

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & MARYALICE GARY,
Complainants

v.

DOCKET NO. 08-BEM-02652

LITTLE CREATURES, INC.¹ &
JOHN SPODICK,
Respondents

Appearances:

Matthew C. Donohue, Esq. for Complainant
Lawrence M. Beane, Esq. for Respondents

I. Procedural History

On August 27, 2008, Complainant Maryalice Gary filed a complaint with this Commission charging Respondents with discrimination on the basis of age and gender. She further alleges that she was constructively discharged. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on June 11-15, 2012. After careful consideration of the record before me 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 Maryalice Gary is a 55 year old woman residing in Lowell, MA.

Complainant has worked as a veterinary technician since the age of 16 and has been in the field

¹ d/b/a/ Swan Corner Animal Hospital

for a total of 23 years. She worked at Swan Corner Animal Hospital from fall 2005 until March 6, 2008.

2. Respondent John Spodick received a degree in veterinary medicine from Purdue University in 1989. He worked at the National Zoo and at several veterinary practices before establishing Little Creatures, Inc., a corporation doing business as Swan Corner Animal Hospital, in 1997. Swan Corner is a full-service veterinary hospital located in Tyngsboro, MA. Spodick is the sole owner of the corporation. By all accounts, Spodick is a very good veterinarian.

Previous Employment Relationship with Respondent

3. From 1982 to 1997, Complainant worked as the head veterinary technician and receptionist at the Dracut satellite clinic of McGrath Animal Hospital, where she answered phones, scheduled appointments, drew blood and cleaned and monitored animals during the minor surgery that was performed there.

4. Complainant met John Spodick in approximately 1990 when he worked as a veterinarian for McGrath Animal Hospital. Spodick rotated through the Dracut office two to three days per week. Spodick testified that Complainant was outgoing and irreverent and that he and she developed a good relationship that included discussions of personal and family matters. According to Spodick, they "clicked," had fun and could joke with each other. Complainant referred to herself in a joking manner as the "mother bitch goddess," which Spodick took to mean she was in charge. (Testimony of Complainant; Testimony of Spodick)

5. During his time at McGrath, Spodick had at least two confrontations with clients. In one case a client stopped coming to McGrath after Spodick yelled at her to move her car; and in another instance, a client grabbed Spodick by the shirt and pushed him up against the wall

because of something Spodick said to him in the parking lot. (Testimony of Complainant; Testimony of Spodick) On another occasion, a receptionist at Dracut overheard Spodick during a phone conversation with a female technician, call the technician a "c--t." The receptionist relayed this to Complainant, who was offended and embarrassed that the receptionist had been subjected to this language and she complained to Dr. McGrath, who directed Spodick to write a letter of apology to Complainant and others in the workplace.

6. As a result of this incident, and for other reasons, McGrath terminated Spodick's employment. Spodick testified that he believed a reason for his termination was his relationship with a man who had AIDS. Thereafter, Spodick worked at two other veterinary practices, before opening Swan Corner Animal Hospital where he is the sole shareholder.

7. Complainant and Spodick remained in touch in the years following his termination from McGrath and occasionally socialized together with former co-workers. (Testimony of Complainant; Testimony of Spodick)

8. Complainant remained working at the Dracut location after McGrath sold it, but when the business was again sold in 2005, she lost her job. She began attending computer classes in order to learn a new skill.

Employment at Swan Corner

9. In September 2005, Spodick offered Complainant a position as a veterinary technician at Swan Corner, at the rate of \$19.50 per hour. She worked at Swan Corner on a part-time basis while completing her computer courses and began working there full time in January 2006. Complainant testified credibly that she assumed that her position would include restraining animals and assisting in surgery. She acknowledged that when she first started the job she went

to Spodick with concerns that she might not be able to handle the changes in the practice of veterinary medicine.

10. The Swan Corner facility consisted of a reception area, a hallway leading to examination rooms and wards for the animals and a pharmacy that opened into a large treatment area. Off the treatment area were a bathroom/laundry room, a surgery suite, Spodick's office and a break room. A computer located on the pharmacy counter was in an open area that could be seen from the waiting room.

11. When Complainant began working at Swan Corner, there were two other full-time veterinary technicians, William Gifford and another male, P.B.² Gifford had many years of experience working in full-service animal hospitals before coming to Swan Corner. P.B. had no relevant experience when he started in 2003 but after training he was able to perform all aspects of the job. (Testimony of Gifford; testimony of Spodick.) Annamaria Meaney, Stephanie McGinness and Michelle Goodwin all worked part-time at Swan Corner and were expected to perform clerical duties as well as some technician duties.

12. According to Gifford, all employees began working in the reception area, learned the computers, and then proceeded to work in the examining rooms, and the lab. He stated that all of the employees knew the "basics" in case they needed to take over. Complainant denied Gifford's assertion that he tried to train her to use the lab machine but that she had a lot of trouble with it. I credit her testimony over Gifford's.

13. Contrary to Complainant's expectations that she was hired to perform all the duties of a veterinary technician, she was assigned primarily receptionist's duties, such as answering

² P.B. is referred to only by his initials in order to protect his privacy. He did not testify at the public hearing.

the phone, greeting clients, scheduling appointments and occasionally holding a puppy. She stated that the other female employees also functioned as receptionists. (Testimony of Complainant)

14. Only Gifford and P.B. were permitted to restrain large dogs. Complainant acknowledged that a prior elbow injury prevented her from safely holding large dogs in the manner required by Spodick.³ (Testimony of Complainant; testimony of Meaney; testimony of McGinnis; testimony of Gifford; testimony of Redheart) Spodick testified that he allowed Complaint to hold smaller dogs and cats and stated that she was very good at restraining them. (Testimony of Spodick) I credit his testimony.

15. On one occasion, Complainant was holding a dachshund in her arms after Spodick had finished examining the animal, when the dog turned in her arms. Spodick became very upset and in the owner's presence, stuck his finger in Complainant's face and angrily claimed that she was going to drop the dog and break its back. Complainant testified that although she hadn't done anything wrong, she began to second-guess herself and was humiliated in the client's presence. I credit Complainant's version of this event. Spodick denied chastising Complainant. He stated that the dog jumped off the table and he asked another employee to assist. I do not credit Spodick's testimony in this regard.

16. Complainant testified that on one occasion, she entered Spodick's office for a work related matter and observed the image of a naked man on Spodick's computer screen. She stated she was so humiliated that she handed Spodick the information he needed and walked out. McGinnis, Goodwin, Redheart, and Meaney all testified credibly that they had observed images

³ Due to Spodick's being left-handed, and the placement of the examining table, Complainant could only hold large dogs so that they faced the wall, instead of facing their owners for greater comfort.

of scantily clad men on Spodick's office computer. Gifford stated that Spodick often viewed web-sites where men posed shirtless in bikinis or jockey shorts, but that this did not bother him. Complainant stated that sometime later there were also images of "pornography" on the computer set up in the treatment room from a website titled justinstefano. (Testimony of Complainant; testimony of Gifford; testimony of McGinnis; testimony of Goodwin; testimony of Redheart; testimony of Meaney) Spodick denied that there was ever a picture of a naked man on his office computer, but I do not credit his testimony.

17. A Chippendales calendar portraying male strippers was displayed in the break room at Swan Corner. Spodick testified that the calendar was given to him by Meaney and another employee. He stated that employees joked about the calendar. Liza Redheart testified that she threw away the calendar because it was out of date. Spodick was angry that Redheart had tossed the calendar and remarked at the time that he was going to miss "Mr. October." (Testimony of Redheart; Testimony of Spodick.) Thereafter, an employee downloaded a photograph of "Mr. October" (variously described by witnesses as wearing a Speedo, a G-string, or board shorts) to the pharmacy computer where it was displayed as the wallpaper. The computer was in full view of the waiting room.

18. The mouse pad located by the pharmacy computer at Swan Corner bore the phrase "The Internet is for Porn." Spodick testified that the phrase was the title of a song from the musical "Avenue Q," which made it acceptable. Spodick stated that no one ever complained to him about the mouse pad and the staff used it on a daily basis. The mouse pad was present throughout Complainant's entire employment. (Testimony of Redheart; Testimony of Spodick)

19. On one occasion when Complainant was at the reception area computer with a client accessing the client's record, a pop-up appeared, with the words "Are you horny?" Complainant felt humiliated, panicked and immediately went to Spodick and Griffith for assistance. Spodick laughed but did not otherwise respond. Complainant proceeded to shut off the computer as the client stood there looking at her. I credit Complainant's testimony about this incident. Spodick testified that he did not know of this incident until Complainant filed her MCAD complaint, but I do not credit his testimony.

20. Swan Corner had a radio/cd player with speakers in all of the rooms. Complainant testified that one song that was frequently played by Spodick or Gifford throughout the office contained sexually suggestive lyrics, "sucking hard on your lollipop." Complainant and her co-workers would turn down the volume when they heard the song. Complainant testified that it was humiliating for this sexually suggestive song to be playing in the office with clients and their children in the waiting room. I credit Complainant's testimony that the lyrics of this song were sexually suggestive. Gifford and Spodick both stated that the song was not sexually suggestive, but I do not credit their testimony.

21. Complainant testified that on one occasion when Spodick and Gifford were talking, Spodick told Gifford that she was "a good Catholic girl" who had "only done it twice." On another occasions he called Complainant a "menopausal old lady." He continued to make such comments throughout her employment. Spodick claimed that Complainant made these remarks about herself and also told him that she had been "spayed." I credit Spodick's testimony that Complainant made some self-deprecating joking remarks, as they had a previous joking relationship at McGrath, where she called herself a "mother bitch goddess." I credit Complainant's testimony that Spodick initiated these remarks as well.

22. Complainant testified that after she cut her hair short, Spodick told her that she looked like a lesbian. On another occasion he remarked that she had a "fat ass," and once told her not to wear a black sweater because it made her look like an old lady. She testified that these remarks were humiliating and made her uncomfortable.

23. Complainant testified that Spodick rated employees on a dry erase board as "good" or "bad," and thought this was a joke, but she didn't think so. Spodick frequently commented on the clothing and personal family matters of the employees. Complainant testified that despite the fact that Spodick's offensive behavior made her uncomfortable and often was abusive, she brushed it off because she needed the job and a paycheck. I credit her testimony.

24. In 2006, Spodick developed a serious medical problem that kept him out of work for varying periods of time over the next two years.⁴ When he was not working, he employed relief veterinarians to cover for him. Complainant testified credibly that the relief veterinarians permitted her to hold and restrain animals, take x-rays and draw blood. Complainant testified that during these times, she felt more confident in her abilities and believed she was still capable of performing traditional vet tech duties. This was in stark contrast to Spodick's limitations and criticisms which made her feel incompetent. (Testimony of Complainant) I credit her testimony.

25. Complainant testified that Spodick referred to P.B. as his "gay straight boyfriend." Redheart testified that Spodick would comment on P.B.'s body and looks, would ask him to remove his shirt, and would tell P.B. he should be his boyfriend. Redheart stated that these

⁴ In 2006, Spodick had medical problems related to diabetes. From February to August of that year he worked two to three days per week. He was hospitalized from late August through October. When he returned to work he was confined to a wheelchair. In 2007, Spodick continued to have medical problems and he worked only four days per week and was out of work for two or three weeks. In 2008, Spodick returned to working full-time. In 2009, Spodick's worsening condition resulted in the amputation of his right leg.

comments upset P.B. Spodick also told P.B. to bring his brother into the office because he was really cute. (Testimony of Complainant; testimony of Redheart) I credit their testimony. Complainant testified that on one occasion, P.B. neglected to flush the toilet after using the bathroom and Spodick went into the bathroom and proceeded to describe to the dimensions of P.B.'s stool. Complainant testified she was embarrassed and disgusted by these gross comments and felt horrible for P.B. I credit her testimony. Spodick admitted only to asking P.B. if he forgot to flush. I do not credit Spodick's version of this event. (Testimony of Complainant; Testimony of Spodick)

26. Complainant testified that Spodick was hostile toward the female employees, particularly McGinnis and Goodwin, whom he loudly chastised over minor matters. They were often in tears as a result of his treatment. Complainant observed Spodick yell at Goodwin for placing a box of tissues on the counter and then purposely knock the box off the counter.

27. Complainant's father died suddenly on December 12, 2006. She learned about his death at the office, became very upset and began to cry. Spodick kept remarking to Complainant that he was surprised at her extreme reaction to the point where she had to tell him to stop. (Testimony of Complainant; testimony of Spodick)

28. Complainant testified that on the morning of Thursday, November 29, 2007, she and her co-workers were hurrying to prepare the office for the day's patients and were rearranging furniture that had been used for a meeting the previous evening. Complainant feared that Spodick, who was on his way to the office, would be angry if the office was not ready for clients. She testified that she was so anxious, she developed a terrible headache, passed out and was taken to Lowell General Hospital. Complainant was admitted to the hospital for tests and "could

not calm down.” She believed the episode resulted from work-related stress. The hospital’s medical records indicate that she had a sinus infection that was treated with the antibiotic, Augmentin. (Testimony of Complainant; Ex. C-2)

29. Gifford and Spodick testified that it took Complainant time to learn Swan Corner’s computer system and that her vet tech skills were limited because her previous job involved very little surgery. Gifford stated that Redheart and Goodwin were inexperienced and had difficulties learning the office procedures and stated that Meaney and McGinnis “worked the rooms” on occasion. Gifford acknowledged that the “girls” wanted to assist in the examining rooms more often than they were allowed. He stated that either he or P.B. usually handled the large dogs but that the female employees were permitted to handle large dogs that were known to be docile.

30. Complainant’s difficult work situation created stress in her marriage because she would often come home from work upset and crying, and became argumentative. She told her husband that she was made to feel stupid and incapable of doing her job. On one evening when she returned home from work feeling angry, she threw items from her collection of lighthouses in her husband’s direction. Her husband ultimately told her to see her physician or not to come home after work.

31. Complainant testified that throughout her employment with Respondents she felt useless, humiliated, embarrassed and worthless. She second-guessed her ability to perform her job because Spodick criticized everything she did. She found it difficult to understand Spodick’s anger because she had never experienced similar treatment at any other job. As a result of Spodick’s uncontrolled anger and abusive treatment, Complainant began calling in sick.

I credit her testimony that the hostile work environment created by Spodick resulted in her not wanting to come to work.

32. Complainant testified that throughout her employment, she discussed her stressful working conditions with her primary care physician, Dr. Savory. Savory's records from 2007 do not support this testimony. During a visit on 5/15/07 Savory wrote that Complainant suffered from anxiety. She told him that her father had died that year and she was dealing with it "okay." There is no indication that Complainant informed Dr. Savory at that time that her anxiety was work-related. Dr. Savory prescribed anti-depressant and anti-anxiety medications. During a follow-up visit for her blood pressure on 11/13/2007, Savory noted that Complainant was happy about the birth of her grandson. While he also noted that Complainant suffered from depression and anxiety, there was no mention of her work situation. Savory testified that Complainant never relayed specific information about her workplace to him. (Testimony of Savory) (Ex. C-2)

33. On the night of March 5, 2008, Spodick tended to a sick dog that remained hospitalized. He left instructions for care of the dog first thing the following morning. (Testimony of Spodick; testimony of Complainant)

34. On the morning of March 6, 2008, when Gifford and P.B. arrived at work they did not see Spodick's instructions concerning the dog. Complainant arrived a little later and also did not see the instructions, and proceeded to perform the checklist of morning duties. (Testimony of Gifford; testimony of Complainant)

35. Complainant heard the door slam as Spodick entered the office. Upon observing that the dog had not been tended to, he yelled "What have you three f---ing idiots been doing all morning?" Complainant, who was at the front desk, became so upset that she ran into the

bathroom and shut the door. Gifford testified that he acknowledged he should have seen the instructions and apologized to Spodick. (Testimony of Gifford; testimony of Complainant)

36. Spodick continued yelling, "I am sick and tired of these mother-f---ing women putting medical records on the exam room table after I've told them not to." Complainant decided right then that she could no longer tolerate such an abusive working environment and told Spodick that she was going home. He responded by laughing and telling her to have a nice day. When Complainant arrived home there was a voice message on her phone from Spodick stating that if she were taking a mental health day, she could not use sick time and directing her to come back to work. Complainant never returned to work. (Testimony of Complainant; testimony of Gifford)

37. Gifford testified that Spodick had been upset about employees leaving files in the wrong place and that he "mentioned" that one of the "girls" had to stop leaving out files from the previous evening. Gifford and Spodick both testified that Spodick's anger about the files was not directed at Complainant and that he did not yell at her that morning. (Testimony of Gifford; testimony of Spodick) However, Complainant was the only woman present in the office at the time and she believed the remarks were directed toward her. I credit her testimony.

38. Spodick testified that he learned on March 3, 2008 that payments he had made to Complainant for the purpose of purchasing health insurance were taxable and that on the following Thursday, he told her that he would be sending her a 1099 form which she received on March 22, 2008. Complainant's husband was upset by this because they had already filed their income tax returns for the previous year. Complainant stated that at the time Spodick still owed her nine months of insurance payments, which he eventually paid.

39. Complainant testified that after leaving her position she lost her self-esteem, locked herself in the house with the blinds drawn and did not answer the telephone for six months, because of her treatment by Spodick. She testified that she never looked for work again.

40. On March 10, 2008, Complainant saw her primary care physician Dr. Savory for stress and anxiety relative to her treatment at work. Dr. Savory testified Complainant called the office crying and was told to come into the office. She relayed to him that she was very stressed about verbal abuse at work and was unable to eat or sleep. She was very tearful and indicated she felt she was "losing it." Dr. Savory modified her medications and referred to her to Kimberly McGlothlin, Ph.D. for counseling. Savory's later records from this time indicate that Complainant's experiences at Swan Corner caused her to be very angry and caused an escalation of her depression and anxiety. (Testimony of Complainant; Testimony of Savory; Ex. C-20)

41. Dr. Savory has treated Complainant for ten years. He currently treats her for hypertension and chronic obstructive pulmonary disease (COPD). He testified that Complainant also suffers from major depressive disorder and anxiety, with a history of issues with her husband and daughter that he declined to divulge due to privacy laws. (Testimony of Savory; Ex. C-2) Complainant has also been treated for mild heart disease.

42. Complainant testified that she has been prescribed medications for anxiety and depression on and off since the 1990s when her daughter was being treated for a serious childhood illness. On another occasion, Complainant was prescribed medication for anxiety when her daughter and husband received burns in a fire and her father and brother were simultaneously hospitalized. Prior to her employment at Respondents, Complainant took antidepressants when her grandmother became ill and died.

43. On June 6, 2008 Dr. Savory saw Complainant for a follow-up for her hypertension. He noted at that time that she was suffering from anxiety and depression, was very angry and her mood was up and down. He testified that he changed her anti-depressant medication. On June 7, 2008 Complainant was seen by Dr. Savory's Nurse Practitioner for nausea related to her medications. On July 21, 2008, Complainant felt her medications were not working and medical records reflect that she was angry, tearful and not sleeping. Dr. Savory increased her prescription for Xanax and referred her to Dr. Bhan, a psychiatrist, who he felt was better equipped to deal with the medications. On Sept 9, 2008, Dr. Savory noted that Complainant had seen Dr. Bhan and her mood was improved.

44. Complainant has treated with Kimberly McGlothin, Ph.D.⁵ since March 18, 2008. Complainant testified that she saw McGlothin to discuss her stress, anxiety and her feelings of no self-esteem. McGlothin documented her sessions with Complainant in clinical notes. In her first session, McGlothin noted that Complainant appeared anxious and depressed and felt compelled to leave her job because of her boss's verbal and emotional abuse, frequent loud/intimidating outbursts, vulgar language and pornography in the workplace. (Ex. C-4)

45. McGlothin's treatment notes document Complainant's stress and anxiety, difficulty in leaving her house, and not feeling like her old self. Complainant reported that she had been more assertive, fun-loving and strong, but that having endured abusive behavior at work took something from her that she feared she would not get back. McGlothin also noted that Complainant's husband's cancer diagnosis in January 2009 and other stressors, including Complainant's continued anxiety regarding legal proceedings against Respondent, caused her to

⁵ McGlothin did not testify at the public hearing

feel out of control. McGlothlin diagnosed Complainant with "Major Depression, Anxiety Disorder with Agoraphobia." (Ex. C-4)

46. On August 11, 2008, Complainant began seeing Dr. Chand K. Bhan, primarily to manage her medications. At the time of the public hearing, she continued to see Dr. Bhan every few months. Dr. Bhan diagnosed Complainant with "Post Traumatic Stress Disorder." Bhan's records document Complainant's on-going stress and anxiety regarding her employment at Swan Corner, and reflect an increase in her anxiety whenever she received communication via her lawyer regarding her ongoing MCAD case. Bhan also noted other sources of stress in Complainant's life, including her husband's cancer diagnosis in 2009, her involvement in a car accident and the suicide of a friend in 2010. (Ex. C-5)⁶

47. Complainant's hourly wages at the time of her separation from employment was estimated in testimony. However, Complainant's W-2 form for 2007 shows gross wages of \$37,879.88. (Ex. C-1) Based on her 2007 wages, Complainant's lost wages for the six months following her separation from employment are \$18,939.94 ($\$37,879.88/2=\$18,939.94$).

Testimony of Co-workers

48. Michelle Goodwin worked at Swan Corner from 2005 to 2006 as the primary receptionist. During her tenure, Goodwin frequently worked with Complainant. Goodwin testified that that Spodick would yell at her and her co-workers over trivial matters in front of clients. Goodwin confirmed that Spodick frequently yelled at staff for scheduling appointments at the wrong time and the staff "walked on eggshells" for fear of incurring his anger. Goodwin

⁶ Dr. Bhan's records appeared to contain some inaccuracies. For example, he noted that Complainant needed to sell a house in Florida that she had bought on-line. Complainant emphatically denied ever owning a house in Florida. Bhan did not testify at the public hearing and a document purporting to be his written summary was not allowed into evidence because it was not provided to Respondents prior to the public hearing.

was "petrified" to pick up the phone for fear that Spodick would chastise her about the scheduling. She testified that she, too, was often reduced to tears by Spodick's criticism and once locked herself in the bathroom to call her mother to complain about the abusive treatment. She asked Complainant to come to the phone to confirm to her mother that she was not exaggerating the extent of Spodick's mistreatment. Goodwin stated that Spodick was friendly with the male technicians and did not yell at them. Goodwin quit her job in 2006 because of the hostile work atmosphere. I credit her testimony.

49. Annamaria Meaney worked at Swan Corner from 2003 to 2005 as a receptionist/technician, performing primarily receptionist duties. Meaney testified that when he was in a bad mood, Spodick yelled at her several times a day and once denigrated her in front of a client. On another occasion, Spodick came up behind her, grabbed her pony tail and made horse-like noises. While Spodick's conduct caused her discomfort, she brushed off the incident, knowing that if she protested, Spodick would make it harder to get through the day. Meaney testified that while Spodick sometimes yelled at the male techs, he did so less frequently than with the female techs. Meaney left the job because she "wasn't learning anything" and was fed up with the inappropriate conduct in the office. I credit her testimony.

50. Stephanie McGinniss worked at Swan Corner from 2005 to 2006. She stated that Spodick's anger was explosive and unpredictable and that he yelled at her at least twice a week. He once asked her to bring a towel to the examining room and yelled at her for not bringing it fast enough. She dreaded coming to work, never knowing what Spodick's mood would be on any given day. She stated that when Spodick arrived, the mood in the office darkened. McGinniss testified that once when she was standing in the reception area, Spodick remarked to her, "Wow, your boobs are huge." She was shocked and couldn't believe he had made such a

comment. She stated that although Spodick did not target any one employee in particular, he did not yell at P.B. I credit her testimony. Spodick denied making the statement about McGinniss' breasts, but I do not credit his testimony.

51. Liza Redheart worked for Spodick from June 2006 to July 2007. At the time of her hire, Spodick told her to watch and learn and that after a few months she would be able to perform more hands-on duties. Once Redheart turned on the x-ray machine on a Monday morning, unaware that it had been drained over the weekend. Spodick yelled, "Shut it off! It's going to break. Who's the stupid idiot who told her to turn it on?" According to Redheart, from then on, Spodick yelled at her on a daily basis.

52. Despite Spodick's assurances to Redheart that her duties would expand, after three months, she was still performing receptionist duties. Spodick instructed her not to operate the blood machines or take x-rays and told her that only Gifford and P.B. were permitted to perform blood work and hold large dogs. Spodick testified that Redheart's training was deficient because he was absent from the office during much of that time.

53. Redheart testified that Spodick once threw a file at her. Another time, he asked her if she had breasts implants and showed her an article he was reading about breast reduction. On another occasion he handed her a bottle of Midol stating he had bought it for her. Spodick denied asking Redheart about breast implants. He stated while he was reading at a magazine story about Pamela Anderson, Redheart commented that her own implants looked better than Anderson's and he responded that he did not know Redheart had implants. I credit Redheart's version of events. I do not credit Spodick's version of events.

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54. Redheart testified that she began to calling in sick and vomiting in the morning before work. She left the job in July 2007, because she was fed up with the abusive work environment and because she needed to make more money because of an impending divorce.

55. William Gifford worked full-time for Respondent from 2005 to June 2011. At the time of his hire, Gifford was an experienced veterinary technician, with much experience in full service animal hospitals, in surgery and ICU. Gifford testified that he performed all duties, including reception, at Swan Corner. He testified that he became the de facto head technician because of his experience and ability. According to Gifford, there was a laid back environment at Swan Corner and employees joked around and listened to music when things were slow. Gifford resigned in 2011 in order to pursue a teaching career. (Testimony of Gifford)

56. Gifford testified that when Complainant started working at Swan Corner, she told him that he could call her "mother bitch goddess," and also repeatedly referred to herself as a "menopausal old lady" and a "good Catholic girl." I credit his testimony regarding these remarks, although I find that he exaggerated the frequency with which these remarks were made by Complainant. Gifford acknowledged that Spodick berated Complainant and Redheart for making mistakes. (Day 4, Testimony of Gifford)

III. CONCLUSIONS OF LAW

Complainant alleges that she was subjected to disparate treatment and a hostile work environment on the basis of her gender and that she was constructively discharged as a result of the hostile work environment.

A. Hostile Work Environment

G.L. c. 151B, s. 4 (1) prohibits discrimination in the workplace on the basis of sex. Sexual harassment is a form of sex discrimination actionable under G.L. s. 4 (1) and (16). See Collegetown, Division of Interco, Inc. v. MCAD, 400 Mass.156 (1987). Discrimination on account of ones gender includes harassment in the workplace that is gender based but is not necessarily sexual in nature. Dinsmore & Ford v. Home Security, Inc., 19 MDLR 4 (1997); Baldelli v. Town of Southborough Police Department, 17 MDLR 1541 (1995) In order to prove a cause of action for hostile work environment harassment based on gender, Complainant must demonstrate that the workplace is pervaded by offensive and unwelcome conduct directed at, or adversely affecting, females and that such conduct poses a formidable barrier to full participation in the workplace, effectively interfering with her ability to perform the job. Baldelli, supra; Ramsdell v. Western Massachusetts Bus Lines, Inc., 13 MDLR 1087 (1991). (standard for hostile work environment sexual harassment) Racial harassment cases have adopted the same standard. Richards v. Bull H.N. Information Systems, Inc., 16 MDLR 1639, 1669 (1994); Beldo v. U. Mass Boston, 20 MDLR 105, 111 (1998) The unwelcome conduct must be both subjectively and objectively offensive. See College-Town supra. at 162; Ramsdell v. Western Mass. Bus Lines, Inc., 415 Mass. 673, 678 (1993). The objective standard of sexually unwelcome conduct considers the evidence from the perspective of a reasonable person in the plaintiff's position. The reasonable woman 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.")

The evidence in this case is that Spodick engaged in behavior that was unwelcome and sexually offensive to Complainant and other female employees in the workplace, while also perpetrating numerous offensive acts of gender based hostility toward female employees. He engaged in many abusive acts manifested by excessive anger and unwarranted yelling and criticism that engendered fear and anxiety in Complainant and which disproportionately impacted Complainant and other female employees. The evidence establishes that Complainant was subjected to harassment by Spodick that substantially affected the terms and conditions of her employment, impaired her ability to do her job and created a hostile work environment based on gender. Spodick addressed Complainant in an insulting, demeaning and sexist manner, commenting on her dress and haircut in an uncomplimentary way and telling her she had a "fat ass."

In addition to offensive sexually inappropriate comments and other such behavior, Spodick displayed a mercurial temper and publicly humiliated Complainant and other employees for perceived errors. Complainant and particularly her female co-workers were fearful and dreaded going to work in anticipation of Spodick's angry outbursts and how it would impact their daily routines. It was clear that his wrath was most often visited upon the female employees and that they were particularly sensitive to his moods and unprofessional outbursts and fearful of his temper.

In addition, Spodick openly displayed photos of naked or scantily clad men on office computers and in the break room, played sexually suggestive music in the office, and displayed a mouse pad proclaiming, "The internet is for porn." He commented on employees' breast size and breast implants and a male employee's body. Complainant was humiliated and embarrassed by the display of naked men, the suggestive music, the degrading comments and the denigration of her work in the presence of clients. She didn't complain for fear of incurring more of Spodick's wrath and losing her job. I conclude that the atmosphere was objectively hostile toward women, and was also subjectively hostile for Complainant as described above. Respondents are liable for subjecting Complainant to a gender based hostile work environment in violation of MGL c. 151B.

B. Disparate Treatment

Complainant further alleges that by virtue of her gender, she was relegated to performing primarily secretarial/receptionist duties and was not allowed to fully participate in the work of a veterinary technician, despite her extensive relevant experience. Complainant was not physically able to hold and restrain large dogs in the manner required by Spodick and there was some evidence that she was fearful of learning Respondents' systems and machinery. I conclude, nevertheless, that she was not given the same opportunities to learn and further enhance her skills that the full-time male technicians were given and that the male vet techs were treated more favorably in terms of the duties they performed, such as animal restraint, surgical assistance, performing laboratory work and taking x-rays. Complainant testified credibly that in contrast to the limitations Spodick placed on her, when substitute veterinarians were brought in, she was given more opportunities to work hands-on with animals and did so ably. I conclude that Complainant was assigned less skilled work and limited in the tasks she could perform, as

compared to the male vet techs, and that the primary reason for this was her gender. Therefore, I conclude that Respondents engaged in disparate treatment of complainant and are liable for unlawful discrimination on the basis of gender, and gender harassment, in violation of M.G.L.c. 151B.

C. Constructive Discharge

In order to prove constructive discharge, Complainant must show that she was in effect, fired because the situation at her workplace became intolerable and the threat of physical or psychic harm was so great as to preclude her remaining on the job. Horzesky v. R&M Construction, Co., 15 MDLR 1171 (1993); McKinley v. Boston Harbor Hotel, 14 MDLR 1241 (1992); Brodeur v. Harney's Superstore, 5 MDLR 1335 (1983). Complainant testified credibly that on her last day of work, her working conditions were so hostile and so affected her confidence and self-esteem that she was forced to quit her job. When Spodick yelled, "What have you three fucking idiots been doing all morning," she was so fearful of his outburst that she hid in the bathroom. From there, she heard Spodick continue his tirade against the female employees in the office. Complainant testified credibly and convincingly that she could no longer tolerate the abusive working conditions and felt she had no choice but to leave. I conclude that Complainant's work environment was sufficiently hostile and abusive to her as a female to support a claim of constructive discharge. Complainant's working conditions had become so intolerable that she had no expectation of them improving and was justified in resigning from her job. See Baldelli, supra. Spodick, who was the perpetrator of the abusive behavior, was the company owner and manager. Ultimately, both he and the corporate entity under which he operated his business, Respondent Little Creatures, Inc. are liable for his

conduct. Since Spodick was the sole owner of the business, Respondents are jointly and severally liable for his conduct.

IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to grant remedies to effectuate the purposes of G.L. c. 151B. Such remedies may include an award of lost wages and damages for emotional distress.

A. Emotional Distress

The Commission is authorized to award damages for emotional distress damages resulting from unlawful discrimination. Stonehill College v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549 (2004) Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303(1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Court 172(1985). 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; the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has suffered and reasonably expects to suffer and 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. Based on the credible testimony of Complainant and the supporting medical records, I conclude that Complainant suffered emotional distress as a result of Respondents' unlawful discrimination.

Complainant testified credibly that during her employment, her work situation caused stress in her marriage. Complainant would often come home from work upset and crying and

tell her husband how she was made to feel stupid and incapable of doing her job. Over time she became argumentative and angry and her husband ultimately told her to see her physician or not to come home after work.

Complainant testified credibly to feelings of uselessness, humiliation, embarrassment and worthlessness caused by the hostile work environment Spodick subjected her to. She second-guessed her ability to perform her job because he was critical of everything she did. She was confounded by Spodick's anger because she had never before experienced such treatment. She told Spodick that his sexually offensive jokes and behavior were not funny. As she came to fear Spodick's angry outbursts more, Complainant began calling in sick and contemplated leaving the job. She pondered what she had done wrong and wondered if she really was as incompetent as Spodick made her out to be. The final straw was the day Spodick attacked the competency of the women in the office in an angry outburst of profanity. On that day Complainant determined she could no longer remain at the job and left the workplace, never to return. Following her resignation, Complainant continued to doubt her self-worth and suffered a loss of confidence and self-esteem. She testified that she retreated to her home, closed the shades and did not answer the telephone for six months. She sought help from her primary care physician and treatment with a psychologist and a psychiatrist. Complainant's psychologist, Kimberly McGlothin, documented Complainant's stress and anxiety, her agoraphobia, her not feeling like her old self and her belief that enduring Spodick's abusive behavior took something from her that she was afraid she would not get back. McGlothin diagnosed Complainant with "Major Depression, Anxiety Disorder with Agoraphobia."

Complainant had been treated with medication for anxiety and depression by her primary care physician over the years prior to her employment with Respondents. She had suffered a

number of traumatic events in her life, such as her daughter's childhood illness, her daughter and husband being burned in a fire, the illness and death of her grandmother, her daughter's divorce and other matters. While, it is clear that Complainant had a long history of suffering from anxiety and depression, and a history of treatment for these ailments, this does not absolve the Respondents from liability for the additional distress Spodick's actions caused her and the fact that his conduct exacerbated her underlying condition. Franklin Publishing Co., Inc. v. MCAD, 25 Mass. App. Ct. 974, 975 (1988); Brady v. Art Cement, 9 MDLR 1075 (1987). Even considering other factors that were sources of emotional distress in Complainant's life, there is still ample evidence that much of the depression and anxiety she experienced while employed by Respondents and subsequent thereto for a period of some time, resulted primarily from the abusive treatment she was subjected to by Spodick as a woman in the workplace. The stress and hostility of her workplace affected her physically and psychologically and ultimately resulted in her constructive discharge. I conclude that the gender based hostile work environment at Complainant's workplace was a significant cause of her emotional distress for period of time after her termination as well.

Notwithstanding the above, I am limited by the record in determining what portion of Complainant's emotional distress in the years following her termination is fairly attributable to Respondents. While the treatment records of Complainant's psychologist and psychiatrist indicate that she continues to suffer from anxiety and depression, Complainant's testimony on the subject was scant and primarily confined to the six months following her termination. The evidence of record indicates that a number of intervening events, notably her husband's cancer diagnosis, the death of several friends and Complainant's physical problems were significant sources of distress for Complainant in the years following her constructive discharge. While I

believe that the manner in which she was treated by Respondents was a significant factor contributing to her emotional distress at the time of the events and for a period thereafter, I decline to draw the inference that Respondents' conduct continued to be the primary source of her ongoing distress for a subsequent period of years. Nonetheless, the distress resulting from Respondents hostile work environment was not insignificant. I conclude that Complainant is entitled to an award in the amount of \$35,000 for the emotional distress she suffered as a direct result of Respondents' unlawful actions which subjected her to a gender based hostile work environment.

B. Lost Wages

I conclude that Complainant is entitled to a lost wages for the six month period wherein she was unable to work and confined herself to her home with depression and anxiety resulting from her treatment by Respondents. Complainant did not seek employment thereafter, taking no affirmative steps to mitigate her damages from lost wages. In 2010, she applied for and was awarded Social Security Disability Benefits retroactive to 2009. There is insufficient record evidence to support a conclusion that Respondents' discriminatory conduct caused Complainant's total disability or her inability to ever work again and I cannot conclude that this is so. Absent a definitive diagnosis or opinion as to causation, I cannot determine with any certainty to what degree Respondents' conduct may ultimately have contributed to Complainant's disability. However based on Complainant's credible testimony that she was rendered emotionally debilitated for six months as a result of the trauma at work, I conclude that it is fair and reasonable to award her lost wages from the date she left employment in March 2008 until September 2008, the six month period following her separation from Respondents, in the amount of \$18,939.94. (See finding #47)

V. ORDER

For the reasons stated above, it is hereby ORDERED that:

1. Respondents cease and desist from discriminating against employees on the basis of gender.
2. Respondents pay to Complainant Maryalice Gary the sum of \$35,000.00 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 Maryalice Gary the sum of \$18,939.94 in lost wages 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.
4. Respondents conduct a four hour training session on unlawful discrimination and harassment. All employees and managers are required to attend.
 - a. Within 30 days of the receipt of this decision, Respondents shall select a trainer to conduct the training. The training may be provided by the Commission, may be provided by a trainer who is a graduate of the MCAD's certified "Train the Trainer" course, or may be provided by a trainer whose resume is approved by the Commission's Director of Training. The training shall take place within 60 days of selection of a trainer.
 - b. At least 30 days prior to the training date, Respondents must submit a draft training agenda to the Commission's Director of Training for approval and provide notice of the date and

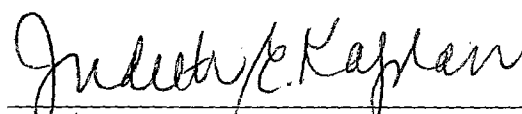
time of the training. If the Commission decides to send a representative to observe the training, Respondents will allow the Commission representative unfettered access.

c. Within 30 days of completion of the training, Respondents must submit to the Commission's Director of Training the following information: the training topic(s), the names of persons required to attend the training, the names of persons who attended the training, and the date and time of the training.

d. For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.

This constitutes the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to 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 27th day of November 2012



JUDITH E. KAPLAN,
Hearing Officer