

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

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MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
NATALIA GUTIERREZ,  
Complainants

v.

DOCKET NO. 10-NEM-02160

GABRIEL CARE, LLC,  
Respondent.

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**DECISION OF THE FULL COMMISSION**

This matter comes before us following a decision by Hearing Officer Betty E. Waxman dismissing Complainant, Natalia Gutierrez’s complaint charging Respondent, Gabriel Care, LLC, with discrimination based on nation origin, race, and retaliation.<sup>1</sup> Following an evidentiary hearing, the Hearing Officer concluded that Respondent, Gabriel Care, LLC, was not liable for discrimination or retaliation in violation of M.G.L. c. 151B, §§ 4(1) & (4). Complainant has appealed to the Full Commission. For the reasons discussed below, we affirm the Hearing Officer’s decision.

**STANDARD OF REVIEW**

The responsibilities of the Full Commission are outlined by statute, the Commission’s Rules of Procedure (804 CMR 1.00 *et seq.*), and relevant case law. It is the duty of the Full

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<sup>1</sup> This case was one of two cases filed with the Commission involving claims against Respondent, Gabriel Care, LLC (10-NEM-02160 and 10-NEM-02161). On April 26, 2016, Hearing Officer consolidated the two cases, as the facts, testimony, and issues of law in the two cases are so closely interwoven. The Hearing Officer issued one decision for both matters.

Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, § 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 Guinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); MCAD and Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). The role of the Full Commission is to determine whether the decision under appeal was based on an error of law, or whether the decision was arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. See 804 CMR 1.23.

### **BASIS OF THE APPEAL**<sup>2</sup>

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<sup>2</sup> Complainant also requests a rehearing of this matter before the Full Commission. Since Complainant chose to remain within the MCAD, instead of removing their claims to the Superior Court pursuant to M.G.L. c. 151B, § 9, both parties are subject to the formal administrative process set forth in M.G.L. c. 151B, § 5. Stonehill College v. Massachusetts Comm’n Against Discrimination, 441 Mass. 549, 565-566 (2004)(“Should the complainant choose to remain within the MCAD, then both parties are subject to the formal administrative process, and neither has a right to a jury trial”). The role of the Full Commission is to determine whether the decision under appeal was based on an error of law, or whether the decision was arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law, not to rehear the matter. This review petition is confined to the record. See 804 CMR 1.23. Although the Full Commission has the discretion to order oral argument on an appeal petition we do not find that oral argument is warranted in this matter. Id.

Complainant has appealed the decision on the grounds that the Hearing Officer's findings are not supported by substantial evidence, are inconsistent, arbitrary, and not in accordance with the law. Complainant argues that the Hearing Officer erred in crediting Respondent's witnesses; that the Hearing Officer inappropriately applied misstatements of facts as well as omissions of key facts to the law; and that the Hearing Officer understated and/or discounted evidence of discriminatory animus and incorrectly justified the discriminatory actions of Respondent.

Complainant's argument that the Hearing Officer erred in crediting Respondent's witnesses; omitting key facts; and understating and/or discounting evidence misunderstands the role of the Hearing Officer and Full Commission. In this case, the Hearing Officer documented in her decision evidence that she found significant, she noted the testimony that she found credible, she noted when she did not credit contradictory testimony, and she cited to specific evidence in the record when explaining why these determinations were made. Complainant's disagreement with the Hearing Officer's determinations does not mean that the Hearing Officer misinterpreted or misconstrued the evidence presented, even if there is some evidentiary support for that disagreement. Ramsdell v. W. Massachusetts Bus Lines, Inc., 415 Mass. 673, 676 (1993) (review requires deferral to administrative agency's fact-finding role, including its credibility determinations). The Hearing Officer remains in the best position to assess credibility because she hears the testimony of witnesses and observes their demeanor firsthand. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). The review standard set forth in 804 CMR 1.23 does not permit us to substitute our judgment for that of the Hearing Officer in considering conflicting evidence and testimony, as it is the Hearing Officer's responsibility to weigh the evidence and decide disputed issues of fact. We will not disturb the Hearing Officer's findings of fact, where, as here, they are fully supported by credible testimony and evidence in the record.

We have carefully reviewed Complainant's grounds for appeal and the record in this matter and

have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law with respect to the Hearing Officer's findings and conclusions of law. We find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them. With regard to Complainant's challenges to the Hearing Officer's determinations of credibility, we reiterate that it is well established that the Commission defers to these determinations, which are the sole province of the fact finder. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005).

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision.

ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of service of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Standing Order on Judicial Review of Agency Actions, Superior Court Standing Order 96-1. Failure to file a petition in court within thirty (30) days of service of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED<sup>3</sup> this 22<sup>nd</sup> day of November, 2019



Monserrate Quiñones  
Commissioner



Neldy Jean-Francois  
Commissioner

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<sup>3</sup> Chairwoman Sunila Thomas George was the Investigating Commissioner in this matter, so did not take part in the Full Commission Decision. See 804 CMR 1.23(1)(c).