

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
RICHARD LAMMLIN
Complainant

v.

DOCKET NO. 10-SEM-00741

SEDER FOODS CORP.,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Complainant. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for discrimination based on age and ethnicity in violation of M.G.L. c. 151B, §§ 4(1) and (1B) after terminating Complainant’s employment. Respondent 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 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 Quinn 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). 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(1)(h).

BASIS OF THE APPEAL

Respondent has appealed the decision on the grounds that some of the Hearing Officer's findings of fact were erroneous and not supported by substantial evidence. Respondent challenges the Hearing Officer's credibility determinations, specifically challenging the Hearing Officer's decision to credit the testimony of Robert Sylvester, Respondent's CFO. Finally, Respondent argues that the Hearing Officer erred in determining that Respondent was liable for discrimination based on age and ethnicity. After careful review we find no material errors with respect to the Hearing Officer's findings and conclusions of law. We properly defer to the Hearing Officer's findings as they are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42.

We have reviewed the relevant findings supporting the Hearing Officer's decision, and determine that these findings are supported by sufficient evidence in the record. The Full

Commission defers to the Hearing Officer's credibility determinations and findings of fact, absent an error of law or abuse of discretion School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007 at 1011. The Hearing Officer is in the best position to observe the witnesses' testimony and demeanor, and her credibility determinations generally should not be disturbed. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). The review standard 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.

Respondent argues that the Hearing Officer erred by concluding that Respondent discriminated against Complainant based on his age and ethnicity. We disagree. The Hearing Officer found that Complainant established by direct evidence that he was terminated by Respondent based on his ethnicity and age. Specifically, the Hearing Officer credited the testimony of Respondent's CFO Sylvester that the CEO and sole owner, Edward Greenbaum, stated that he terminated Complainant in order to replace him with a "younger, more aggressive salesman who can speak Spanish." Greenbaum testified that Complainant was replaced "by a bi-lingual Latino man in his 40s." Greenbaum made references to Complainant's age as a factor in his decision to hire a younger individual. The Hearing Officer credited Greenbaum's testimony that he believed that increasing the number of ethnic retailers would best be accomplished by hiring bi-lingual Latino sales staff. Greenbaum testified that Latino store owners would connect better with Latino sales representatives and that this would help increase Respondent's sales. Although Respondent asserted that it terminated Complainant's employment due to financial

problems, CEO Greenbaum informed Complainant that he was terminating his employment because he needed a Spanish-speaking employee in sales. The Hearing Officer concluded that Respondent would not have terminated Complainant's employment had it not been for his age and ethnicity. The Hearing Officer did not err in determining that Respondent discriminated against Complainant based on his age and ethnicity.

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

ORDER

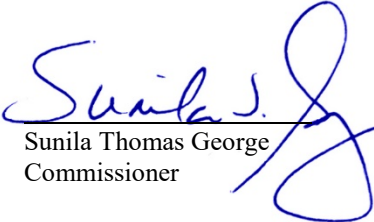
For the reasons set forth above, we hereby affirm the Decision of the Hearing Officer in its entirety and issue the following order:

1. Respondent shall cease and desist from any further acts of discrimination on the basis of age and ethnicity;
2. Respondent shall pay Complainant damages in the amount of \$11,100 for lost wages, with interest thereon at the rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue;
3. Respondent shall pay Complainant emotional distress damages in the amount of \$5,000 with interest thereon at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.


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 this 18th day of December, 2019.


Sunila Thomas George
Commissioner


Monserrate Quiñones
Commissioner


Neldy Jean-Francois
Commissioner