COMMONWEATH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

Massachusetts Commission Against
Discrimination and Stephanie Joseph,
Complainants

v. Docket: 17-BEM-02109

Massachusetts Department of
Children and Families,
Respondent

DECISION ON (1) COMPLAINANT'S PETITION FOR ATTORNEY'S FEES, COSTS, AND INTEREST AND (2) COMPLAINANT'S FORMER COUNSEL'S PETITION FOR ATTORNEY'S FEES

Complainant, Stephanie Joseph ("Joseph") filed a complaint with the Massachusetts Commission Against Discrimination ("Commission") against her former employer, the Massachusetts Department of Children and Families ("DCF"), alleging that it: (1) discriminated against Joseph on the basis of her disability by failing to provide her with a reasonable accommodation on four separate occasions; (2) retaliated against her; and (3) constructively discharged her in violation of M.G.L. c. 151B. After a public hearing that took five full days and the beginning of a sixth, I issued a decision on May 5, 2023, finding in favor of Joseph on two of the four failure to provide a reasonable accommodation claims, the retaliation claim, the constructive discharge claim. Remedies included an award of lost wages and emotional distress damages to Joseph.

M.G.L. c.151B, §5 allows a complainant who prevails in a matter after a public hearing before the Commission to recover reasonable attorney's fees and costs. On May 24, 2023, two petitions were filed by Joseph with the Commission. One was a petition for attorney's fees,

costs and interest for her attorneys - Chetan Tiwari ("Tiwari") and Patrick Banfield ("Banfield"). The other was a petition for attorney's fees by her former attorney, Suzanne Herold ("Herold") ("Petitions"). On July 14, 2023, the DCF filed an opposition to the Petitions. On August 18, 2023, a reply brief was filed. [1]

I. LEGAL STANDARD

The "purpose of G. L. c. 151B, which is to discourage unlawful discrimination, as well as the requirement that the statute be broadly construed, see G. L. c. 151B, § 9, indicate an expressed legislative intent to encourage competent counsel to seek [] relief for discrimination claims. [Citations omitted]" Haddad v. Wal-Mart Stores, Inc. (No. 2), 455 Mass. 1024, 1025 (2010) (rescript) See also Sun and Massachusetts Commission Against Discrimination v. University of Massachusetts, Dartmouth, 36 MDLR 85, 88 (2014) (Full Commission) ("in awarding attorneys' fees, the Commission recognizes the strong public interest in allowing claims to proceed with competent counsel to vindicate the public interest to discourage unlawful discrimination") The Commission has adopted the "lodestar" methodology for fee computation. See e.g. Reed and Massachusetts Commission Against Discrimination v. Pipefitters Association of Boston, Local 537, et. al., 44 MDLR 22 (2022) (Full Commission). The Commission has explained the lodestar methodology as follows.

> 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

[1]I have considered all material submitted and arguments made relative to the Petitions. Material and arguments not addressed within this document do not alter my conclusions.

determines that no adjustment is warranted depending on various factors, including complexity of the matter. *Id.*

Reed, 44 MDLR at 23 See School Committee of Norton v. MCAD, 63 Mass. App. Ct. 839, 850 (2005). ("The MCAD was well within its discretion to apply the lodestar method.")

II. CALCULATION OF REASONABLE ATTORNEY'S FEES

In the Petitions, Joseph seeks as attorney's fees: (a) Tiwari, $500/hour for 225 hours ($112,500); (b) Banfield, $600/hour for 132.7 hours ($79,620) and (c) Herold, $400/hour for 32.2 hours ($12,880), for a total request of attorney's fees of $205,000. [2]

A. Reasonable Hourly Rate

The "determination of a reasonable hourly rate begins with 'the average rates in the attorney's community for similar work done by attorneys of the same years' experience.' (Citation omitted)" Haddad, 455 Mass. at 1025-1026 (when "'the award is provided for by statute and is assessed against the party having no contractual relationship with the attorney involved, the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth.' *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 629 (1978)")

In support of their respective requested hourly rates, Banfield, Tiwari, and Herold each filed an affidavit. Two affidavits were filed by other attorneys on behalf of the requested hourly rate for Banfield and two affidavits were filed by two other attorneys in support of Tiwari's requested hourly rate (collectively "Affidavits"). In support of the requested hourly rates,

[2]DCF argues the requested hourly rates for Banfield and Tiwari are excessive and suggests an hourly rate for Banfield of $490 and for Tiwari of $450. DCF does not argue that Herold's requested hourly rate of $400 is excessive.

Joseph also relies upon the Wolters Kluwer 2022 Real Rate Report ("WK 2022 Report") and the U.S. Attorney's Office's Fees Matrix (2015-2021) ("USAO Matrix").

Regarding the USAO Matrix, it was prepared "to evaluate requests for attorney's fees in civil cases *in District of Columbia courts* … in which a fee shifting statute permits the prevailing party to recover 'reasonable' attorney's fees" and "has *not been adopted by the Department of Justice generally for use outside* the District of Columbia." (USAO Matrix at note 1) (Emphasis Added) In light of this express limitation, I do not find it appropriate to use the USAO Matrix in this case.

Regarding the WK 2022 Report, "[s]everal courts have relied on [Wolters Kluwer Real Rate Reports] because of their large sample size and accurate reflection of market rates." Muehe v. City of Boston, 569 F. Supp. 3d 80, 86 (D. Mass. 2021); Tyler v. Michaels Stores, Inc., 150 F. Supp. 3d 53, 70 n. 32 (D. Mass. 2015) ("This Court notes, however, that there might be a response in future cases to its objection that published hourly rates are unhelpful in the absence of any data on actual 'yield': Wolters Kluwer apparently publishes a commercial dataset of 'actual rates that have been paid' by clients…. Without expressing an opinion as to the quality of the report, or its relevance to any case in particular, the Court notes that it appears to bypass the main objection to published rates.")[3] In determining reasonable hourly rates in this case, I rely upon the WK 2022 Report.

In its opposition, DCF states Banfield "runs a small firm with one other attorney" and Tiwari "is a solo practitioner." In its reply, Joseph does not rebut these assertions. As such, I shall presume both statements are true. DCF correctly points out that the WK 2022 Report

[3]I am aware that some courts do not view Wolters Kluwer Real Rate Reports favorably. Salomon v. 4221 Hylan Boulevard Corp., 2021 WL 7908043, at *6–7 (E.D.N.Y. May 7, 2021); Cortes v. Juquila Mexican Cuisine Corp., 2021 WL 1193144, at *5 (E.D.N.Y. Mar. 29, 2021) ("the helpfulness of the Real Rate Report is less than certain.")

indicates a lower hourly rate for attorneys in small firms.[4] This is consistent with case law reflecting that the hourly rate for attorneys working in small firms is lower than had they worked in mid-sized or large firms. See Neal v. City of Boston, 2022 WL 303492 at *7 (Mass. Sup. Ct., Jan. 18, 2022)

> Mr. Nevins is an attorney with almost 40 years of experience…. His hourly rate for his practice in a small or solo firm environment of $525 is reasonable. Indeed, if he was practicing in a large firm, with a host of associates to manage, his hourly rate would likely be much higher…. Part of what is built into their rates as solo practitioners is the fact that they will, on occasion, have to perform certain tasks that might otherwise be done by a more junior lawyer who bills at a lower rate. However, by performing those tasks themselves, they are saving time that might otherwise reasonably be spent for coordination, review and supervision of a team of people, or in doing tasks more expeditiously than they might be done by an attorney with less experience.

See also Long Bay Mgmt. Co., Inc. v. Haese, LLC, 2013 WL 7018941, at *6 (Mass. Sup. Ct., Dec. 3, 2012), aff'd, 88 Mass. App. Ct. 1113 (2015) ("These rates are in line with those of highly regarded small-to mid-sized Boston firms for litigation work, and substantially below the rates of similarly qualified attorneys at larger firms."); Rudy v. City of Lowell, 883 F. Supp. 2d 324, 327 (D. Mass. 2012) ("While there are instances of comparably-skilled attorneys

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[4]

Pages 61-62 of 2022 WK Report (litigation partners with no limitation on subject area)

Firm Size (#attorneys)	n (sample size)	median hourly rate
50 or less	664	$345
51-200	756	$400
201-500	822	$555
501-1000	1012	$760
1001-	707	$895

Page 122 of 2022 WK Report (litigation partners with subject area limited to employment and labor)

Firm Size (#attorneys)	n (sample size)	median hourly rate
50 or less	58	$398
51-200	48	$370
201-500	132	$476
501-1000	167	$634
1001 -	126	$795

This data shows, with one exception, an increasing hourly rate as the size of the firm increase. The sole outlier (51-200 attorneys with subject area of employment and labor) may be attributed to the small sample size for that data point and the adjacent 50 or less attorneys' data point.

being awarded higher rates, those are generally for more complex actions or for attorneys at large firms with higher overhead. By contrast, the scope and complexity of this case and Attorney Rice's position at a small, suburban firm indicate that the requested hourly rate is too high"); Gavin v. City of Boston, 2022 WL 847409 at *9 (D. Mass., March 22, 2022)

Joseph notes that in the WK 2022 Report, the median hourly rate for Boston area partners in employment and labor matters is $578 and the median hourly rate for Boston partners practicing litigation without limitation by subject area is $681 (WK 2022 Report at pp. 11, 116). However, in light of the significance of firm size, I have determined that additional pertinent data points from the WK 2022 Report are necessary, including ones not specific to the Boston area. The WK 2022 Report has one further data point relative to Boston law partners that I find relevant. The median hourly rate for partners in the Boston area with fewer than 21 years of experience is $650. (WK 2022 Report at p. 29) The WK 2022 Report contains the following six data points not specific to the Boston area that I also deem relevant to assessing a reasonable hourly rate for attorney's fees in this case: (a) median hourly rate for partners practicing ADA litigation is $502; (b) median hourly rate for partners practicing litigation in firms with fewer than 50 attorneys is $345; (c) median hourly rate for partners practicing labor and employment is $535; (d) median hourly rate for partners practicing discrimination, retaliation, and harassment/EEO litigation is $365; (e) median hourly rate for partners practicing labor and employment litigation, with fewer than 21 years of experience, is $475; and (f) median hourly rate for partners practicing labor and employment litigation in firms with fewer than 50 attorneys is $398. (WK 2022 Report at pp. 48, 61, 69, 70, 120, and 122) [5]

[5] I am mindful that "determination of a reasonable hourly rate begins with 'the average rates in the attorney's community….' (Citation omitted)" Haddad, 455 Mass. at 1025-1026. However, the three referenced Boston area data points do not address firm size, making it necessary to analyze data points within the WK 2022 Report not specific to the Boston area.

The average hourly rate of the nine pertinent WK 2002 Report data points is $503. The totality of these nine data points achieves to a considerable degree a reasonable hourly rate. However, there are two additional issues that must be addressed.

The first is determining the date(s) at which the hourly rates should be calculated. In my discretion, I apply a single rate and use a rate appropriate to the time of filing of the Petitions (May 24, 2023). See Sun, 36 MDLR at 88, n. 4 ("Although the attorney's fees were incurred over the period from 2005 through 2011, we exercise our discretion to apply a single reasonable rate to the petition. *See*, *Rolland* v. *Cellucci*, 106 F.Supp.2d 128, 142 (D. Mass. 2000) (recognizing discretion to award rates appropriate to the moment of the fee request, rather than calculating various rates over time)"); M. Berenson Co. v. Faneuil Hall Marketplace, Inc., 671 F. Supp. 819, 831 (D. Mass. 1987) ("The use of current market rates may compensate the attorneys for the delay in payment of their fees, that is, for inflation and interest, as well as simplify the task of the district court.") The WK 2022 Report data was "based on data collected thru Q2 2022" (ie through June 30, 2022)[6] and is thus approximately one year before the filing of the Petitions on May 24, 2023. (WK 2022 Report at pps. 8, 63, 84 and 172) In light of this passage of almost one year, I will apply an inflation factor in this case. [7] [8] The record does not include the rate of inflation for the period approximating July 1, 2022 to May 24, 2023. The record does indicate that $1 in January 2021 was worth $1.16 in April 2023. Extrapolating from this evidence but mindful to avoid a windfall regarding attorney's

[6] Although not specifically cited in the WK 2022 Report, I presume Q2 2022 means April 1, 2022 through June 30, 2022.

[7] Many attorney fee petitions may not require a separate analysis for inflation.

[8] Joseph argues inflation should be taken into account in determining a reasonable hourly rate because of the passage of time. See Petition in support of fees for Tiwari and Banfield at p. 8 ("Accounting for the additional 1-2 years that has elapsed since the last year included on the Matrix and unusually high inflation"); and at Exhibit F (CPI inflation calculator indicating that $1 in January 2021 had the same buying power as $1.16 in April 2023).

fees, I shall increase the average hourly rate of $503 by 5% to account for inflation during the period of July 1, 2022 through June 30, 2023 which equates to an hourly rate of $528.

The second issue is years of experience. Years of experience is an important component in determining a reasonable attorney's fee. Haddad, 455 Mass. at 1025-1026 ("determination of a reasonable hourly rate begins with 'the average rates in the attorney's community for similar work done by attorneys of the same years' experience.' (Citation omitted)") Of the nine WK 2022 Report data points relied upon, two address years of experience but those only break down the years of experience into two categories – "Fewer Than 21 Years" and "21 or More Years." (WK 2022 Report at pp. 29, 120) In other words, these two data points do not distinguish between an attorney with 20 years of experience and one with 2 years, or in this case, an attorney with approximately 17 years of experience (Banfield) and an attorney with approximately 9 years of experience (Tiwari). Joseph's petition relative to Banfield and Tiwari recognizes this distinction in years of experience and that a reasonably hourly rate for Tiwari will be less than that for Banfield.

Taking all of the above into account, I find that a reasonable hourly rate for services performed by Banfield is $528. Regarding the hourly rate for Tiwari, I take a modest reduction of 10% from the $528 because of his comparatively less years of experience resulting in a reasonable hourly rate for services performed by Tiwari of $475.[9] [10]

Regarding Joseph's request for attorney's fees for Herold, Herold's affidavit suggests that she began practicing in 2009, or four more years of experience than Tiwari, who I have

[9]In determining a reasonable hourly rate for Banfield and Tiwari, I took into account the Affidavits but found they do not warrant a different hourly rate for either Banfield or Tiwari or Herold.

[10]I reject Joseph's argument that this was a complex case that justifies a higher billable rate. This case did not raise novel issues of law and was by-and-large a straight forward employment discrimination and retaliation case.

determined merits $475/hour in this case. However she is only requesting $400/hour. Under these circumstances, I determine her requested hourly rate of $400/hour is reasonable.

B. Number of Hours Reasonably Expended

In determining the number of hours reasonably expended in this case, the following principles apply.

> Only those hours that are reasonably expended are subject to compensation under MGL 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. [Citation omitted] Compensation is not awarded for work that appears to be 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 1097 (1992).

Reed, 44 MDLR at 23 (2022)

The Petitions include contemporaneous time records for Banfield, Tiwari and Herold. DCF raised various issues regarding how many hours were reasonably necessary in this case. As to Tiwari and Banfield, I find two of DCF's arguments have merit.

First, DCF argues the 64.8 hours requested for Banfield and Tiwari attending the hearing (32.4 requested for each) should be reduced because Banfield examined only one witness and was supporting counsel at hearing yet billed at a higher hourly rate than Tiwari for the time spent at hearing.[11] In support of its argument, DCF cites Cheeks v. Massachusetts Department of Corrections, 29 MDLR 152, 153 (2007) (Full Commission)[12] which states the following.

> Complainant's lead counsel, Attorney Glaser, seeks compensation for 58.1 hours of work she did preparing for hearing and conducting the hearing and further

[11]Banfield examined one witness, Ian Pineda. I found Banfield's questioning of Mr. Pineda did not advance Joseph's case.

[12]The parties cite this case as Massachusetts Commission Against Discrimination v. Mass. Dep't of Corr., 2007 WL 3223763 (MCAD, Oct. 30, 2007).

> compensation for 47.9 hours of work by her co-counsel preparing for and conducting the hearing. They seek compensation for a total of 106 hours for preparation and conducting the hearing, at a rate of $300 per hour for each attorney. There is no further description or detail of the separate duties performed by each in furtherance of preparation for trial. In addition, although it is not uncommon in Commission proceedings for there to be an attorney present during litigation whose function is to support lead counsel, the second chair is frequently a less experienced attorney or para-professional professional who bills out at a lower hourly rate. That is not the case here, where two highly experienced attorneys are billing at the same rate. We therefore must consider certain of these hours as duplicative and excessive and will reduce the number of compensable hours for preparing and conducting the hearing by one-third, or 35 hours, for a total of 71 hours that are compensable….

Joseph attempts to distinguish Cheeks by arguing that "[i]n contrast in this matter, undersigned counsel submitted … detailed time entries showing how the time each attorney spent *during the hearing* complemented each other as opposed to duplicated each other. (Citations omitted) Specifically, Attorney Tiwari's affidavit lists exactly what was done the day of the hearing." (Reply at p. 3) (Emphasis added) Joseph's attempt to distinguish Cheeks is not persuasive. Banfield's and Tiwari's time records relative to work performed *during the hearing* are non-detailed.[13]

Under the circumstances, where the supporting counsel (Banfield) conducted only one examination, which did not advance Joseph's case, and is seeking a higher rate than lead counsel (Tiwari), a reduction of hours relative to the time spent during the hearing is necessary. DCF argues that one third of the combined 64.8 hours (or 21.6 hours) of hearing attendance time should be reduced and that such reduction should be taken from Banfield's hours. I agree that any reduction in compensable hours should be taken from Banfield's hours, because he

[13] Banfield's time records have the following entries regarding the time spent at the hearing: (a) Appear for/attend 5/19/2021 Attend Day 1 of Hearing, 6.70; (b) Appear for/attend 5/20/2021 Attend Day 2 Hearing, 6.90; (c) Time 5/21/2021 Attend Day 3 of Hearing, 4.00; (d) Appear for/attend 5/24/2021 Attend Day 4 of Hearing, 6.40; (e) Appear for/attend 5/25/2021 Attend Day 5 of Hearing, 7.00; and (f) Appear for/attend 5/26/2021 Attend Day 6 of Hearing, 1.40. Tiwari's time records are similarly devoid of description relative to time spent at the hearing as they provide: (a) 6.7, 5/19/2021 Hearing Day No. 1: Hearing; (b) 6.9, 5/20/2021 Hearing Day No. 2: Hearing; (c) 4.0, 5/21/2021 Hearing Day No. 3; (d) 6.4, 5/24/2021 Hearing Day No. 4; (e) 7.0, 5/25/2021 Hearing Day No. 5; and (f) 1.4, 5/26/2021 Hearing Day No. 6.

was not the lead counsel. I have determined that a reduction of one fourth of the 64.8 hours (or 16.2 hours) from Banfield's time is necessary and sufficient.

Second, Tiwari billed 45.3 hours and Banfield billed 47.8 hours for a total of 93.1 hours for the post-hearing brief.[14] Relying again on Cheeks, DCF argues that a more reasonable total number is 40 hours. The pertinent language from Cheeks states:

> Complainants' counsel seeks compensation for a total of 62.2 hours, which amounts to over $18,000 for the preparation of a post-hearing brief. We consider this to be excessive. We conclude that a more reasonable amount of time for preparing a post hearing brief, even one as detailed and lengthy as Complainant's, to be 40 hours or five work days, assuming 8 hours of work each day. Therefore, we will reduce the compensable hours for work associated with the post-hearing brief to 40 hours.

Cheeks, 29 MDLR at 153

I find that 93.1 hours for the post-hearing brief in this case is excessive. In this case, I determine that 50 compensable hours for the post hearing brief is reasonable. Thus, a reduction of at least 40 hours is necessary. Because Tiwari and Banfield spent similar amounts of time regarding the post hearing brief, I am deducting 20 hours from each of their respective times.

Regarding Herold, DCF argues her compensable hours should be reduced by 25% for lack of specificity. Herold's time records lack specificity and warrants a 10% reduction (3.2 hours) of the overall time requested.

DCF argues "Herold also billed 13 hours in blocks that include travel" which precludes distinguishing between "travel time and productive time in these blocks" and warrants a reduction in half of the 13 hours. (Opposition at pp. 9-10) I find this argument has merit. The following entries from Herold's records are pertinent: (a) 2.2, travel to and from Charlestown. Meeting client; (b) 1.3, travel to and from Charlestown. Meeting client; (c) 5, travel to and

[14] In its Opposition, DCF stated that Tiwari billed 34.7 hours for the post hearing brief. (Opposition Brief, p. 9). A review of Tiwari's time records for the period of July 28, 2021 through August 20, 2021 evidences that 45.3 hours of Tiwari's time regarded the post hearing brief.

from mediation. Attend mediation; (d) 3.5, travel to and from MCAD. Attend "pre-hearing conf. RR discovery docs. EM client"; and (e) 1, prepare file for return. Travel to and from Charlestown. EMX client. These block billing entries deprive me from separating travel time from non-travel time. This matters because "[t]ravel time is typically compensated to account for only half of the time actually spent traveling." Norkunas v. HPT Cambridge, LLC, 969 F. Supp. 2d 184, 196 (D. Mass. 2013) ("included travel time in block billing that accounts for 7.75 hours"; "block billing has given this Court no way to differentiate between the travel time and productive time in these blocks, [thus] the Court reduces the hours expended in their entirety by half, or 3.88 hours") I reduce Herold's compensable time by 6.5 hours.

One final issue remains regarding compensable hours. Joseph did not prevail on two of the four failure to provide a reasonable accommodation claims. But, she did prevail on the retaliation and constructive discharge claims, which are generally harder to prevail on than failure to provide a reasonable accommodation claims. Additionally, one of the two failure to provide a reasonable accommodation claims upon which Joseph did not prevail, the Request for Workspace Relocation and Furniture Change, was part of a larger pattern of discriminatory behavior towards Joseph, which was inextricably linked to the retaliation and constructive discharge claims upon which she was successful. *See* Quarterman v. City of Springfield, 91 Mass. App. Ct. 254, 265 (2017), further review denied, 477 Mass. 1107 (2017) ("In general, when only some claims are successful, 'no fee should be awarded for service [employed pursuing an] unsuccessful claim, unless the court finds that the unsuccessful claims are sufficiently interconnected with the claims on which [t]he plaintiff prevails.'") The lone unsuccessful failure to reasonably accommodate claim, a minor issue in this case, does not justify a reduction in compensable hours.

C. Calculation of Lodestar

Banfield's portion of the lodestar is derived by multiplying $528 by his adjusted compensable hours of 96.5 which equals $50,952. Tiwari's portion is derived by multiplying $475 by his adjusted compensable hours of 205 which equals $97,375. Herold's portion is derived by multiplying $400 by her adjusted compensable hours of 22.5 which equals $9,000. Thus, the total unadjusted lodestar is **$157,327**. Having determined the lodestar, I now address whether the lodestar should be adjusted upwards or downwards or left as is. I have determined that an adjustment to the lodestar amount is not warranted.

III. COSTS

Regarding costs, attorneys Tiwari and Banfield incurred total costs of **$5,318.50** for depositions and transcripts. DCF does not challenge those costs. Those costs are reasonable and allowed.

IV. POST-JUDGMENT INTEREST

Joseph's petition regarding Tiwari and Banfield requests interest in the amount of 12% on awarded attorney's fees and costs. Interest on an award of attorney's fees and costs after a public hearing pursuant to Section 5 of M.G.L. c. 151B is postjudgment interest. Dep't of Correction v. Massachusetts Comm'n Against Discrimination, 2018 WL 7075235, at *4 (Mass. Super. Nov. 27, 2018) ("The MCAD awarded attorneys fees and costs to Scanlon under §5 as a 'prevailing complainant.' Scanlon could only prevail if the MCAD awarded her judgment. This is precisely what the MCAD did. Like a Superior Court in a §9 case, the decision of the MCAD in a §5 case is reviewable but potentially final. Because that is so, it is the MCAD's decision on

attorneys fees and costs, and not a potential subsequent decision by the Superior Court, which draws the line between interest that is pre- and postjudgment.")

As a matter of law, postjudgment interest is not recoverable on the attorney's fees and costs awarded in this case. DCF is correct that such postjudgment interest is barred by the doctrine of sovereign immunity. The Supreme Judicial Court's decision in Brown v. Office of Com'r of Probation, 475 Mass. 675 (2016) governs this issue. In Brown, the Court "consider[ed] whether sovereign immunity bars a plaintiff who is awarded punitive damages, costs, and attorney's fees as part of a judgment under G.L. c. 151B, § 9, from recovering postjudgment interest on those awards from a public employer." Id. at 675 The Court "conclude[d] that G.L. c. 151B, § 9, does not waive sovereign immunity from liability for postjudgment interest, either expressly or by necessary implication" id. at 676 and held that the "trial judge therefore correctly denied the plaintiff's request for postjudgment interest on the award of [] costs, and attorney's fees." Id. at 681 Brown dictates that an award of postjudgment interest on attorney's fees and costs is barred against a public agency such as DCF. This is true whether the complaint was brought under G.L. c. 151B, § 5 or § 9. Dep't of Corr. v. Massachusetts Comm'n Against Discrimination, 2018 WL 7075235 * 4 (Mass. Sup. Ct., Nov. 27, 2018) ("As the *Brown* court found, the Commonwealth has not waived sovereign immunity for postjudgment interest on awards of attorney's fees and costs. *Brown* thus controls here. The MCAD's order awarding interest on attorney's fees and costs constitutes postjudgment interest in violation of the DOC's sovereign immunity. Accordingly, that award was erroneous as a matter of law and cannot stand") Thus, Joseph's request for post-judgment interest on attorney's fees and costs is denied.

V. ORDER

Based on the authority granted me by Section 5 of M.G.L. c. 151B, I order DCF to pay Complainant Stephanie Joseph **$157,327** in attorney's fees and **$5,318.50** in costs.

VI. NOTICE OF APPEAL

Pursuant to 804 CMR 1.12(19), a Hearing Commissioner decision on a request for award of attorneys' fees and costs is a final decision appealable to the Full Commission pursuant to 804 CMR 1.23(1)(a), regardless of whether a party has appealed the underlying hearing decision to the Full Commission. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23 (2020). If a party files a Petition for Review, the other party has the right to file a Notice of Intervention within 10 days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within 30 days of receipt of the Petition for Review. 804 CMR 1.23 (2020) All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other party.

So ordered, this 9th day of February, 2024.

Sunila Thomas George
Hearing Commissioner