

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & MICHELE FALZONE,
Complainants

v.

DOCKET NO. 11-BEM-02816

SEA VIEW RETREAT, INC.,
STEPHEN B. COMLEY, II &
ACEDA ABORGAH,
Respondents

Appearances:

Marcy Richmond, Esq. for Michele Falzone
Thomas E. Beatrice, Esq. for Respondents

I. PROCEDURAL HISTORY

On September 27, 2011, Complainant Michele Falzone filed a complaint with this Commission alleging that Respondents unlawfully retaliated against her for engaging in a protected activity. Specifically, Complainant alleged that her employment was terminated in retaliation for making an internal complaint of sexual harassment, in violation of M.G.L.c. 151B§4¶4. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on November 4-6, 2013. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, the testimony is rejected. After careful consideration of the entire 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 Michele Falzone resides in Rowley, MA. On October 22, 2010, Complainant began working for Respondent as a housekeeper. She worked a 40-hour week at the rate of \$8.50 per hour. Her duties were to clean patient rooms, bathrooms, railings, stairs and hallways and empty trash. (Testimony of Complainant)

2. Respondent Sea View Retreat is a 60-bed nursing home located in Rowley, MA. It has been owned and operated by members of the Comley family since 1954. Respondent Stephen Comley II has been Sea View's administrator and owner since 1992. His responsibilities include day to day management of the facility, including handling personnel, financial and patient matters. Comley testified that he attempts to become familiar with all Sea View employees, whom he considers his extended family.

3. Patricia Heywood has worked for Respondent for 30 years. She has been supervisor of laundry and housekeeping since 1988 and was Complainant's supervisor. Heywood worked 6:00 a.m. to 2:30 p.m. Monday through Friday

4. Aseda Aborgah has been employed by Respondent since 2001. He worked part-time until 2010 when he became a full-time employee. Since 2011, Aborgah has been Sea View's director of nursing and assistant administrator to Comley.

5. Jamie Yalla worked at Sea View from 2000-2011 in various positions. At the time of Complainant's employment she was director of nursing. Yalla testified that she conducted Complainant's orientation, which involved showing tapes on various topics such as infection control and patients' rights. She also ensured that Complainant reviewed Respondent's handbook and gave her a patients' rights quiz. (Ex.5) (Testimony of Yalla) Documents setting

forth residents' rights are posted in three locations within the building. (Testimony of Comley)
Patients' rights postings were not offered into evidence at the public hearing.

6. The first 90 days of employment were an "adjustment period" for Sea View employees, during which they were not subject to Respondent's progressive disciplinary policy and could be terminated for any reason. Comley testified that it could take up to 90 days for an employee to adjust to the environment and become "part of the team." At the end of 90 days, employees were given a written evaluation.

7. Sea View was divided into three sections for purposes of assigning housekeepers, with one housekeeper per section. Complainant was assigned to an area that included six or seven private rooms, two semi-private rooms and two three-bedroom apartments.

8. Respondent's no tolerance sexual harassment policy was posted on the bulletin board and was contained in the employee manual. The policy instructed employees to report instances of sexual harassment to Stephen Comley.

9. Complainant testified credibly that when she began working at Sea View, the employees got along and ate lunch together and co-workers complimented her work. She was very happy, and enjoyed interacting with residents on a daily basis. Kayleigh McIlveen, a CNA at Sea View during Complainant's employment, testified credibly that Complainant was a good housekeeper whose interactions with patients were kind and respectful.

10. In November 2010, as Complainant and two other housekeepers, a male ("A") and a female ("B") were entering an elevator, a male CNA ("C") was exiting the elevator and as he held the door for them, C said to A, "How can you kiss B when she just got through sucking my cock?" The others laughed, but Complainant was shocked, disgusted and sickened and told B that she was going to report C to the owner.

11. Complainant testified that she complained directly to Comley about C's comment and he referred her to Aborgah, who obtained written statements from Complainant, A and B.

12. Aborgah testified that Complainant and B came directly to him regarding the incident and he then met with Comley who agreed to conduct an investigation and interviewed the employees involved in the incident.

13. Comley testified that he learned about the incident from Yalla. He stated that he spoke individually with A, B, and C, but could not be sure if he took their written statements. He did not interview Complainant because C's comment was not directed to her and thus she was "not directly involved."

14. Comley and Aborgah determined that C's comment was inappropriate and suspended him for three days, required him to attend in-service training on appropriate workplace behavior and to apologize to the others involved in the incident.¹ (Testimony of Comley; Testimony of Aborgah)

15. Complainant learned from Aborgah that C had been suspended and stated that sometime after the incident, C offered her an apology, which she accepted. (Testimony of Complainant)

16. Complainant subsequently overheard C telling staff members that Complainant "had a big mouth" and had gotten him in trouble. She also overheard co-workers saying that she had a big mouth and some co-workers stopped speaking to her and no longer ate lunch with her. (Testimony of Complainant)

17. McIlveen testified that she had heard C make inappropriate remarks prior to the incident with Complainant. After Complainant's complaint about C, McIlveen heard C tell

¹ A and C are still employed by Sea View. B left Sea View voluntarily.

others that Complainant had lied about the incident. She also heard CNAs speak disparagingly about Complainant's work ethic. I credit her testimony.

18. Complainant found it difficult to work under the circumstances and complained to Comley, Heywood, Aborgah and Yalla, about co-workers' treatment of her, but she was brushed off. Comley, Heywood and Aborgah denied that Complainant complained to them, although Comley testified that Complainant had once told him that she did not "fit in," but not in relation to the incident with C. I credit Complainant's testimony that she complained to managers Comley, Heywood, Aborgah and Yalla about her treatment by co-workers

19. Yalla testified that Complainant "changed" and went "downhill" after the incident with C. Yalla found Complainant crying and took her into her office where Complainant told Yalla that her co-workers did not like her. Yalla commended Complainant for speaking up about C's conduct. However, Yalla stated that Complainant could not have been shunned because the workers would not do that and because if they had, Yalla "would have known about it."

20. Comley stated that Complainant's "facial expressions" and "lip movements" caused him to be concerned about her ability to interact with others. He asked several CNAs their opinion of Complainant and they told him that she was "odd" and "nutty;" that she did not talk to people and did not do her job. According to Comley, Heywood reported to him that Complainant was distracted, involved in non-work-related matters and spent an excessive amount of time talking with residents and co-workers. I do not credit Comley's testimony that he relied on interpreting Complainant's facial expressions and lip movements to determine her social skills and I find that while he may have spoken to co-workers about Complainant, his testimony in this regard was exaggerated.

21. Heywood testified that when first hired, Complainant appeared to be doing well. However, at some point, Complainant's work performance declined; she failed to adequately clean her assigned area and spent too much time with patients. Heywood testified that she complained to Comley about the matter. However, at her deposition Heywood did not recall complaining to Comley about Complainant and stated that her relationship with Complainant was "fine" and Complainant was a "joy to work with." I find that Heywood's testimony at hearing regarding Complainant's decline in performance was exaggerated in order to support Respondents' position in this case.

22. Heywood testified that Complainant was supposed to work a 40-hour work week but came in late a couple of times and left early on several occasions and that Heywood told Complainant that she had to work a full week. According to Complainant's time cards she worked only one 40-hour week during her employment with Respondent.

23. Complainant's time cards reflect that she came in late twice, and left early on several occasions. (Ex. 21) Complainant work weeks and hours for her time at Respondent are as follows:

Week of 10/26/10 11:15 hours;
Week of 11/2/10 34:15 hours;
Week of 11/9/10 40:00 hours;
Week of 11/16/10 4 hours;
Week of 11/30/10 39.15 hours;
Week of 12/7/10 37:30 hours;
Week of 12/14/10 38:30 hours;
Week of 12/21/10 38.30 hours;
Week of 12/28/10 34:45 hours;
Week of 1/4/11 39.30 hours;
Week of 1/11/11 28:45 hours;
Week of 1/18/11 37.15 hours;
Week of 1/25/11 38.45 hours;
Week of 2/1/11 19 hours

Complainant testified that after the incident with C, she would leave work early as long as her work was done.

24. On December 3, 2010, Comley issued a memorandum to staff informing them that the number of beds had decreased and he was therefore reducing the hours of work for employees by 1 ½ hours. Complainant, who worked 40 hour weeks, was to work 38.5 hours per week. (Ex. 16)

25. Two weeks later, on December 17, 2010, Comley issued another memorandum stating that rather than reduce employees' hours, they would be required to take an unpaid break and 40 hour per week employees would have 90 minutes deducted from their time. (Ex. 17)

26. Yalla stated that Complainant was overly involved with male patient "D" who had diabetes and limited mental capacity. Complainant gave D cookies that she brought from home, which was, according to Aborgah, "a serious infraction and a danger to residents." On another occasion, she brought D some of her husband's used clothing, which violated protocol because it was not distributed through Respondents' social services department, and prompted a complaint from D's family who felt that it implied they were not adequately providing for D. (Testimony of Comley). On another occasion, in December 2010 or January 2011, Complainant gave D a goodbye kiss on the cheek. (Testimony of Yalla)

27. Complainant acknowledged that she once gave diabetic cookies to D after receiving permission from a nurse; she stated that she brought in clothes which were distributed by Heywood and she stated that she and a co-worker gave D an affectionate kiss on the cheek. She stated that after being instructed not to bring food to patients or to kiss patients, Complainant no longer did so. Respondent had no written rule against providing food to residents and Comley testified that employees who wished to provide food to residents could do so after getting

approval from a nurse. Respondents had no written policy regarding providing clothing or food to patients.

28. Yalla testified that Complainant was well-meaning and tried very hard, but she became overly involved with D and a female resident, E. Yalla testified that after Complainant was instructed not to kiss patients or give them food, there were no further issues with D. (Testimony of Complainant; Testimony of Yalla; Testimony of Comley)

29. Complainant developed a rapport with an elderly female resident, “E.” Comley testified that Complainant discussed personal matters with E, which he stated “could be viewed as a violation of the patient’s rights.” I do not credit Comley’s testimony that he believed Complainant’s discussions with E were a violation of patients’ rights. Respondents did not offer into evidence their patients’ rights policy nor was the policy articulated at the public hearing. Complainant stated that employees were encouraged to greet residents and she was never warned about talking to residents. I credit Complainant’s testimony.

30. Comley stated that Complainant was “by far the worst employee he had ever had,” but because Complainant “had problems” and Heywood felt responsible for inadequately training Complainant, at the end of 90 days, they decided to give Complainant a second chance and extended her adjustment period for an additional 30 days. I do not credit Comley’s testimony. I find his statement that Complainant was Respondents’ “worst employee” to be a gross exaggeration, and I do not believe that he would have given her a second chance, had she been such a bad employee. Moreover I do not believe that Heywood felt responsible for inadequately training Complainant and I do not believe she told Comley so.

31. Heywood testified that on January 20, 2011, she prepared Complainant’s 90-day written employee evaluation form and discussed it with Complainant. The evaluation noted that

Complainant left work early, that her work was not up to standards, that she found fault with the rest of the staff and that she tended to leave her assigned area. Heywood also wrote that Complainant did not get along with the staff and thought that everyone was talking about her. Heywood wrote that she told Complainant things have to change and that Comley asked her to extend her 3 month evaluation for one more month to see if things change. The employee evaluation was not signed by Complainant and Heywood stated that she did not remember why Complainant did not sign the evaluation. Heywood turned it in to the front office on Monday January 25. At deposition Heywood testified that she did not recall whether she met with Complainant about her evaluation and was not sure whether she wrote Complainant's evaluation prior to her termination. Complainant testified that she was never shown an employee evaluation and Heywood did not discuss these issues with her. (Testimony of Heywood; Testimony of Complainant) I credit Complainant's testimony over that of Heywood, as Heywood's testimony at trial was inconsistent with her deposition testimony.

32. Heywood testified that on the same day, January 20, 2011, after meeting with Complainant to discuss her evaluation, she documented their discussion on a separate piece of paper, noting Complainant's poor job performance, excessive socializing with patients, leaving work early and accusing staff of not doing their jobs. (Ex. 20) These notes were not produced at Heywood's deposition and were not contained in the copy of Complainant's personnel file received in response to her written request and mailed by Respondent on February 23, 2011. (Testimony of Complainant; Ex. 5)

33. Heywood testified that that she did not find the January 20, 2011 memorandum until after her deposition while cleaning out a file pertaining to former employees. I do not credit her testimony.

34. Complainant testified that on or about January 26, 2011, she was instructed to strip and clean a deceased resident's bed and clean out her personal effects. Complainant believed that she was assigned the task in retaliation for complaining about C and she refused to do it. According to Heywood, stripping and cleaning the bed of a deceased resident is the job of housekeeping and I credit Heywood's testimony in this regard.

35. Comley and Heywood testified that shortly after extending Complainant's adjustment period, they spoke with E, who was upset with them about Complainant's having received a poor evaluation. Comley and Heywood drew the inference from E's comments that Complainant had complained to E about her evaluation. Comley testified that Complainant's talking with E about her evaluation was tantamount to "patient mental abuse." Comley testified that this was the third time he had spoken with E about Complainant's interactions with her. I do not credit their testimony. Heywood testified at her deposition that she did not remember whether residents had complained about Complainant.

36. Comley and Aborgah discussed the incident with E and Comley made the final decision to terminate Complainant's employment because of her poor work performance and threat to patients' well-being. (Testimony of Comley; Testimony of Aborgah) I do not credit the testimony of Comley and Aborgah that they found Complainant to be a threat to patients' well-being.

37. When Complainant came to work on Monday, January 31, 2011, Heywood called her into Aborgah's office. According to Complainant, Aborgah first asked her if she were being sexually harassed and she said that she was not. Aborgah then told her that he was terminating her employment because she was spending too much time talking with residents. Complainant testified that she was escorted out of the building in a state of shock. I credit her testimony.

38. After her termination, Complainant filed for unemployment benefits. Comley acknowledged telling the DUA that Complainant was terminated for talking to residents, which did not violate Respondents' policy and that Complainant was adequately performing her job. Comley stated that he had a heated argument with a DUA representative and said that as the employer he could do what he wanted.

39. Comley testified that he did not contest Complainant's unemployment compensation award because of concerns about her financial difficulties and his belief that she was entitled to the benefits and because he thought it would be too costly to contest.

40. Complainant testified credibly that following her termination she was sad, depressed and cried. She stayed home and made no social plans. She slept most of the day and did not perform household chores.

41. Complainant has been treating with mental health professionals for several years. For the past two years she has been treated by a psycho-pharmacologist. On March 9, 2011, she told her psycho-pharmacologist that she had been terminated for reporting verbal harassment. She was depressed and cried and was concerned about the financial consequences of having lost a job. Her provider increased the dosages on her medications. Complainant testified credibly that she had difficulty getting up in the morning because of the sleeping pills and she lost 15 pounds in six weeks. (Testimony of Complainant; Ex. 15)

42. Complainant's husband Louis Falzone testified that prior to her termination Complainant was doing well, taking care of their two children and the house, in addition to performing her job. He stated that after her termination she was upset and cried and did not want to talk about her termination. She had difficulty getting up in the morning and he began taking their daughter to school. He stated that Complainant was not herself and lost her appetite, and

he took over the majority of the house work and caring for their children. Her sleep problems and mood changes lasted for about a year. I credit his testimony. Complainant testified that she began to feel better in June 2011 and began a job search in August 2011. She applied to Richdale, UPS and a few other jobs on line. She stated that she focused her job search on jobs located near the Rowley commuter rail station, although there was evidence that she had access to a car, as her husband ran a used car business out of their home. I conclude that Complainant did not make a good faith effort to find work in August 2011 and was not employed until November 2013, when she became a part-time babysitter.

43. Complainant received a total of \$1,900.00 in unemployment benefits. Assuming she would have made \$8,840 (\$340 per week x 26 weeks+\$8,840) from January 31, 2011 through July 2011 had she not been terminated, I conclude that Complainant's lost wages equal \$6,940. (\$8,840-\$1,900)

III. CONCLUSIONS OF LAW

Pursuant to M.G.L.c.151B§4(4), it is unlawful for any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five.

Complainant has alleged that Respondents terminated her employment in retaliation for her having made an internal complaint of sexual harassment. In order to establish a prima facie case of retaliation, Complainant must show that she engaged in a 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, at 116-117; Wynn & Wynn, 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.

Under M. G. L. c. 151B, s. 4 (4), Complainant has engaged in protected activity if she... "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]." In this case, Complainant made an internal complaint of sexual harassment to Respondents when she reported a coworker's sexually explicit comment. This was protected activity within the meaning of the statute.

Within two months after Complainant's report of sexual harassment, Respondent terminated her employment. 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, 423 Mass. 652, 662, n. 11(1996), citing Prader v. Leading Edge Products, Inc., 39 Mass. App. Ct.

616, 617(1996). That Respondent knew of a discrimination complaint 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.

I conclude that there is credible evidence of a causal connection between the Complainant's complaint of sexual harassment and her termination. Therefore, I conclude that Complainant has established a prima facie case of retaliation based on the timing of her termination and the burden of production shifts to Respondents to articulate and produce credible evidence of a legitimate, nondiscriminatory reason for their actions.

Respondents denied that Complainant's complaint of sexual harassment was a factor in their decision to terminate her employment and stated that Complainant was terminated because of unacceptable performance and excessive time spent with patients.

There was testimony critical of Complainant's performance as a cleaner, and of time spent talking to patients about personal matters. Respondents have thus met their burden of articulating legitimate, nondiscriminatory reasons for their actions. Notwithstanding, I found Comley's testimony to be hyperbolic and disingenuous in so many matters as to cast doubt on his credibility in general. His testimony that Complainant was his worst employee ever was a gross exaggeration, as was his statement that Complainant's lip movements and facial expressions were evidence of poor social skills. Similarly, Heywood's testimony at public hearing differed in so many instances from her deposition testimony as to call into question her credibility as well, and I conclude that she did not actually meet with Complainant after 90 days. Their lack of candor and inconsistent testimony lead me to conclude that much of their criticism of Complainant's performance was greatly exaggerated and an ex post facto justification for terminating her employment.

Nevertheless, I conclude that based on the credible testimony of Yalla, there is some truth to Respondents' concerns regarding Complainant spending excessive time with patients and a corresponding decline in her work performance after the incident with C. While the decision to terminate Complainant's employment may have resulted in part from concerns about her performance, I find that her complaint about C's sexually offensive remark was the primary reason for her termination. There was evidence that C blamed Complainant for his being disciplined and some of the staff resented Complainant for complaining about him.

Further, there was evidence that Respondents viewed Complainant's complaint about C as meritless. Comley testified that he did not interview Complainant about the sexually explicit comment by C because the comment was not directed toward her, revealing a lack of understanding of how an employee's sexually graphic remark might offend a coworker hearing the remark. I conclude that Respondents' failure to address the matter of staff members' anger with Complainant was indicative of Respondents' lack of concern about the backlash from Complainant's complaint about C. I conclude that, as a result of her protected activity, Respondents viewed Complainant as a trouble maker who disrupted staff and that this marked her for termination. This caused Respondents to re-examine and to exaggerate minor work issues that were quickly resolved such as bringing cookies to a patient. I thus conclude that Respondents had "mixed-motives" for terminating Complainant's employment. Under the mixed-motive framework, Complainant must first prove by a preponderance of the evidence that a proscribed factor played a motivating part in the adverse employment action. I conclude that Complainant has met her burden. Once the Complainant carries her initial burden, the burden of persuasion shifts to the Respondent who "may avoid a finding of liability only by proving that it would have made the same decision" even without the illegitimate motive. Wynn and Wynn,

P.C. v. MCAD, 431 Mass. 655 (2000); Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) at 244-245. See Northeast Metro. Regional Vocational Sch. Dist. Sch. Comm. v. Massachusetts Comm'n Against Discrimination, 21 Mass. App. Ct. 89, 89 n.1 (1991); Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294 (1991) at 299.

For the reasons stated above, Respondents have failed to persuade me that they would have terminated Complainant's employment had she not complained of sexual harassment and I conclude that consideration of Complainant's protected activity was the primary reason for terminating her employment. Thus I conclude that Respondents' actions were motivated primarily by unlawful retaliatory animus in violation of M.G.L.c. 151B§4¶4 and not by lawful considerations as they contend. I conclude that they are jointly and severally liable for unlawful retaliation.

IV. REMEDY

Pursuant to M.G.L.c.151B s. 5, the Commission is authorized to grant remedies to make the Complainant whole. This includes an award of damages to Complainant for lost wages and emotional distress suffered as a direct and probable consequence of her termination by Respondents. Bowen v. Colonnade Hotel, 4 MDLR 1007 (1982), citing Bournewood Hospital v. MCAD, 371 Mass. 303, 316-317 (1976); see Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997).

A. Emotional Distress

An award of emotional distress "must rest on substantial evidence and its factual basis must be made clear on the record. Some factors that should be considered include: (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 (e.g., by counseling or by taking medication).” Stonehill College vs. Massachusetts Commission Against Discrimination, et al, 441 Mass. 549, 576 (2004). In addition, complainant must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress. “Emotional distress existing from circumstances other than the actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable.” Id. At 576.

Complainant’s and her husband’s testimony about her emotional distress following her termination was confined to a period of time lasting several months in which Complainant lost weight, was upset and cried and did not take care of the house as she had before her termination. I conclude that she suffered moderate distress that was not long-lasting as a result of being terminated. Moreover, there was evidence that Complainant suffered from on-going mental health issues preceding her employment at Respondents and that her pre-existing condition likely contributed to her distress. Notwithstanding, it is clear that she suffered emotionally as a direct result of discriminatory treatment and constructive discharge by Respondents and I award her damages for emotional distress resulting from Respondents’ unlawful conduct in the amount of \$25,000

B. Back Pay

The Complainant has the responsibility to mitigate damages by making a good faith search for employment. I conclude that the Complainant did not search for a job for a matter of months because of the adverse effects of her termination. However, I conclude that Complainant was thereafter able to seek out work, but made only a limited search for work. I conclude that she did not make a good faith effort to find employment. Therefore she is entitled to lost wages only from February 2011 until August 2011 when, as she testified, she became well enough to

seek employment. Complainant received \$1,900 in unemployment compensation during this time period. Assuming she would have earned \$8,840 through July 2011 had she not been terminated, I conclude that Complainant's lost wages are in the amount of \$6,940. (\$8,840-\$1,900). I conclude that she is entitled to lost wages in this amount to compensate her for the pay she would have earned had she not been unlawfully terminated.

V. 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 unlawful retaliation.
- 2) Respondents pay to Complainant the amount of \$25,000.00 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) Respondents pay to Complainant the amount of \$6,940 in damages for back pay 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.

This constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file a Notice of Appeal with 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 11th day of August 2014

JUDITH E. KAPLAN
Hearing Officer