COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and CLAUDE DOTSON,
Complainants

v.

Docket No.: 12-NEM-00932

SATURDAY AFTERNOON, INC.,
d/b/a/MACHINE NIGHTCLUB, and
GEORGE CHAKOUTIS,
Respondents

Appearances: Lisa S. Carlson, Esq. for Complainants

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 3, 2012, Claude Dotson ("Complainant") filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD") containing allegations of sexual harassment against Respondents.

A probable cause finding was issued by the Investigating Commissioner on June 27, 2013. The case was certified for a public hearing on December 27, 2013. At that time the Commission amended the complaint, *sua sponte,* to include a retaliation claim. A prehearing conference was conducted on May 9, 2014. On August 22, 2014, the Hearing Officer granted Complainant's Motion to Prohibit Respondents from Defending the Case for Failure to Respond to Discovery Requests.

A public hearing took place on November 3, 2014. Neither Respondents nor their counsel attended the public hearing. A default order was entered against Respondents for their failure to attend.

The following witnesses testified at the public hearing: Complainant Claude Dotson, Teddy Sparks, and Mark Buckman. On November 20, 2014, Respondents' counsel submitted a Motion To Remove Default. The motion was denied on November 26, 2014. Following the hearing, Complainant's counsel submitted a post-hearing brief.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. In July of 2011, Complainant was hired to work as a security guard at the front door of Saturday Afternoon, Inc. d/b/a Machine Nightclub ("Respondent"). Respondent nightclub is located in Boston and caters to a predominately gay and lesbian clientele. Individually-named Respondent George Chakoutis was bar manager and Complainant's immediate supervisor. Chakoutis reported to Sean Caron, general manager.
2. Respondent's facilities encompass twelve interior bars: bars one through five are located on the upper level and bars six through twelve are located on the lower level. The bars on the lower level are busier and more profitable. Bar twelve is the busiest.
3. After two weeks of employment, Complainant was offered a position as a bartender. He worked three days per week (Fridays, Saturdays, and Sundays) plus every other Wednesday. Complainant earned an average of four to six hundred dollars per week.
4. According to Complainant's credible testimony, he was approached by Chakoutis after several months of employment and was told that he would make more money if he "showed

more skin." Complainant began to wear more revealing clothing at work but stopped doing so after Chakoutis began touching him in an unwanted manner. Chakoutis continued to touch Complainant, rubbed up against him behind the bar, rubbed his legs, and said that Complainant was a "good looking boy." Bar patron Mark Buckman witnessed Chakoutis massaging Complainant's shoulders and licking his neck. The behavior continued even though Complainant told Chakoutis to stop and leave him alone.

5. According to Complainant's credible testimony, Chakoutis asked when they were going to "F" and told Complainant that if he agreed to sex, Chakoutis would "take care of him" by assigning him to a busier bar where he would make more money.

6. According to Complainant's credible testimony, Chakoutis told him to wear leather apparel to a Halloween event. Complainant complied, after which Chakoutis licked Complainant's neck and massaged his shoulders in front of customers at the bar. Complainant testified that he told Chakoutis to stop, but the behavior continued throughout the evening.

7. Complainant testified that on several occasions, Chakoutis followed him into the men's bathroom where he stared at Complainant, touched himself while staring, and exposed himself to Complainant. Bar patron Mark Buckman and bar employee Teddy Sparks witnessed Chakoutis follow Complainant into the men's bathroom. According to Sparks, when Complainant returned from the bathroom, he appeared to be upset. Sparks[1] testified credibly that he heard Chakoutis comment about how "big" Complainant was and how he (Chakoutis) wanted to do a "train" on him.

8. Complainant hosted several event nights at his assigned bar such as "Deaf Night" which was attended by many of his friends.

[1] Sparks has a claim of sexual harassment against Respondent pending at the Commission.

9. Complainant testified that he complained about Chakoutis's behavior to Respondent's general manager Sean Caron but that nothing was done. According to Complainant, he also asked for the telephone number of the owner of the company but didn't get it. Complainant was terminated by Chakoutis in January of 2012 after refusing to have sex with him.

10. Complainant testified that he had been receiving public assistance prior to his employment by Respondent but that the job enabled him to support himself, move from a hotel into an apartment, and better care for his daughter. He testified that he became depressed after losing his job. He testified that he "attempted" to see a therapist for depression but stopped going because he didn't feel it was helping. He testified that he lost sleep and gained weight as a result of losing his job. Complainant's friendships with bar employees were curtailed because of the possibility that they would face retribution for socializing with him.

11. Complainant testified that he was not able to find a job after his termination by Respondent and intended to enroll in school to become a truck driver.

III. CONCLUSIONS OF LAW

M.G.L. c. 151B, sec. 4, paragraph 1 prohibits workplace discrimination, including sexual harassment. See Ramsdell v. Western Bus Lines,, Inc., 415 Mass. 673, 676-77 (1993). Chapter 151B, sec. 4, paragraph 16A also prohibits sexual harassment in the workplace. See Doucimo v. S & S Corporation, 22 MDLR 82 (2000). 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 is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions and (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, or sexually offensive work environment. M.G. L. c. 151B, sec. 1, para. 18.

In order to establish a "hostile work environment" sexual harassment claim, Complainant must prove by credible evidence that: (1) he was subjected to sexually demeaning conduct; (2) the conduct was unwelcome; (3) the conduct was objectively and subjectively offensive; (4) the conduct was sufficiently severe or pervasive as to alter the conditions of employment and create an abusive work environment; and (5) the employer knew or should have known of the harassment and failed to take prompt and effective remedial action. See College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987); Parent v. Spectro Coating Corp., 22 MDLR 221 (2000); MCAD Sexual Harassment in the Workplace Guidelines, II. C. (2002).

The objective standard of sexually-unwelcome conduct means that the evidence of sexual harassment must be considered from the perspective of a reasonable person in the plaintiff's position. The reasonable person inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker's performance, and what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) *citing* Harris v. Forklift Systems, Inc., 510 U.S.17 (1993); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

The subjective standard of sexual harassment means that an employee must personally experience the behavior to be unwelcome. See Couture v. Central Oil Co.,12 MDLR 1401, 1421 (1990) (characterizing subjective component to sexual harassment as ... "in the eye of the beholder."). An employee who does not personally experience the behavior to be

intimidating, humiliating or offensive is not a victim within the meaning of the law, even if other individuals might consider the same behavior to be hostile. See MCAD Sexual Harassment in the Workplace Guidelines, II. C. 3 (2002); Ramsdell v. Western Bus Lines, Inc., 415 Mass. at 678-679.

Applying the aforesaid standards, I conclude that there is sufficient credible evidence to sustain Complainant's allegations of sexual harassment. Unrebutted evidence establishes that supervisor George Chakoutis told Complainant to wear more revealing clothing at work and to wear leather apparel, rubbed up against Complainant behind the bar, massaged Complainant's shoulders and licked his neck, asked when they were going to "F," and said he would "take care" of Complainant by assigning him to a busier bar where he would make more money. On several occasions, Chakoutis followed him into the men's bathroom where he touched himself while staring at Complainant and exposed himself to Complainant. Employee Teddy Sparks heard Chakoutis comment about how "big" Complainant was and what he wanted to do sexually with Complainant. Chakoutis's behavior constituted a barrage of unwelcome commentary and physical contact that was subjectively and objectively offensive. It was sufficient in scope and severity to alter the conditions of Complainant's employment and create an abusive work environment.

There is also credible testimony that Complainant did not welcome Chakoutis's attentions. Complainant repeatedly told Chakoutis to leave him alone. Complainant became upset when Chakoutis followed him into the men's bathroom. Complainant testified credibly that he was embarrassed and humiliated at his treatment by Chakoutis but muted his response because he needed the job as a means of financial support. Complainant reported his treatment to general manager Sean Caron and attempted to contact Respondent's owner but

was not successful. These conditions all support a claim of hostile work environment sexual harassment.

Complainant has also proven a case of quid pro quo sexual harassment. He was terminated in January of 2012 after refusing to have sex with Chakoutis. Pursuant to G.L. c. 151B, section 1(18), quid pro quo harassment is defined as "sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when . . . submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment ...." A prima facie case of such harassment is satisfied by Complainant demonstrating that: a) he is a member of a protected class; 2) was subjected to unwelcome sexual conduct; 3) there was an adverse change in the tangible terms or conditions of employment; and 4) the change was causally connected to the rejected sexual advances. See Socarides v. Camp Edwares Troop Welfare Council, Inc. 21 MDLR 173 (1999); Hinojosa v. Durkee, 19 MDLR 14, 16 (1997); Emmons v. Codex, 14 MDLR 1533 (1992).

Credible, unrebutted evidence that Complainant was terminated in January of 2012 after refusing to have sex with Chakoutis establishes quid pro quo sexual harassment in accordance with the aforesaid criteria. The evidence does not support a claim of retaliation, however, because there is no credible evidence that Complainant was demoted or fired in response to the protected activity of complaining about Chakoutis's sexual advances but, rather, for rejecting said advances. See Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003) (prima facie case of retaliation, requires protected activity, adverse employment action, and a causal connection between the two); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000) (same).

Insofar as the liability of Saturday Afternoon, Inc. d/b/a Machine Nightclub is concerned, the entity is vicariously liable for the actions of Chakoutis since he was a club manager who served as Complainant's supervisor. Chakoutis assigned Complainant duties and scheduled his hours. Given this relationship, the club bears responsibility for Charkoutis's discriminatory conduct. See College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 165-167 (1987); MCAD Sexual Harrassment in the Workplace Guidelines, II. B. (2002).

IV. REMEDIES AND DAMAGES

A. Back Pay

Upon a finding of unlawful discrimination, the Commission is authorized, where appropriate, to award damages for lost wages and benefits pursuant to G.L. c. 151B. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Complainant testified that he was on public assistance prior to his employment with Respondent but that the job enabled him to support himself, move from a hotel into an apartment, and better care for his daughter. I credit Complainant's unrebutted testimony that he earned between four to six hundred dollars per week.

According to Complainant he was not able to find a job after his termination by Respondent. I do not credit this testimony, but I do credit that it would have taken him a reasonable period of time to secure another position. Accordingly, I award Complainant back pay damages in the amount of $4,000, an amount which covers a two-month job search which I deem to be reasonable.

B. Emotional Distress Damages

An award of emotional distress damages must rest on substantial evidence that is causally-connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant attempted to mitigate the harm. See Stonehill College v. MCAD, 441 Mass. 549, 576 (2004).

Complainant testified that he became depressed after losing his job, "attempted" to see a therapist for depression but stopped going because he didn't feel it was helping, lost sleep, and gained weight. Complainant's friendships with bar employees were curtailed because of the possibility that they would face retribution for socializing with him. After weighing these factors, I conclude that Complainant is entitled to $10,000 in emotional distress damages.

V. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondent is ordered to:

(1) Cease and desist from all acts of sexual harassment;

(2) Pay Complainant, within sixty (60) days of receipt of this decision, the sum of $4,000 for back pay damages;

(3) Pay Complainant, within sixty (60) days of receipt of this decision, the sum of $10,000 in emotional distress damages.

Complainant shall receive interest on the damages awarded at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, 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. 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.

So ordered this 15th day of July, 2015.

Betty E. Waxman, Esq.,
Hearing Officer