. The following day, Respondent held a training program for its sales associates which Complainant attended. The third-party trainer, VinSolutions, which conducted the training on that date provides a software package to assist the car dealership business. Most of the sales team attended the training. Boccanfuso testified that he did not attend the entire training but was in and out. Complainant was terminated from his employment with Respondent by Boccanfuso on that day, February 19, 2013, ostensibly for disruptive, offensive behavior and being abusive to the third-party instructor during the training class.

9. Samantha Kelly, a marketing and social media manager at Respondent was present for the training session at issue and testified that she could not recall anyone being disruptive during the training or the trainer being concerned about disruptive behavior. (Kelly testimony) Another sales associate, Jermaine Phillips testified that he was present at the training and recalled Boccanfuso being present only at the beginning for introductions and then leaving. He testified that Complainant did not behave inappropriately during the training and he could not recall anyone, including the trainer, being upset during the class. (Phillips testimony)

Boccanfuso testified that the trainer expressed difficulty getting through the class and that Complainant was being disruptive. He testified that he could recall only that the trainer was generally frustrated and he probably told Complainant to "knock it off." Max Silvera the Sales Manager, who was present for the training testified that Complainant made it hard on the trainer by asking questions and trying to be funny, and that he had a conversation with the trainer and Boccanfuso about Complainant disrupting the training. Silvera disagreed with an email characterization from the trainer that Complainant was "using vulgar language and interrupting" him during the training.

10. During a break in the training, Boccanfuso approached Complainant and told other people to leave the room. According to Complainant, Boccanfuso said, " I always said I'd do this to your face," and then terminated Complainant's employment telling him that they had to "part ways." When Complainant asked why, he gave him no reason. Boccanfuso and Complainant stated that Max Silvera and Monte Jones were present as witnesses, but Silvera denied that he was present and testified that did not know why Complainant was terminated. Boccanfuso testified that he did not discuss or consult with Silvera or anyone else prior to the termination, and did not confirm Complainant's alleged disruptive behavior with other attendees, claiming he spoke only to the trainer.

11. Respondent's employment handbook provides for a progressive discipline policy, with disciplinary action that may call for any of four steps, including a verbal warning, written warning, suspension with or without pay, or termination of employment, depending on the severity of the circumstances and the number of occurrences. (Ex. R-1, p.41) Complainant had never been disciplined pursuant to this policy for any reason. There was evidence presented that no other employee with the exception of Complainant had ever been terminated by Boccanfuso

for insubordination. (Boccanfuso testimony) Others had been terminated for tardiness or performance related issues.

12. Boccanfuso admitted that his termination of Complainant was precipitous and that he acted in a fit of anger. At the hearing he was virtually apologetic about acting so impetuously. Silvera testified that he had witnessed Boccanfuso fire other employees in a fit of rage, but rehired them after cooling down. Complainant testified that upon being fired, he went to his desk, packed his stuff and left without issue. A few days later when he picked up his final pay check, Boccanfuso told him that the termination was "above his (Boccanfuso's) head," and said it was in the hands of the owners. Complainant also alleged in his complaint that Boccanfuso informed him during that discussion that Sue Pelletier was going to file a formal complainant against him for "dropping the N-bomb" at the associates dinner and for allegedly behaving badly with the waiter. At the hearing, Boccanfuso denied that events at the dinner the previous evening had anything to do with Complainant's termination. Complainant testified that Silvera told him afterwards that his termination for supposedly acting out at the dinner was all "BS." Respondent's position statement articulated Complainant's low customer satisfaction scores as another reason for the termination, but Boccanfuso testified that this was not accurate and that Complainant had glowing written reviews from customers.

13. After his termination, Complainant applied for unemployment compensation and his claim was contested by Respondent and denied. Pelletier testified that in her ten years of employment with Respondent she was unaware of any other occasion when Respondent contested a former employee's claim for unemployment compensation and was surprised to hear that Complainant's claim had been contested. Complainant appealed the denial at a hearing and was ultimately granted unemployment benefits. Complainant testified that the first time he heard

that he was terminated for being disruptive during the training was at the unemployment hearing. He asserted that the reasons advanced in a termination notice dated 2/19/13. i.e., that he was disciplined for disrespectful conduct in a sales class and that he had been warned on previous occasions were untrue. I credit his testimony that he had no previous warnings. He also stated that he never received a formal notice of termination and never saw this document at the time. (Complainant's testimony; Ex. C-1) Boccanfuso also testified that he had never seen the termination notice prior to the public hearing and was not involved in Complainant's unemployment matter.

14. For the first nine weeks of 2013 Complainant's wages from Respondent were $14,438.56. (Jt. Ex. 1; C-2) His weekly earnings during the first nine weeks of 2013 varied from a low of $561.59 to a high of $2941.19. These large fluctuations in weekly income are presumably due to his earning commissions on car sales in some weeks, which are difficult to predict. His average earnings per week for that period are $1604.29. Complainant worked at Muzzy Motors in Needham from May to July, 2013. In October of 2013 he began working at a Nissan dealership. His income from those periods of employment is undetermined. Complainant's tax returns for the year 2013 are not in the record and there is no information about the amount of his income from other sources of employment during that year, including the two months at Muzzy Motors and his job at a Nissan dealership later in the year. Given that he did receive some undetermined amount of income from May to July 2013, and collected unemployment for some period of time prior to October of 2013, when he again began working full time, I find that he is entitled to approximately four and one-half months or twenty weeks of back pay for part of February, and all of March, April, August and September, the months in

which he presumably was not employed. At an average salary of $1604.29 per week, his lost wages for the period of approximately twenty weeks is $32,085.80.

15. Complainant's tax returns show that in 2014, Complainant earned $54,562 and collected $14,938 in unemployment compensation for a total of $70,450. In 2015, he had earnings of $45,420, but there is no evidence as to the reason for the significant diminishment in earnings. In 2016 he had earnings of $79,833. In 2017 he had earnings of $64,248.90 and received unemployment compensation. (Jt. Ex. 1 & 1A) There is no record evidence regarding his 2018 earnings. Since there is scant evidence in the record about Complainant's subsequent employment from 2014 to 2018, it is undetermined what jobs he held when, or why he left subsequent jobs. The records in evidence indicate he received some unemployment compensation in 2014 and 2017, so he was clearly unemployed for some periods of time.

16. Complainant testified that his termination was very difficult and stressful for him financially because he had five children who he was helping to support whose lives were affected by the loss of income. He testified that he had many months of financial uncertainty while awaiting unemployment compensation. Having to contest his unemployment claim also caused Complainant a great deal of stress. When his claim was ultimately approved he received approximately $725 a week in unemployment compensation. He stated that the accusations of him making racist remarks or behaving in a racist manner toward an Asian waiter were untrue and "ate him up inside," emotionally. Complainant gave compelling testimony that his name and his reputation have always been good and that being terminated for false reasons caused him great concern about his reputation being smeared caused him a great deal of stress.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 151B s. 4(1) makes it an unlawful practice to refuse to hire or fire or discriminate in the terms and conditions of employment based upon an employee's race. Discrimination may include subjecting an employee to disparate treatment based on race. Complainant alleges that he was subjected to disparate treatment when his employment was terminated because of his race and in retaliation for his protected activity.

Absent direct evidence, claims of unlawful discrimination in employment generally rely on the three-stage analysis articulated in McDonnell-Douglas Corp. v. Green, 411 U.S. 972 (1973) adopted by the Supreme Judicial Court in Wheelock College v. MCAD, 371 Mass. 130 (1976). Complainant must first establish a prima facie case of discrimination which Respondent may rebut with a legitimate non-discriminatory reason. Complainant must then demonstrate that the reason articulated by Respondent is a pretext for discrimination, i.e. that discriminatory animus was the reason for the action. Lipchitz v. Raytheon Co., 434 Mass. 493, 502-504 (2001).

To establish a prima facie case of disparate treatment, Complainant must establish that he is (1) a member of a protected class; (2) that he was performing his job adequately; (3) that he suffered an adverse employment action, and (4) that similarly situated individuals not of his protected class were not treated in a like manner, giving rise to an inference of discrimination. Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000); Blare v. Husky Molding Systems, 419 Mass. 437 (1995). The initial burden of establishing a prima facie case is "not intended to be onerous." Trustees of Health and Hospitals of City of Boston, Inc. v. Massachusetts Comm'n Against Discrimination, 449 Mass. 675, 683 (2007)

The Complainant in this case has established a prima facie case. He is a member of a protected class by virtue of his race and he was performing his job acceptably. His employment

was terminated quite precipitously under circumstances that are suspect for a number of reasons that give rise to an inference of discrimination. He was the only employee terminated by Boccanfuso for insubordination and his unemployment claim was contested, contrary to Respondent's general policy.

Once Complainant has established a prima facie case, the burden of production shifts to Respondent to articulate a legitimate, non-discriminatory, reason for the termination, accompanied by some credible evidence that the reasons advanced were the real reasons. Abramian v. President and Fellows of Harvard College, 432 Mass. 107, 117 (2000) Blare v. Huskey Injection Molding Systems, Inc. 419 Mass. 437, 442 (1995)

Respondent denies that Complainant's behavior at the dinner was the reason for his termination, but the evidence seems to suggest that it might have been a factor. First, there is some suggestion that Complainant's purported inappropriate behavior at a dinner the night before his termination was at least part of the motivation for his termination. While Boccanfuso denied this, there was some evidence that others in management believed it to be true, as did Complainant. At the very least, Pelletier testified that she expressed her displeasure with Complainant's behavior to DePlacido and DePlacido testified that he witnessed bad behavior by Complainant at the dinner. Silvera seemed to suggest to Complainant after-the-fact that it was rumored to be the reason and that Silvera believed it to be nonsense. Notwithstanding, I credit Complainant's persuasive explanation, that another African American manager was using the "n-word" repeatedly at the dinner and that Complainant merely counseled him not to do so. I credit Complainant's explanation that he did not demean the waiter, but did complain about the waiter reaching over him. However, even if Complainant had engaged in questionable behavior, given the party atmosphere described, it hardly seems sufficient grounds for termination. This is

particularly true given his unblemished work record, lack of any discipline, and his top sales performance. It is also significant that management did not call upon Complainant to explain or address his behavior that evening.

Boccanfuso testified that he fired Complainant in a fit of anger for disrupting a sales training session the following day. However there is ample conflicting evidence that Complainant did not disrupt this meeting, but did ask questions of the trainer, and that no one was upset by this. Several employees present at the training denied or could not recall any such disruption and Boccanfuso was not present for most of the training. I found Complainant's testimony about his behavior in the training meeting to be credible. A purported written complaint from the trainer upon which Respondent is alleged to have relied was post-dated after Complainant's charge was filed and is not in evidence. Boccanfuso later told Complainant that the termination was "above his head," diluting his assertion that he made the decision to terminate Complainant. However, DePlacido testified that he relied on Boccanfuso's assertions that Complainant was disrespectful in a training session. Respondent's Position Statement also referred to Complainant's low customer satisfaction ratings as a reason for the termination, something both Complainant and Boccanfuso credibly denied. Contrary to DePlacido's testimony, Boccanfuso testified that Complainant received glowing reviews on-line from customers. Given these inconsistencies, I seriously question the credibility of Respondent's reasons for the termination and conclude that it has not met its burden at stage two to articulate a legitimate reason supported by credible evidence.

However, even if a reasonable fact finder were to find credible Respondent's assertions that Complainant behaved inappropriately at the dinner and disrupted the training session, there is sufficient evidence that these reasons, even if true, are a pretext for discrimination. If

Respondent articulates a legitimate non-discriminatory reason, at stage three, Complainant must show by a preponderance of the evidence that Respondent's articulated reasons were not the real reasons, but a cover-up for discriminatory motive. Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001)

The reasons Respondent offered for the termination in its Position Statement were contradicted by testimony at public hearing. Contradictory evidence can support a finding of discriminatory animus. Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 684 (2016) (pretext can be established showing weaknesses or implausibilities in the employer's offered reasons); City of Salem v. Mass. Comm'n Against Discrimination, 44 Mass. App. Ct. 627, 643 (1998) (proof of pretext may be shown when the employer's reasons for discharge contain "weaknesses, implausibilities, incoherencies, and contradictions.")

In this case, in addition to Respondent's version of events being marked by inconsistency and implausibility, there are other considerations that support a finding of pretext. Complainant was considered to be one of the top performers in sales at Respondent, made money for the dealership, and was respected for his success and experience in the industry. He testified credibly and there was no documentary evidence that he had ever been disciplined for performance or any other reason. I conclude that Respondent's failure to adhere to its progressive discipline policy is evidence of pretext. Deviation from normal management procedures can support a reasonable inference that the employer acted based on a protected class. Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1, 16 (1998); Bulwer v. Mount Auburn Hosp., 473 Mass. 672 (2016) (similarly-situated medical interns who were not black, experienced "similar issues" but unlike plaintiff, were not subject to immediate disciplinary action).

The inconsistent reasons for the termination, its precipitous nature and the failure to follow progressive discipline, all lead me to conclude that racial animus was at play in the termination. Complainant was a mature and successful business professional. He testified that his attempts to counsel Boccanfuso about Bocannfuso's excitable and unprofessional managerial behavior was a source of some tension between them. Boccanfuso had never fired another individual for insubordination, but there was testimony that he had impetuously fired others, and later changed his mind, something he did not do with Complainant. At the hearing, he appeared to almost regret the decision to terminate Complainant and admitted that it was impetuous. Complainant's status as a successful and accomplished black professional in the industry, and the considerable difference in age and experience between him and Boccanfuso, supports a reasonable inference that Boccanfuso bore some resentment towards him that can reasonably be attributed to racial animus. I conclude, based on the evidence and the reasonable inferences drawn therefrom, that Respondent's reasons for the termination are a pretext for discrimination and that it is liable for a violation of G. L. c. 151B s. 4(1).

I decline to conclude that Complainant's termination was in retaliation for his having reported alleged discriminatory comments by two of Respondent's technicians in the presence of a third-party vendor who was African American. There is no evidence about when this event occurred and Respondent asserted that Boccanfuso, who was the driving force behind Complainant's termination, had no involvement in that matter. There was insufficient evidence of any nexus between that event and Complainant's termination to support a claim of retaliation. I also decline to find that the termination resulted from Complainant's remonstrations to his manager Jones not to use racial epithets. Thus, I find no violation of G.L. c. 151B s. 4(4).

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. See G.L. c. 151B §5. This includes damages for lost wages and emotional distress. Stonehill College v. MCAD, 441 Mass 549 (2004).

Complainant is entitled to some lost wages for a period of time he was out of work. The record with respect to subsequent jobs and income Complainant earned in mitigation of damages is spotty and incomplete. However, there is evidence that after his termination in 2013, Complainant worked for at least two other employers in automobile sales for short periods of time and collected unemployment compensation for a period of time. He began working full time again in October of 2013 and in the years since has worked for different employers and has received unemployment compensation at various times. Complainant ultimately moved out of state to work selling cars in Georgia. It is reasonable to presume that there were intervening events, unrelated to his termination from Respondent that caused him to abandon subsequent jobs and to take new jobs.

I have concluded that he is entitled to lost wages for back pay for the period of approximately four and one-half months in 2013 in which he was not employed. Given the relative dearth of evidence regarding Complainant's subsequent jobs, what he earned at those jobs, and his reasons for leaving and collecting unemployment compensation, I decline to award back pay for the years 2014 to 2018. I have concluded that Complainant is entitled to $32,085.80 for the period of time that he was not employed in 2013 and I decline to deduct unemployment compensation he received in that year relying on the "collateral source rule." This rule is grounded in the theory that the party who caused the injury is responsible for the

damages and any resulting windfall arising from the receipt of certain benefits should inure to the benefit of the injured party rather than the wrongdoer. Jones v. Wayland, 374 Mass. 249, 262 (1978); School Committee of Norton v. Massachusetts Comm'n Against Discrimination, 63 Mass. App. Ct. 839, 849 (2005) (hearing officer has discretion to decline to offset any unemployment benefits). Here, Respondent diverged from its normal practice and contested Complainant's benefits without apparent good reason, but Complainant prevailed.

I conclude that Complainant is also entitled to an award of damages for emotional distress suffered as a direct consequence of his termination. Awards for emotional distress "should be fair and reasonable, and proportionate to the distress suffered." Stonehill, supra. at 576. Some of the factors to be considered are: "(1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the Complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm..." Id. The Complainant "must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress." Id.

Complainant's testimony about emotional distress was convincing. It was clear from my observation that his precipitous and unanticipated termination upset him greatly and that he was still distressed at the time of hearing. He discussed the stress of financial burdens resulting from his termination and the fact that he had to contest the denial of unemployment which was a long process during which time he had little income. Due to the delays, he was in financial limbo for some time. He discussed the humiliation of having his reputation questioned for purported racist actions which he denied and stated this "ate him up," inside. I conclude that he is suffered considerable embarrassment and humiliation as a direct result of his precipitous termination and is entitled to damages for emotional distress in the amount of $50,000.

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 race.
2) To pay to Complainant, Duane Daye, the sum of $32,085.80 in damages for lost wages with interest thereon at the rate of 12% per annum from the date the Complainant 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, Duane Daye, the sum of $50,000 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.

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 c. 151B, Complainant may file a Petition for attorney's fees.

So Ordered this 31st day of July, 2019.

Eugenia M. Guastaferri
Hearing Officer