**COMMONWEALTH OF MASSACHUSETTS**
**COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION, JOSHUA FORTIN, and NICOLE EVANGELISTA,
Complainants

v. DOCKET NO. 17WPR00664

MARTIN GREEN, MARTY GREEN PROPERTIES LLC, and HANG NGO a/k/a NGO HANG,
Respondents

## DECISION OF THE FULL COMMISSION

This matter comes before us following a decision imposing liability for housing discrimination by Hearing Officer Jason Barshak dated December 19, 2022, in favor[1] of Complainants Joshua Fortin ("Fortin") and Nicole Evangelista ("Evangelista") (collectively, "Complainants") against Respondents Martin Green ("Green"), Marty Green Properties LLC ("MGP"), and Hang Ngo ("Ngo") (respectively the property manager, property management company, and owner of the subject property, and, collectively, "Respondents"). Complainants filed a complaint with the Commission against Respondents for disability discrimination, denial of a reasonable accommodation, and retaliation in violation of M.G.L. c. 151B §§ 4(4), 4(4A), 4(6), and 4(7A)(2).

These claims stem from Respondents' refusal to grant, or even engage with, Complainants' request that Fortin's dog, Samantha ("Sam"), be allowed to live with them at the subject property

[1] Complainants' disparate treatment claims pursuant to M.G.L. c. 151B § 4(6) were dismissed below, but Respondents were found liable for discrimination against Complainants under section 4(6) for the failure to reasonably accommodate.

as an accommodation to Respondents' "no dogs" policy. Following a public hearing, the Hearing Officer found Respondents liable for unlawful discrimination against Fortin for failing to provide him with a reasonable accommodation in connection to his disability; for unlawful discrimination against Evangelista based on her association with Fortin, through the failure to provide a reasonable accommodation in connection with his disability; for unlawful retaliation against both Complainants; and finding Green individually liable for the same. The Hearing Officer awarded Complainants damages for emotional distress and separately entered an order awarding Commission Counsel attorneys' fees and costs in the amount of $41,077.10.[2] Inherent to the resolution of the reasonable accommodation claims was the Hearing Officer's conclusion that while Sam was not a dog trained to assist Fortin with his diabetic condition, i.e., a "diabetic alert dog", she was nevertheless an "emotional support animal" who ameliorated Fortin's anxiety related to his diabetes, thereby entitling Fortin to a reasonable accommodation from the Respondents' "no dogs" policy.

Respondents Green and MGP[3] appeal to the Full Commission on the grounds that Sam was nothing more than a house pet, and the Hearing Officer's decision relating to Sam's status as an animal entitling Fortin to reasonable accommodation was in error and unsupported by the evidence. Complainants intervened in the appeal pursuant to 804 CMR 1.23 (2)(d) (2020), and, while in agreement with the ultimate result of the Hearing Officer's decision and the majority of its reasoning, they urge the Full Commission to clarify that Sam was an "assistance animal" that provided more than just emotional support to Fortin. Complainants argue that regardless of a lack of training, the evidence was sufficient to show that Sam in fact assisted Fortin in the management

[2] Respondents did not appeal the attorneys' fees award as required for review by the Full Commission. See 804 CMR 1. 12(19) (2020).
[3] Respondent Ngo did not participate in this appeal.

of his diabetes beyond providing emotional support. Complainants argue that the Hearing Officer erred by essentially determining that Sam was only an "emotional support animal" if she was never trained to help Fortin as a "diabetic alert dog" per the standard for service animals defined in federal regulations under the Americans with Disabilities Act ("ADA"), 28 C.F.R. § 36.104.

This case highlights the lack of clearly defined and applicable labels with respect to animals as a basis for reasonable accommodation in housing under Chapter 151B. We affirm the Hearing Officer's decision every respect save one—the narrow labeling of Sam as an "emotional support animal" where the evidence was sufficient to label her more broadly as an "assistance animal" whose behaviors went beyond emotional support and actually did help Fortin control his blood sugar despite a lack of training. In so doing, we seek to clarify the law with respect to reasonable housing accommodations and animals under Chapter 151B.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 (2020)), 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, §§ 3 (6), 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, § 1 (6).

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); Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, their findings are entitled to deference). It is nevertheless the Full Commission's role to determine whether the decision under appeal was supported by substantial evidence, among other considerations, including whether the decision was arbitrary or capricious or an abuse of discretion. 804 CMR 1.23(10) (2020).

## LEGAL DISCUSSION

The central issue on appeal is Sam's identity as a "service animal," "assistance animal," or "emotional support animal," in relation to Fortin's disability and Complainants' entitlement to live with her as a reasonable accommodation to the "no dogs" policy. Again, Respondents argue that Sam was merely a house pet requiring no accommodation where the Complainants failed to prove that Sam was a "service animal" (a conclusion consistent with the Hearing Officer's findings), and that the Hearing Officer erroneously determined Sam was an "emotional support animal." Respondents' arguments are not well taken. As discussed below, Complainants were not required to prove that Sam was a "service animal", and the Hearing Officer's conclusion that Sam provided emotional support to Fortin such that accommodation from the "no dogs" policy was required was supported by sufficient evidence and free from error. However, as previewed above, we find that the evidence was sufficient to label Sam more broadly as an "assistance animal" where she provided assistance with disability related tasks beyond providing emotional support.

While the hearing decision uses terms such as "service animal", "assistance animal", and "emotional support animal" the terms are not defined, and their sources are not identified. This is, however, in keeping with MCAD decisions addressing housing accommodations and animals.[4]

[4] See, e.g., Clark v. New Bedford Housing Authority, 41 MDLR 13, 13 (2019) (accommodation request sought for pet snake as "companion animal" was unreasonable under the circumstances); Blake v. Brighton Gardens Apartments, 33 MDLR 48, 51 (2011) (allowing exception to no-pet rule where small dog provided companionship and support to HIV-infected tenant).

The hearing decision does clearly and accurately reflect that to succeed on a claim of housing discrimination on the basis of disability, a complainant must establish that: (1) they have a handicap; (2) the respondent was aware of the handicap or could have reasonably been aware of it;[5] (3) the accommodation sought is reasonably necessary to afford complainant an equal opportunity to use or enjoy the premises; and (4) the respondent refused to make the accommodation. See Clark, 41 MDLR at 13, citing Kacavich v. Halcyon Condominium Trust, 30 MDLR 109 (2008). Accordingly, and on the one hand, when the accommodation sought involves an animal, a label for the animal is strictly unnecessary where all that is required is that the animal's presence is reasonably necessary to afford complainant an equal opportunity to use or enjoy the premises. And, to be certain, clearly defined labels for such animals are currently unavailable in M.G.L. c. 151B, in MCAD regulations, or case law interpreting M.G.L. c. 151B, except for a recognition that the federal definition of "service animal" in the ADA is not a controlling standard with respect to whether allowing an animal in housing is a reasonable accommodation under M.G.L. c. 151B.[6] However, given the rampant use of varying labels for such animals, and to dispel further arguments like those from Respondents urging a strict dichotomy between federally defined "service animals" and house pets in the context of M.G.L. c. 151B housing cases, we herein adopt the umbrella term "assistance animal" as applicable to reasonable accommodations in housing under M.G.L. c. 151B, consistent with guidance issued by the U.S. Department of Housing and Urban Development ("HUD") concerning the Fair Housing Act ("FHA"), as discussed below. To be clear, the record contains sufficient evidence in support of the Hearing Officer's conclusion that Sam's presence was reasonably necessary to afford complainant an equal

[5] There is no dispute as to whether Fortin has a disability, i.e., Type 1 diabetes, or whether Respondents were aware of Fortin's disability.

[6] See Clark, 41 MDLR at 14 (Full Commission confirmed Hearing Officer only mentioned ADA in a footnote and did not rely on ADA standard concerning Complainant's request for snake as a "companion animal").

opportunity to use or enjoy the premises, and that conclusion is free from legal error. The issue modified on appeal is only that the evidence supports the labeling of Sam as an "assistance animal", a term applicable henceforth as encompassing animals who provide emotional and other support to persons with disabilities, whether such animals are trained or untrained.

The FHA is analogous to M.G.L. c. 151B, and FHA guidance from HUD uses the term "assistance animal" to encompass everything from "service animal" as defined in the ADA (i.e., a trained dog),[7] to "support" animals, which are "trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities." See U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FHEO Notice: FHEO-2020-01 (January 28, 2020) ("2020 FHEO Guidance").[8] Thus, both "service animals" and "emotional support animals" are "assistance animals", but "assistance animal" covers more than just those two categories. To wit, "assistance animals" can be untrained dogs or other animals who provide disability related-assistance other than (or in addition to) emotional support. It is meaningful to clarify that in the housing context, animals who assist persons with disabilities despite a lack of training must be accommodated absent undue hardship, and an emotional support animal is just one kind of assistance animal. To whatever extent the hearing decision can be read as strictly equating "service animal" and "assistance animal", and/or conveying nothing in between trained dogs and emotional support animals, we dispel such notions. We note that there was confusion in the record with respect to terminology, as Complainants

[7] The ADA definition at issue found at 28 CFR § 36.104 is applicable specifically to federal public accommodation claims and does not set a standard for "assistance animal" in housing, but, instead, the guidance recognizes that any animal meeting that definition would also qualify as an "assistance animal" under the FHA. This has been true under M.G.L. c. 151B, see Clark 41 MDLR at 13, and remains true—a complainant has no burden to prove that an animal meets the definition of "service animal" under the ADA to succeed on a reasonable accommodation claim under M.G.L. c. 151B, but any dog that qualifies as a "service animal" will qualify as an "assistance animal."

[8] The 2013 FHEO guidance was submitted as an exhibit in the record. We take notice that HUD issued updated guidance in January 2020.

referred to Sam in several instances, including in the accommodation request, as a "service animal", and the parties even stipulated that Fortin required the use of an "assistance animal" because of his disabling condition. However, though Complainants referred to Sam as a "service animal" at various times, they did not have to prove she was a service animal to be afforded protection under the housing laws. Failing to prove that Sam was a service animal does not automatically relegate her status to a mere pet, and the record supports the conclusion that Sam was an assistance animal.

With the terms in focus, the inquiry must be whether, trained or untrained, Sam provided Fortin with disability-related assistance in the form of providing emotional support or diabetes management, or both. Regardless of whether Sam was actually able to detect drops in Fortin's blood sugar, a factual determination supported by substantial evidence that we do not second guess, Fortin testified credibly that Sam did perform behaviors such as nudging while he was sleeping and awake which in fact caused Fortin to actually test his blood sugar.[9] Further, Fortin

[9] Albeit a significantly nuanced point, we reject Complainants' argument that there was sufficient evidence to show that Sam had the innate skill to actually detect drops in Fortin's blood sugar. The Hearing Officer made a factual determination that Sam was not able to do so, having been persuaded by the testimony from an expert witness, Sher-Ann Rossi, on the detailed training for "diabetic alert dogs." The Hearing Officer weighed Fortin's testimony against the expert's testimony concerning such training, and concluded that, as a matter of fact, Sam could not actually detect drops in Fortin's blood sugar. In this calculation, the Hearing Officer also found a doctor's note unconvincing on the point that Sam actually had the ability to detect low blood sugar in Fortin. We cannot say that such factual determination was against the weight of the record evidence, although such factual determination does not preclude a finding in a different case that an untrained dog has an innate ability to reliably detect drops in a person's blood sugar, i.e., this case cannot stand for the proposition that only dogs trained to be "diabetic alert dogs" have the ability to detect low blood sugar in persons with diabetes. This is the gravamen of Complainants' argument—the failure to meet the "service animal" standard does not preclude a finding that an animal does in fact assist with disability-related tasks despite a lack of training. Certainly, the record contains evidence that Sam may have had that innate ability, but, again, the Hearing Officer's conclusion to the contrary does not warrant reversal. The salient fact is that regardless of Rossi's testimony or the doctor's note, Fortin did actually check his blood sugar in response to Sam's behaviors, and the Hearing Officer did not disbelieve otherwise. Accordingly, Sam did actually assist Fortin in the management of his diabetes, regardless of a lack of training or any innate, proven ability to detect drops in blood sugar. Sam's behaviors were constant, and even if they coincidentally prompted Fortin to check his blood sugar, those checks actually assisted Fortin in the management of his disability. Sam did not need to qualify as "diabetic alert dog" in order to find that she actually did help with diabetes management, and these behaviors were more than just emotional support. In the Hearing Officer's calculation, Fortin's belief that Sam could detect drops in blood sugar was merely comforting, but the belief was more than just emotionally comforting where it prompted Fortin to actually act by checking his blood sugar.

testified that Sam's presence and behaviors learned through positive reinforcement ameliorated symptoms of Fortin's anxiety. Thus, the evidence in the record and the facts as found by the Hearing Officer reflect that Sam's presence and behavior, with or without training, alleviated the effects of Fortin's disability, both in terms of relieving anxiety *and in the prompting to actually check his blood sugar.* Complainants therefore proved that Sam was an "assistance animal" in the broad sense, not just at the level of "emotional support animal", enhancing Fortin's quality of life and alleviating some symptoms caused by Fortin's disability. See Blake v. Brighton Gardens Apartments, L.P. et al., 33 MDLR 48, 51 (2011), aff'd 36 MDLR 99 (2014) (complainant submitted credible evidence that his dog was necessary to alleviate symptoms of both physical and mental non-observable disabilities and improved his quality of life).

Respondents' argument that the Hearing Officer's decision "cast[s] a wide shadow of potential abuse" by making all dogs owned by persons with non-observable disabilities emotional support animals is unconvincing. As detailed above, where Sam's behaviors had the actual effect of getting Fortin to check his blood sugar, Sam was helpful to Fortin in the actual management of his diabetes, not just his diabetes-related anxiety. Accordingly, Sam was not just an "emotional support animal." Respondents correctly note that the doctor's note submitted by Fortin's physician in relation to his disability did not reference disability-related anxiety. However, where Respondents failed to engage in the interactive dialogue with Complainants regarding Fortin's need to live with Sam, they cannot fairly take issue with the weight or reliability of medical documentation submitted to them in connection with the reasonable accommodation request. More to the point, the doctor's note did not preclude a finding based on sufficient evidence from Fortin at public hearing that Sam's presence ameliorated his diabetes-related anxiety, because when she was absent, he feared he could miss potential drops in his blood sugar levels. Again, the

evidence showed that Sam's behavior had the effect of getting Fortin to check his blood sugar, and Fortin's anxiety around being without Sam therefore had a rational basis in fact, apart from the crediting of his testimony on the matter. For all of these reasons, we reject Respondents hyperbolic objection that affirming the Hearing Officer's decision in this case allows any animal to qualify by default as an emotional support animal.

The Hearing Officer's findings regarding Respondents' denial of Complainants' request for accommodation was not arbitrary or capricious and was supported by evidence in the record for all of the reasons above, but also because Respondents failed to engage in the interactive dialogue with Complainants. Respondents were made aware of Fortin's disability and requested accommodation in February 2017 when Evangelista emailed Green regarding Sam being a "service animal." Respondents' appeal acknowledges these communications as Complainants' requests for accommodation that Sam be allowed on the subject property. At this point, Respondents should have engaged in an interactive dialogue concerning Complainants' request for accommodation. The requirement to engage in an interactive dialogue applies no less in a housing context than it does in an employer/employee relationship. See HUD v. Astralis Condo Ass'n, 620 F.3d 62 (1st Cir. 2010) (FHA obliges a landlord to engage in an interactive process to resolve reasonable accommodation requests); see also Andover Housing Authority v. Shkolnik, 443 Mass. at 300, 308 (2005) (SJC characterizes interactive dialogue as the "optimal way" to explore alleged handicaps and potential accommodations despite lack of explicit accommodation language in the FHA and related regulations).

Respondents attribute the lack of interactive dialogue to Evangelista's refusal to answer the phone when Green called and blamed her for shutting down the interactive dialogue. However, based on the evidence, the Hearing Officer made specific findings of fact that Evangelista

requested all communication between her and Green concerning Sam be in writing via email. Requesting a particular method of communication concerning a reasonable accommodation does not effectively shut down the interactive process, but refusing to communicate using the requested method of communication does. Thus, we are not persuaded by Respondents' characterization. Contrast Shkolnik, 443 Mass. at 309-312 (landlord found not to discriminate based on its making "every effort" to engage in an interactive process and accommodate tenant). Here, the breakdown in communication was caused by Green's conduct in refusing to communicate by email to address Fortin's disability related needs when it came to Sam. Respondents' contention that they had no obligation to engage in the interactive process because Sam was a house pet is unavailing. By failing to engage in the interactive dialogue, Respondents could not have determined whether or not the accommodation requested was reasonably necessary or would have caused Respondents an undue burden. Rather than engage in the interactive dialogue, Green made assumptions about Complainants and about Sam and denied the request for accommodation.

Respondents also challenge Evangelista's standing because Sam was "just a pet." As detailed above, Sam was not just a pet, but was an assistance animal. Regardless, the emphasis of Respondents' arguments improperly rests on Evangelista's association with Sam, rather than her association with Fortin, the individual with a disability. By essentially removing Fortin from the equation in their argument Respondents ignore the basis of an associational discrimination claim. To establish standing on the basis of associational discrimination, a complainant must demonstrate that they, although not a member of a protected class, were the victim of discriminatory animus directed to a third person who is a member of a protected class and with whom that person associates. Flagg v. Alimed, Inc., 466 Mass. 23, 27 (2013). The reality is, Evangelista made a request for accommodation on behalf of Fortin, an individual with a disability she closely

associated with, and Respondents failed to engage in an interactive dialogue or grant an accommodation.

The Commission has recognized associational discrimination in the housing context. See Papa v. Pelosi and Paulo, 18 MDLR 174 (1996) (finding of racial discrimination against a white woman upheld where property owners denied her housing because her son was Black); Luna v. Lynch, 7 MDLR 1699, 1725 (1985) (finding Caucasian wife of Black man from Puerto Rico had standing to assert a claim of racial discrimination for denial of housing by virtue of association with husband). The parties agree that Fortin has a disability within the meaning of the law. Evangelista was closely associated with Fortin by virtue of their romantic relationship and their living situation at the time of the operative events. To conclude that associational discrimination claims do not extend to other protected classes, including disability, is contrary to the broad remedial purposes of M.G.L. c. 151B. The Hearing Officer did not err as a matter of law when he found Evangelista had standing to bring her claims for disparate treatment and denial of reasonable accommodation by virtue of her association with Fortin, who has a disability. We fully agree with the Hearing Officer's reasoning interpreting M.G.L. c. 151B as prohibiting associational discrimination in the context of denying a tenant's request for reasonable accommodation.

Similarly, there was no error of law when the Hearing Officer determined Respondents retaliated against Complainants. Respondents reiterate that there could be no retaliation because Sam was just a pet, but as previously discussed, Sam's identity is irrelevant to the question of retaliation. Retaliation claims can proceed even where all or part of a discrimination claim fails. See Abramian v. President & Fellows of Harvard Coll., 432 Mass. 107, 121-122 (2000). To prevail on the retaliation claim, Complainants had to prove: (a) they reasonably and in good faith believed Respondents engaged in discrimination; (b) they acted reasonably in response to that belief through

acts meant to protest or oppose such discrimination (protected conduct); (c) Respondents took adverse action against them; and (d) the adverse action was in response to the protected conduct (forbidden motive). Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405–06 (2016).

Complainants engaged in protected conduct by making a request for a reasonable accommodation and subsequently filing a complaint with the Commission. The Hearing Officer was persuaded that Complainants had a good faith belief that Green was engaged in discrimination by denying the request for accommodation. Then, Green took adverse action against Complainants by issuing Evangelista 14-day Notices and commencing eviction proceedings between June and October 2017. Respondents then articulated a legitimate, non-retaliatory reason for taking such actions by arguing that Green's conduct could not be an adverse action because Evangelista owed back rent and Respondents were not required to make exceptions to how and when she paid rent. However, inconsistencies, contradictions, or deviations from standard practice or procedures can be evidence of pretext. Theidon v. Harvard University, 948 F.3d 477, 497 (1st Cir. 2020). The Hearing Officer's findings illustrate that prior to the request for accommodation Respondents did, in fact, make exceptions to how and when Evangelista paid rent, and that practice changed after Evangelista made the request for accommodation on behalf of Fortin. Therefore, we affirm the Hearing Officer's decision concerning retaliation.

We reject Respondents' arguments taking issue with the Hearing Officer's conclusions concerning Green's individual liability and remedies in this matter. Section 4(4A) of M.G.L. c. 151B makes it unlawful for any person to coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by M.G.L. c. 151B. To find Green individually liable, Complaints had to prove that: 1) Green had the authority or the duty to

act on behalf of the owner; (2) Green's action or failure to act implicated their rights under M.G.L. c. 151B; and (3) there is evidence that the action or failure to act was in deliberate disregard of their rights, allowing the inference to be drawn that there was intent by Green to discriminate or interfere with their exercise of rights. Lazaris v. Massachusetts Human Resources Division, 41 MDLR 117, 117-118 (2019). Green had the authority and a duty to act on Complainants' request for accommodation and deliberately declined to participate in an interactive dialogue concerning the request. Additionally, Green's conduct pertaining to the changes in his rent collection and eviction practiced were deliberate and retaliatory.

ORDER

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

1. Each Respondent is jointly and severally liable to pay Fortin, as an emotional distress damage award, $ 10,000 - plus interest thereon at the rate of 12% per annum from the date of the filing of the Complaint with the Commission until paid or until this order is reduced to a court judgment and post judgment interest begins to accrue.
2. Each Respondent is jointly and severally liable to pay Evangelista, as an emotional distress damage award, $ 20,000 - plus interest thereon at the rate of 12% per annum from the date of the filing of the Complaint with the Commission until paid or until this order is reduced to a court judgment and post judgment interest begins to accrue.
3. Respondent Green shall pay a civil penalty in the amount of $7,500 payable to the Commonwealth of Massachusetts within 60 calendar days of receipt of this decision.
4. Respondent Ngo shall pay a civil penalty in the amount of $5,000 payable to the Commonwealth of Massachusetts within 60 calendar days of receipt of this decision.

5. Respondent MGP shall pay a civil penalty in the amount of $5,000 payable to the Commonwealth of Massachusetts within 60 calendar days of receipt of this decision.
6. Within 30 calendar days of receipt of this decision, the Respondents shall contact the Commission's Director of Training to obtain a list of trainers approved by the Commission on disability law. Within 30 days of receipt of that list, the Respondents (separately or jointly) shall select an approved trainer and within 60 days of receipt of that list, the Respondents (separately or jointly) shall attend such a training. The training session must be at least four (4) hours in length. Within 30 calendar days after the completion of the training, each Respondent shall submit documentation of compliance to the Commission's Director of Training, signed by the trainer, identifying the training topic, the names of the persons required to attend the training, the names of the persons who attended the training, and the date and time of the training session. For purposes of enforcement, the Commission shall retain jurisdiction over training requirements.

In accordance with 804 CMR 1.24(1) (2020) and 804 CMR 1.23(12)(e) (2020), the within Order is not a final decision or order for the purpose of judicial review by the Superior Court in accordance with M.G.L. c. 151B, § 6 and M.G.L. c. 30A. Pursuant to 804 CMR 1.23(12)(c) and (d) (2020), Complainant has 15 days from receipt of this Order to file a petition for supplemental attorney's fees and costs incurred as a result of litigating the appeal to the Full Commission, and Respondent has 15 days from receipt of the petition to file an opposition.

The Commission will issue a Notice of Entry of Final Decision and Order when either the time for filing a petition for attorney's fees and costs has passed without a filing, or a decision on the petition is rendered. The Commission's Notice of Entry of Final Decision and Order will represent the final action of the Commission for purposes of M.G.L. c. 151B, § 6 and M.G.L. c. 30A § 14(1).

The thirty (30) day time period for filing a complaint challenging the Commission's Final Decision and Order commences upon service of such Notice.

SO ORDERED this 16th day of May 2024.

Sunila Thomas George
Chairwoman

Neldy Jean-Francois
Commissioner

**COMMONWEALTH OF MASSACHUSETTS**
**COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION, JOSHUA FORTIN, and NICOLE EVANGELISTA,
Complainants

v. DOCKET NO. 17WPR00664

MARTIN GREEN, MARTY GREEN PROPERTIES LLC, and HANG NGO a/k/a NGO HANG,
Respondents

## DECISION OF THE FULL COMMISSION

This matter comes before us following a decision issued on May 16, 2024, by the Full Commission in favor of Complainants Joshua Fortin and Nicole Evangelista ("Complainants"). The decision clarified and affirmed the hearing decision issued by Hearing Officer Jason Barshak on December 19, 2022, finding Respondents Martin Green, Marty Green Properties LLC, and Hang Ngo a/k/a Ngo Hang ("Respondents") liable for disability discrimination, denial of a reasonable accommodation, and retaliation in violation of M.G.L. c. 151B, §§ 4(4), 4(4A), 4(6), and 4(7A)(2).

On May 17, 2024, Commission Counsel filed a Petition for Supplemental Attorney's Fees and Costs (the "Petition"), along with an affidavit and time records. The Petition seeks attorney's fees for work performed between February 2, 2023, and February 27, 2023, before the Full Commission.[1] For the reasons discussed below, we award supplemental attorney's fees in the amount of $10,324.00.

[1] The Petition refers to attorney's fees and costs, but only includes a request for fees, not costs.

## LEGAL DISCUSSION

Commission Counsel seeks to recover fees of $10,324.00 for 28.99 hours of work performed by Commission Counsel at a rate of $356.00 per hour for work done in intervention on Respondents Martin Green and Marty Green Properties LLC's[2] appeal to the Full Commission. Respondents did not oppose the Petition.

Section 5 of Chapter 151B allows prevailing complainants to recover reasonable attorney's fees, and 804 CMR 1.23(12)(c) (2020) specifically provides for the award of attorney's fees and costs accrued as an appellee litigating a respondent's appeal to the Full Commission. The determination of whether a fee sought is reasonable is subject to the Commission's discretion and includes such factors as the time and resources required to litigate a claim of discrimination in the administrative forum. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). The Commission has adopted the lodestar methodology for fee computation. Id. 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. Id.

Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Id. at 1099. Compensation is not awarded for work that appears to be

[2] Respondent Ngo did not participate in this appeal.

duplicative, unproductive, excessive, or otherwise unnecessary to the prosecution of the claim. Hours that are insufficiently documented may also be subtracted from the total. Grendel's Den v. Larkin, 749 F.2d 945, 952 (1st Cir. 1984); Brown v. City of Salem, 14 MDLR 1365 (1992). The party seeking fees has a duty to submit detailed and contemporaneous time records to document the hours spent on the case. Denton v. Boilermakers Local 29, 673 F. Supp. 37, 53 (D. Mass. 1987); Baker v. Winchester School Committee, 14 MDLR at 1099.

Commission Counsel's hourly rate of $356.00 is consistent with rates customarily charged by attorneys with comparable experience and expertise.[3] The time records indicate that Commission Counsel spent just over three hours researching Fair Housing Act cases involving service animals and assistance animals, and the remaining time (25.74 hours) drafting and editing Complainant's Brief in Intervention.[4] Based upon our review of this record, we believe that this figure represents a reasonable number of hours necessary to litigate the claims upon which Complainants prevailed. Our review points to no evidence that hours spent were duplicative, unproductive, excessive, or otherwise unnecessary to the successful prosecution of the claim. For these reasons, we award Commission Counsel supplemental attorney's fees in the amount of $10,324.00.

## ORDER

For the reasons set forth above, Respondent is hereby ordered to pay Complainant $10,324.00 in attorney's fees with interest thereon at the rate of 12% per annum from the date of the filing of the Commission Counsel's Petition, until paid, or until this order is reduced to a

[3] Commission Counsel's hourly rate increased between the time of the award of fees for the public hearing and the Full Commission appeal consistent with the 2010 Massachusetts Law Reform Institute ("MLRI") scale.
[4] This document is referred to as the "reply brief" in Commission Counsel's time records.

court judgment and post-judgment interest begins to accrue.[5] Pursuant to 804 CMR 1.23(12)(e) (2020), this decision on Commission Counsel's Petition together with the Full Commission's decision issued pursuant to 804 CMR 1.23(10) (2020) on May 16, 2024, constitutes the Final Decision of the Commission for the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A, § 14(1).

SO ORDERED this 28th day of June 2024.

Sunila Thomas George
Chairwoman

Nelcy Jean-Francois
Commissioner

[5] Respondents additionally remain responsible for complying with the Hearing Officer's February 1, 2023 Order awarding Commission Counsel's fees in the amount of $41,077.10.