

**MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION**

**EST. AUGUST 1946**

**ANNUAL REPORT**

**FISCAL YEAR 2022**

July 1, 2021 - June 30, 2022

**COMMISSIONERS**

Sunila Thomas George  
Chairwoman

Monserate Quiñones

Neldy Jean-Francois

## About the MCAD

The Massachusetts Commission Against Discrimination (MCAD) is the independent state agency that enforces the anti-discrimination laws of the Commonwealth through training, mediation, investigation, prosecution and adjudication.

The people of Massachusetts, its workers, and visitors may file a Discrimination Complaint if they believe they were treated differently or unfairly in Massachusetts based on their identity as a member of a protected class. Complaints filed at the MCAD are investigated by an MCAD staff member to determine if there are sufficient facts to find that the alleged treatment constitutes unlawful discrimination. The MCAD conducts its investigation as a neutral entity. If it is more probable than not that there was an unlawful practice, the Complaint may move forward to prosecution and adjudication.

The MCAD has three offices, Boston, Springfield, and Worcester, where one can meet with an intake specialist for a free consultation and file a Complaint. The MCAD closed its New Bedford office temporarily while searching for a new office location in the region.

The MCAD also offers training and outreach to address and prevent discrimination. In addition, the Commission conducts policy reviews, provides draft model policies online, and issues guidance on Acts that affect the work of the Commission.

## Main Contact Numbers

### Boston Headquarters Reception

Front Desk Reception	mcad@mass.gov	617-994-6000
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### Office of the Commissioners

Assistant to Commissioners	mcad@mass.gov	617-994-6147
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### Investigations Division

Ken Callahan, Chief of Investigations	kenneth.callahan@mass.gov	413-314-6111
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### Legal Division

Deirdre Hosler, General Counsel	deirdre.hosler@mass.gov	617-994-6016
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### Training Unit

Alison Caton, Director of Training	MCADTraining@mass.gov	617-994-6072
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### Clerk's Office

Theresa Lepore, Acting Clerk	theresa.lepore@mass.gov	617-994-6034
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### Public Records Requests

Theresa Lepore, Records Access Officer	cadrao@mass.gov	617-994-6124
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### Alternative Dispute Resolution Unit

Michael Zeytoonian, Director of ADR	michael.zeytoonian@mass.gov	617-994-6055
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### Operations and Finance Division

Michael Memmolo, Chief of Operations	michael.memmolo@mass.gov	617-994-6124
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## Table of Contents

i	About the MCAD
	Main Contact Numbers
ii	Table of Contents
1	MCAD Process Flow Chart
3	Letter from the Commissioners
5	Operations & Finance Report
7	FY22 & FY23 Budget
8	Training & Outreach Unit
9	Investigations Division Report
11	Alternative Dispute Resolution Unit Report
14	Legal Division Report
32	Hearing Division Report
33	Full Commission Decisions
34	Glossary of Terms
35	Staff List
36	Advisory Board & FY22 Interns

## Commissioners

**Sunila Thomas George**  
Chairwoman

**Monseratte Quiñones**

**Neldy Jean-Francois**

## MCAD Locations

**Boston**      **MCAD**  
1 Ashburton Pl. Ste. 601  
Boston, MA 02108  
P: 617.994.6000  
F: 617.994.6024

**Springfield**      **MCAD**  
436 Dwight St. Rm. 220  
Springfield, MA 01103  
P: 413.739.2145  
F: 413.784.1056

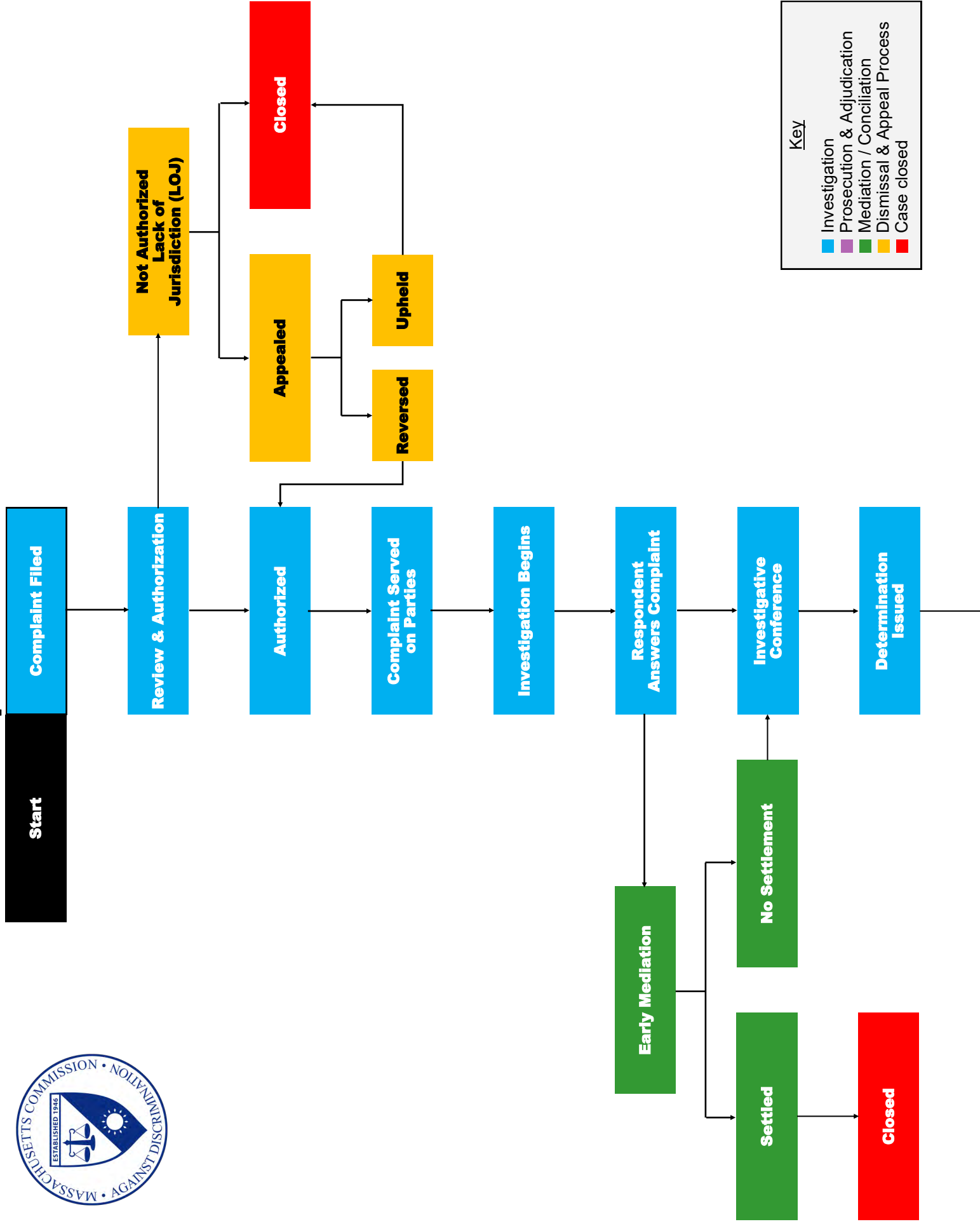
**Worcester**      **MCAD**  
484 Main St. Rm. 320  
Worcester, MA 01608  
P: 508.453.9630  
F: 508.755.3861

**TTY**    617.994.6196

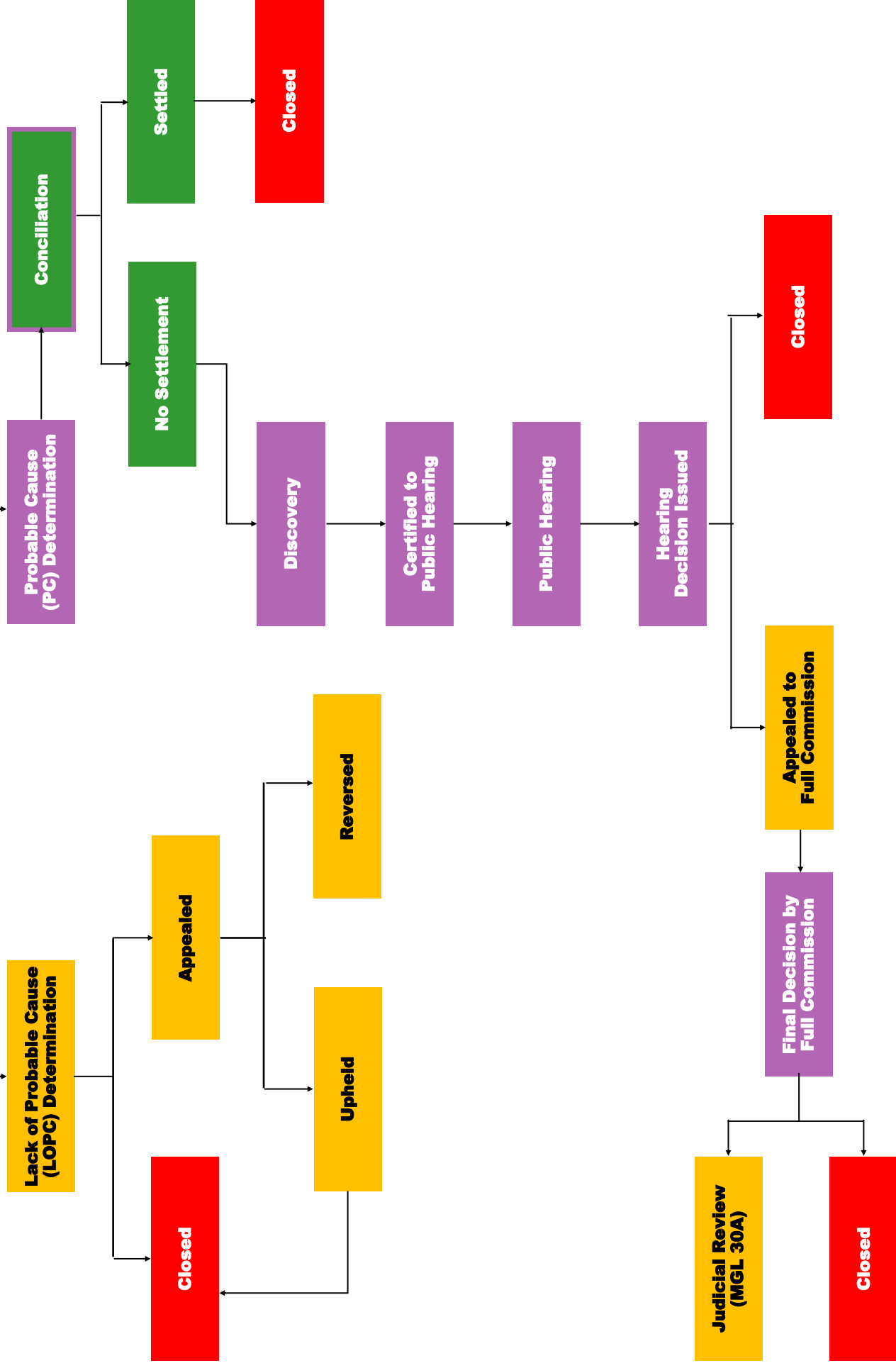
**[www.mass.gov/mcad](http://www.mass.gov/mcad)**



# MCAD Complaint Process Flowchart



(Continued from previous page)



## Letter from the Commissioners

Dear Governor Baker, Lieutenant Governor Polito, Speaker Mariano, Senate President Spilka and Members of the General Court, in accordance with Chapter 151B, §3 (10) of the Massachusetts General Laws, we hereby submit the Fiscal Year 2022 (FY22) Annual Report of the Massachusetts Commission Against Discrimination (“MCAD” or “Commission”), which covers the activities undertaken by the MCAD during the period of July 1, 2021 – June 30, 2022.

Among the Commission’s noteworthy activities over the past 12 months, this fiscal year included the extraordinary milestone of the 75<sup>th</sup> Anniversary of the founding of the MCAD in 1946. For over 75 years, the MCAD has been the cornerstone of civil rights protections in Massachusetts. Throughout its impressive history, the Commission has heard numerous cases of first impression, issued precedent-setting hearing decisions, pioneered the use of alternative dispute resolution to resolve complaints, and to this day, continues to innovate, wherever possible, to meet the evolving needs of our constituents.

Whereas last fiscal year the MCAD focused on addressing the setbacks and delays caused by the COVID-19 pandemic, the Commission has prioritized rebuilding and fortifying the agency over this fiscal year to maintain its effectiveness to better serve the public. Unfortunately, the MCAD saw an unprecedented number of staff attrition from retirements and low staffing levels during the pandemic that resulted in an unavoidable increase to the agency’s backlog—both investigative and post-probable cause cases—and longer wait times for the parties.

Furthermore, the unprecedented staffing shortage made performance on our workshare agreements with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC) impossible to complete, resulting in a catastrophic loss of nearly \$400,000 in anticipated revenue in FY22, and exposing the vulnerabilities of this precarious funding structure. The lost income from these contracts was significant and continued to impede our ability to meet the production requirements of these workshare agreements.

The Commissioners informed the Legislature of this perilous cycle and, in May, Senator Sonia Chang-Diaz filed a Senate amendment to free the MCAD from reliance on federal contracts by increasing the MCAD’s state appropriation from \$4.6 million to \$7.6 million in order to fully fund the MCAD. While we wait for the FY23 budget to pass, the Commissioners and managers have been meeting with Legislative leaders and are optimistic that with additional funding, the MCAD will be able to fill all vacant positions, reducing the time needed to complete investigations, and ultimately eliminate the ballooning backlog.

To date, the MCAD has already made notable progress towards these goals. Upon the departure of all three career Hearing Officers in October 2020, and after a rigorous search, the MCAD hired a new Hearings Unit Supervisor in July 2021. Then, in May of 2022, one of the Commission’s litigators was promoted to the role of Hearing Officer. The Hearings unit continues to hold virtual public hearings as the MCAD offices remain closed to the public. Additionally, for the first time in the Commission’s history, we have hired a full time Director of Human Resources, Diversity, Equity, and Inclusion, which we believe is vital to the agency’s growth, and added the position of Commission Counsel Supervisor.

With the departure of two senior level managers—the General Counsel and the Chief of Investigations—their deputies, Deirdre Hosler and Ken Callahan, were both promoted, respectively, and seamlessly transitioned into these leadership roles.

At the start of the calendar year, the Commission received notice that the building which houses the Worcester office building was sold to a developer, necessitating the agency to look for new and appropriate space.

In other news, the Commission hosted its second Fair Housing and Anti-Discrimination Education Conference virtually via Zoom in April. The event welcomed over 200 attendees to learn about fair housing. Some of these sessions focused on combatting environmental racism, affirmatively furthering fair housing, and the disparities in COVID-19 policies and interventions. Additionally, Commissioner Monsi Quiñones held a number of cultural celebrations throughout the year for staff. Tragically, the Commission lost a career employee, Pattie Woods, who passed away in September after serving as the Assistant Clerk of the Commission in Springfield for over 20 years.

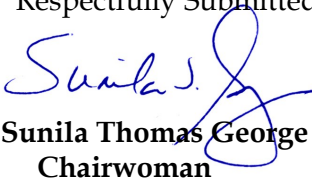
In June, the MCAD ran a public awareness campaign on the MBTA exclusively promoting the agency's robust training programs for the public and private sectors. This summer, we are welcoming back our interns to the office for the first time since the pandemic, and we are grateful for their help. To promote equitable opportunities, the MCAD has, for two years running, offered stipends to its interns and is positioning to have that practice continue, in order to bring in the most talented and dedicated students. Interns have played a crucial role at the agency, assisting with intake and investigations, and many interns have come back to work at the MCAD as investigators. In fact, two of us Commissioners started our careers as interns at the MCAD!

Another major shift for the Commission came this fiscal year when the Office of the Attorney General notified the MCAD that the agency and its Commissioners were subject to the Massachusetts Open Meeting Law. This change will now require the Commissioners to debate openly and vote on Commission policies during Commissioner meetings open to the public. This change prompted the appointment of an Interim Executive Director, who will assume the role on July 5th.

In closing, this report captures the accomplishments and milestones of each division within the Commission but it is worth noting that we consider our greatest resource to be our workforce. The achievements outlined in this report would not be possible without the dedicated Senior Managers and staff of this agency who, with limited resources, continue to dedicate themselves to the work of the Commission and our ever expanding legislative mandates.

Special thanks to the MCAD Advisory Board and our community stakeholders who steadfastly champion and support the Commission's critical role in civil rights law enforcement and our efforts to eradicate discrimination in the Commonwealth.

Respectfully Submitted,

  
Sunila Thomas George  
Chairwoman

  
Monserrate Quiñones  
Commissioner

  
Nelly Jean-Francois  
Commissioner

## Operations and Finance Division Report

The Operations and Finance Unit is comprised of the Office of Human Resources, Fiscal/Budget, Information Technology (IT), Operations, and Training. These functions are overseen by the Chief of Operations and Finance (COF).

### **Fiscal/Budget**

The Unit is tasked with all the financial and budgetary functions of the Commission. The Unit prepares and submits the Commission's annual budget request to the Commonwealth's Administration and Finance Secretary and the House and Senate Ways and Means committees; monitors fiscal year spending to ensure spending meets planned levels; makes requisite recommendations for spending deviations; oversees all of the Commission's purchasing, including all procurement and contract management; and manages accounts payable, accounts receivable, and revenue activities.

### **Office of Human Resources**

The Unit provides all aspects of personnel administration and human resource direction and support for the employees of MCAD. These services include payroll administration, benefits and leave administration, labor and employee relations, handling of all Americans with Disabilities Act requests, accommodations, and processing, and approving all Family and Medical Leave Act requests. The Unit is also responsible for all posting, hiring, and recruiting (in collaboration with the Commission's Training Unit) of MCAD positions. The COF, as the designated Diversity Officer, oversees all diversity considerations and professional development opportunities. Additionally, the Unit recommends and implements agency-wide personnel policies and procedures. In FY22, the MCAD hired its first ever Director of Human Resources, Diversity, Equity and Inclusion (DEI). The above duties previously assigned to the agency's Chief of Operations and Finance are now performed by the Director of Human Resources, DEI.

### **Information Technology**

The Unit oversees all of the Commission's IT and telephony functions including desktop and application support for all of the Commission's offices. The Unit also procures and supports all of the Commission's hardware and software.

### **Operations**

The Unit manages the operations of the Commission's three office locations, and oversees lease management for the Commission's Springfield and Worcester offices. The Unit is responsible for day-to-day operations of all locations including, but not limited to, maintenance, security, ID access, and asset inventory.

### **Funding/Personnel**

Although staffing issues plagued the agency throughout FY21, in FY22 the agency began the steep climb toward rebuilding. The first step in this process was filling the agency's two top manager positions, the Chief of Investigations and General



Counsel. The agency was successful in filling those two positions during the first half of FY22. In addition to these important management positions, the agency began to rebuild its completely vacant hearings unit. The agency hired a Senior Hearing officer at the very beginning of FY22, setting the stage for an additional Hearing officer hire later in the fiscal year. As the agency began to rebuild its leadership it was feverishly backfilling open investigator positions. In FY22, the agency increased investigator totals by 30%, and continued to complete hiring in this important division as the fiscal year closed. Although the agency endeavored to fill all vacant position by the end of FY22, additional, unanticipated attrition continued to press the agency's timeline. The agency continues to hire in a very real way and is well positioned to backfill all of its vacant positions in FY23.

Consistent with rebuilding the agency hired its first ever Director of Human Resources, Diversity, Equity and Inclusion within the Operations and Finance Division. For the balance of the agency's history, the Chief of the Operations and Finance Division has served not only as the agency CFO, and Operations director, but as the agency's Director of Human Resources, including acting as the agency's Diversity, ADA and Harassment officer. Hiring a Director of Human Resources, DEI established a full-time management position within the agency that is entirely dedicated to Human Resources and DEI.

During FY22, the agency continued to offer all of its services virtually and continued to lead relative to staff working in the office. With most employees already working a hybrid work schedule, in January 2022, the MCAD launched its hybrid work policy. This policy primarily reflected the hybrid work schedule most employees were already working, but anticipated the agency's return to in-person operations, and established operational protocols to meet those anticipated needs. In addition to ensuring staffing needs for a return to in-person operations, the agency ordered and received kiosk hardware to enable the facilitation of in-person virtual intake. This technology will allow the public, if they desire, to schedule an appointment, or walk-into, an MCAD office and engage virtually with an MCAD investigator to file a Complaint of discrimination. The agency is planning to implement this offering in the fall of FY23 and will continue to offer virtual and phone intake for purposes of filing a complaint of discrimination.

The above rebuilding, and initiatives, were made possible because of the agency's increased state funding in FY21. Following federal contract reduction in FY19 and FY20 the agency faced a new loss of federal revenue due to the agency's inability to meet its federal contractual obligations with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC) resulting from reduced staffing levels. State funding was appropriated to supplement the federal revenue shortfall and to provide the agency with requisite funding in FY22. These funds have been entirely dedicated to the agency's staff rebuilding initiatives in furtherance of the agency's mission.

## MCAD Budget for FY22

### July 1, 2021—June 30, 2022

#### Direct State Appropriation (Line Item 0940-0100)

**State Appropriation Total<sup>1</sup> .....\$ 4,400,144**

#### Retained Revenue Collected (Line Item 0940-0101)

HUD.....\$ 1,049,272  
 EEOC.....\$ 1,489,080  
 Audit/Copying fees.....\$ 375  
 Attorneys' Fees.....\$5,000

**Retained Revenue Total.....\$ 2,543,727**

#### Training Program (Line Item 0940-0102)

**Training Program Total.....\$211,780**

**Total FY21 Appropriated Funds &  
Collected Retained Revenue.....\$ 7,155,651**

#### Expenses

Payroll.....( \$5,808,246)  
 Rent.....( \$ 146,320)  
 Administrative Overhead.....( \$ 915,387)

**Total FY21 Expenses.....(\$ 6,869,953)**  
**Reversion to General Fund<sup>2</sup>.....(\$ 285,698)**

### MCAD Proposed Budget for FY23

#### July 1, 2022 – June 30, 2023

State Appropriation (Line Item 0100).....\$ 7,641,395  
 Retained Revenue (Line Item 0101).....\$ 1,100,000  
 Training Program (Line Item 0102).....\$ 410,000  
 Retained Revenue (Line Item 0103).....\$ 2,520,000

**Total FY22 Budget<sup>3</sup>.....\$ 11,671,395**

1. Includes \$120,000 in FY21 funds authorized to be spent in FY22
2. Funds earned in excess of the retained revenue caps as well as unspent funds are reverted back to the General Fund. This reversion occurred due to unprecedented attrition and retirements as well as delays in hiring, due to funding uncertainty, which are not expected to recur in FY23.
3. The FY23 Budget includes all funds and retained revenue allocated in the FY23 Final Budget.

## Training and Outreach Unit Report

The MCAD Training, Education, and Community Outreach Unit provides internal and external discrimination prevention trainings, and assists with recruitment and onboarding of new agency staff and interns. Toward the end of the fiscal year the Training, Education, and Community Outreach Unit expanded to have a Director and two full time trainers.

In FY22, the Training, Education, and Community Outreach Unit conducted and attended approximately 236 discrimination prevention training sessions, community events, and career fairs across the Commonwealth impacting roughly 5,105 participants. The Training Unit offers anti-discrimination training in the subjects of employment, housing, sexual harassment, disability and religious accommodations, and conducting internal investigations. Due to demand the Unit added a one-day Responding to Accommodation Requests class. The Commission also held its 23rd annual Courses for Equal Employment Opportunity Professionals. This multi-day training includes three popular courses: Train-the-Trainer, Responding to Accommodation Requests, and Conducting Internal Discrimination Complaint Investigations. As a result of in-person gathering restrictions, all trainings were moved to a virtual platform with a live trainer beginning in April 2020.

Beyond training work, the Education, Training, and Community Outreach Unit continued to support the recruitment and hiring of staff members and interns at the Commission. The Unit's work includes assisting in recruitment strategy, assisting with on-boarding plans for new staff, and running new employee/intern training.

In June 2022, the MCAD ran a public awareness campaign exclusively dedicated to the training unit programs, which included placing billboards across the eastern half of the state, on the Massachusetts Bay Transportation Authority's (MBTA) subway system. The ad campaign had an estimated impact of over 20 million views.

### Training Unit FY22 Statistics

**Total Training Events..... 236**  
 External Trainings..... 159  
 Employment Law ..... 76  
 Sexual Harassment ..... 35  
 Fair Housing ..... 21  
 Career Fairs ..... 8  
**Total Participants ..... 4,434**

#### Top Industries trained in FY22

- Fire & Police Departments
- Higher Education
- Housing Authorities
- Construction Groups
- Individual Landlords
- Retail / Food Services

## Investigations Division Report

The MCAD's Investigations Division investigates complaints of discrimination in employment, housing, and public accommodations, among other areas. The Complaint is dismissed if the MCAD determines that it lacks jurisdiction or an investigation is not authorized. Otherwise, the MCAD proceeds with a formal investigation.

The Investigations Division is comprised of eight units with approximately 49 employees, including Administrative staff, who assist with document organization and processing; Investigators and Investigative Supervisors, who conduct the investigations; Attorney Advisors, who provide legal guidance and support to the investigative staff; and the Deputy Chief and Chief of Investigations, who manage the personnel and operations of the Division. The MCAD processes approximately 3000 Complaints each year.

For the majority of FY22, the Investigations Division operated at 67% staffing levels due to attrition and difficulty hiring new investigators during the ongoing pandemic. This understaffing caused delays in the processing time required to conduct investigations. The MCAD has continued to suspend in-person services and performs the following services and proceedings via telephone and/or video conferencing: complaint intake for pro-se complainants; investigative conferences; mediations; conciliations; and hearings on appeals of investigative dispositions. The MCAD is committed to returning the Investigations Division to pre-COVID staffing levels. In FY22, the Investigations Division hired ten employees. In the first four months of FY23, the Investigations Division will hire seven more employees, and an additional eight employees before the end of the fiscal year to restore staffing to pre-COVID-19 levels.

### FY22 At-A-Glance

 **2,822**  
New Complaints filed

 **484**  
Mediations & Conciliations

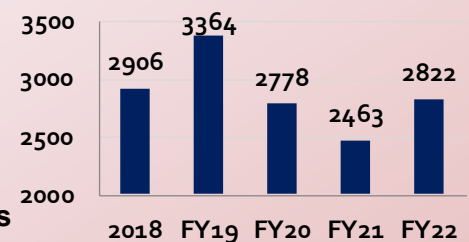
 **5,300**  
Information Calls

 **4,000**  
Consultations

 **11,000**  
Website visitors

 **485**  
Public Records Requests

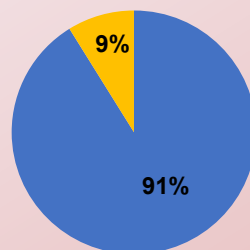
#### Annual Inventory of New Complaints



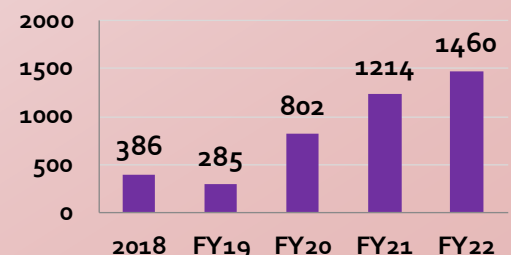
#### Complaints by Jurisdiction

Employment .....	2208
Private Housing .....	285
Public Accommodation.....	223
Public Housing .....	81
Education .....	23
Credit.....	2

#### Active Case Inventory



#### Annual Inventory of Backlog Cases



#### Investigative Findings

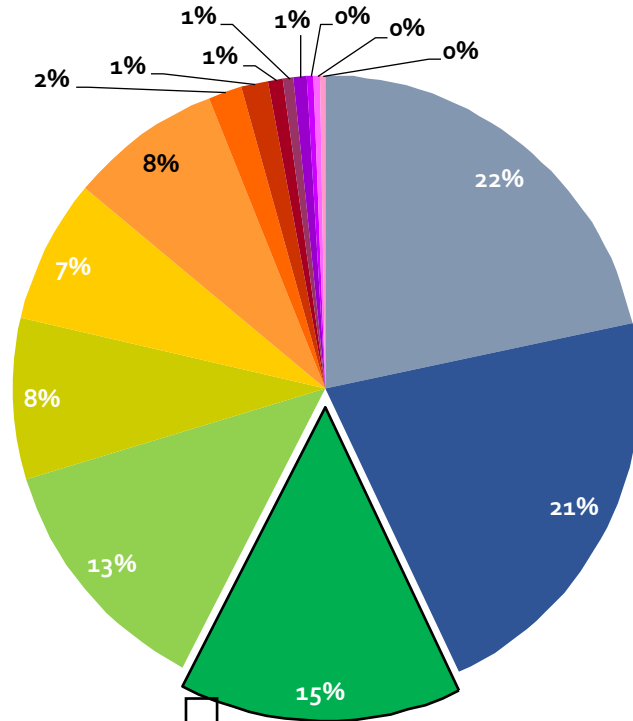
Probable cause.....	207 (17%)
Lack of probable cause ...	1001 (83%)

Investigations .....	4,092
Post-probable cause .....	397

Breakdown of Complaints by Protected Category

Complaints by Protected Category	
Retaliation .....	1,100
Disability .....	1,088
Sex .....	740
Race / Color .....	650
National Origin .....	423
Age .....	379
Religion .....	398
Sexual Orientation .....	88
Public Assistance .....	72
Lead Paint .....	39
Gender Identity .....	28
Other .....	23
Criminal Record .....	18
Active Military Status .....	17
Family Status .....	16

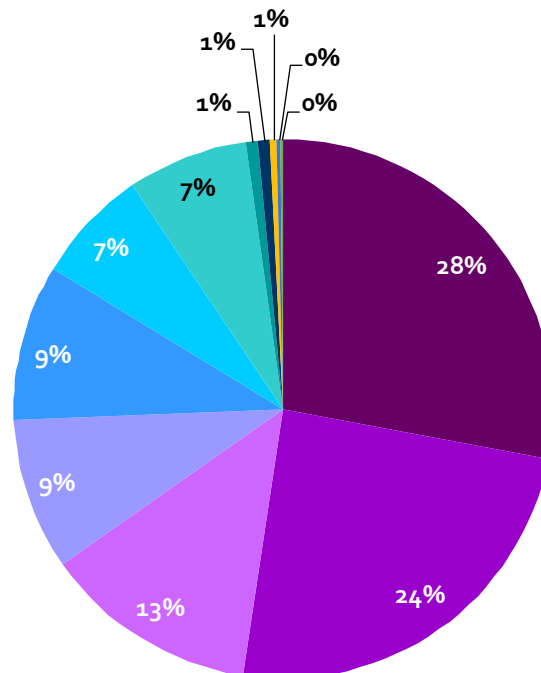
\* Other includes Veterans Status, Marital Status, and Genetics



Sex Discrimination Breakdown	
Sex .....	436
Harassment .....	208
Parental / Pregnancy .....	97

## FY22 Administrative Closures

Administrative Closures	
Removed to Court .....	335
Withdrawn With Settlement ..	292
Conciliated .....	154
Dismissed .....	109
Withdrawn .....	112
Lack of Jurisdiction .....	82
Pre-Determination Settlement ..	86
Housing Judicial Review .....	9
Failure to Cooperate .....	8
No Violation .....	5
Violation/Enforcement .....	3
Unable to locate Complainant ..	2



## Alternative Dispute Resolution Unit Report

In 2022, the ADR Unit continued to work on the following goals carried over from FY21: maintaining and improving the high quality of the mediators' work; productive communications; coordinating and information sharing between mediators; developing consistency in practices and case processes between the Boston regional offices; maintaining ongoing and regular communications and coordination between the ADR unit and all other units within the MCAD; educating attorneys who practice at the MCAD on mediations and conciliations, and encouraging and nurturing an ongoing dialogue between lawyers who practice at the MCAD and the ADR Unit.

ADR Unit efforts in service of the above goals include regular communication between mediators and also at monthly ADR Unit meetings; reviewing, updating and standardizing materials and forms; attending advanced continuing education programs; refining internal guidelines for the ADR Unit; and holding monthly "best practices" discussions at ADR Unit meetings to exchange and share ideas and experiences across the Boston and regional offices. The ADR Unit regularly invites experienced mediators and lawyers to join meetings and present on relevant topics. Other guests at ADR Unit meetings include state and federal agency-level mediators and MCAD personnel, including Commissioners, Commission Counsel and the General Counsel. Additionally, the ADR Unit continued to maintain quantitative data to measure the volume of cases handled and the success rate at settling cases through mediation and conciliation. As an experienced mediator joins the ADR Unit, the Unit will better develop and update a database for all MCAD decisions and awards that is organized by type of discrimination claims and includes data on emotional distress damages.

The ADR Unit also continued to hold popular "Roundtable Meetings" in the Spring of 2022 that encourage the exchange of ideas and feedback between the bar and the Unit. Lawyers who practice at the MCAD are regularly invited to these meetings, where they routinely educate other lawyers about MCAD practices, procedures and the procedural regulations updated in 2020, among other topics. Once again this fiscal year, the ADR Unit held several sessions and was able to invite more attendees than in previous years by using Zoom, although there were still wait lists for each session. Given the positive response, the ADR Unit will continue to offer these meetings in the next fiscal year.

The ADR Unit has successfully transitioned from in-person mediations and conciliations to remote sessions using Zoom, as the challenges from the COVID-19 pandemic continue. Throughout the pandemic, there has been no interruption in offering dispute resolution services, as MCAD mediators, Commissioners and Commission Counsel are trained in using Zoom for video mediations and conciliations. The feedback received from both the attorneys who appear for remote mediations and conciliations and their clients has been overwhelmingly positive, and there is consensus around a strong preference to continue with remote dispute resolution sessions even after the pandemic has subsided. Holding remote dispute resolution sessions has not adversely impacted the quality of the negotiations and continues to provide several pragmatic advantages including saving time and costs for those we serve.

This year, the ADR Unit also took on the task of offering late mediation—post-discovery or post-certification mediation—to parties, giving an additional opportunity to resolve disputes and settle claims before going to public hearing. This added service helped to decrease the backlog of cases awaiting certification to public hearing as a result of pandemic-related delays.

*ADR graphed data for FY22 and FY23 will be made available in the agency's FY23 Annual Report.*



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## Noteworthy Settlements from the ADR Unit

- In an employment discrimination claim, Complainant worked for a company and alleged a sexual assault by her supervisor while the two of them were at a hotel on company business. Respondents agreed to pay \$96,000 in damages and have the MCAD provide discrimination training for multiple supervisory staff members. This included potential future trainings for newer supervisors as well.
- In a public accommodations claim, Complainant had mobility-related disabilities and alleged she was denied appropriate seating at a restaurant. Respondent agreed to pay the Complainant \$500, send managers to MCAD discrimination training, update employee handbooks with ADA provisions, ensure integrated seating in their establishment for disabled individuals, and provide a point of contact for Complainant to make reservations.
- In a housing claim, Complainant had disabilities requiring the need for two assistance animals. Complainant informed the Respondents of their need after moving into Respondents' unit. Respondents were willing to grant an accommodation to their no pet policy for one assistance animal but not two. This resulted in the Complainant having to break her lease and move. The matter resolved with Respondents paying Complainant \$5,000, agreeing to attend MCAD fair housing training, and changing their housing policies to remove the one assistance animal only requirement and requiring insurance for assistance animals.
- In an employment claim, Complainant alleged he was terminated from his employment based on his race, color, and/or sex. Respondent agreed to pay \$55,000 to the Complainant, removed the internal termination code from Complainant's file, removed the termination letter from Complainant's file, and send a representative to the MCAD "Train the Trainer" program so they would have the appropriate knowledge to train Respondent's staff.
- In a public accommodation claim based on the failure of the Respondent to provide services on more than one occasion to a person who was blind and using a service dog, Respondents agreed to pay \$100,000 most of which represented emotional distress damages. Complainant was subject to demeaning comments about her service dog and forced to leave the Respondents' location of service. Due to her disability Complainant placed considerable reliance on the services provided by the Respondents.
- In an employment claim alleging discrimination on the basis of race/color and retaliation, Respondent agreed to pay Complainant \$140,000, largely lost wages. Complainant alleged disparate treatment in how more lucrative accounts were taken from him and reassigned to white employees, and that other actions were taken that prevented him from higher sales. Complainant was then terminated for poor performance. Subsequent to his termination, Complainant alleged that the Respondent retaliated by adversely interfering with several of his efforts to find alternate employment.
- In a housing discrimination claim based on Respondents' alleged failure to de-lead the rental unit and offer it to a family with two small children, Respondents agreed to take Fair Housing Discrimination training, to complete the de-leading of the rental unit and include anti-discrimination language in its advertisements for two years. Respondents had allegedly responded to inquiries from potential tenants with small children that the unit would not be a good fit because of the lead and to de-lead would be burdensome. Respondents also agreed to pay \$1,000 in settlement of the claims.

- In a post-discovery mediation of a sexual harassment and gender discrimination claim against a small business, Respondents agreed to pay the Complainant \$21,000. Complainant alleged that Respondents, in the person of one of her superiors, made *quid pro quo* offers of extra pay for sexual acts, made several comments of a sexual nature during work shifts, and took photos of Complainant and sent them to co-workers with comments. Respondents also agreed to have their entire staff attend anti-discrimination training given by the MCAD Training Unit.
- In an education discrimination case based on G.L. 151C, Complainant alleged discrimination on the basis of race and color against him in his efforts to seek admission to an advanced degree-granting educational institution. Respondent agreed to pay the Complainant \$100,000. Complainant alleged a pattern of discrimination against diverse applicants, particularly Black men, and also alleged that Respondent improperly requested that Complainant disclose an arrest where no conviction resulted as part of its application process.
- In an employment claim involving a Complainant applying and being hired for a job contingent on passing a drug test, Respondent agreed to pay the Complainant \$10,000, \$7,200 of which for emotional distress damages. Respondent also agreed to have its human resource professionals and recruiters in Massachusetts attend the MCAD's anti-discrimination training. Complainant alleged disability discrimination. Complainant told the Respondent after being offered the job that he used medical marijuana pursuant to a doctor's prescription and was concerned that he would fail the drug test. Respondent was required to subject employees to a drug test after an offer of employment was made, due to the requirements within Respondent's federal contracts. Complainant did fail the drug test and the job offer was rescinded.
- In a housing discrimination claim involving an emotional service animal ("ESA" - a cat), Respondent agreed to attend anti-discrimination Fair Housing training, made a written apology to the Complainant and made a donation of \$1,000 to a non-profit animal rescue organization. Complainant needed the ESA to help her manage anxiety and depression. Respondent's lease agreement did not prohibit animals, but did require the Respondent landlord's consent.
- In an associational discrimination employment claim, Respondent agreed to pay Complainant \$67,500. Complainant alleged associational discrimination and retaliation after he was terminated allegedly for poor performance. The termination occurred one week after Complainant, Vice President of Human Resources, advised the Respondent owner against terminating a co-worker who was about to go out on medical leave and protected the co-worker by not firing her.



## Legal Division Report

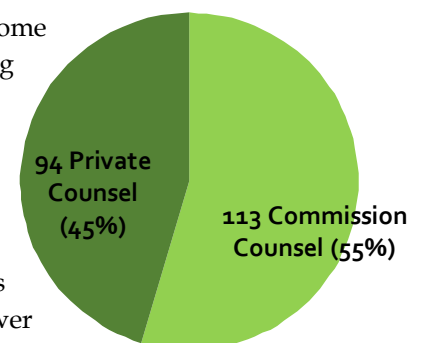
The Legal Division provides legal services and support to the Commission in furtherance of its mission to eradicate discrimination in Massachusetts. The Legal Division includes the General Counsel, Deputy General Counsel, seven Commission Counsel, the Clerk's Office, and the Full Commission Law Clerk. The Legal Division oversees the Full Commission review process, provides draft decisions, and submits recommendations on post-probable cause motions to the Commissioners. The Legal Division also provides legal and procedural advice concerning matters affecting the Commission, including ethical issues, personnel, investigations, public records requests, and proposed legislation.

The Clerk's Office within the Legal Division consists of the Clerk of the Commission, Deputy Clerk/Records Access Officer, Hearings Clerk, Conciliation Clerk, and Appeals Clerk. The Clerk's Office in Boston is responsible for overseeing Commission public hearings and Full Commission filings, assignment of motions to Hearing Commissioners and Hearing Officers, issuing Commission decisions and responding to public inquiries. In fiscal year 2022, the Clerk's Office responded to 485 public records requests. The Clerk's Office in Springfield is staffed by a First Assistant Clerk.

Commission Counsel enforce the Commonwealth's anti-discrimination laws through prosecution of complaints at public hearings and through litigation and appellate practice in Massachusetts courts. Commission Counsel also prosecute Commission-initiated complaints, and participate in conciliation proceedings. Commission Counsel hear and review appeals from Lack of probable cause (LOPC), Lack of Jurisdiction (LOJ) and Review and Authorization (R & A) dismissals and provide recommendations to Investigating Commissioners regarding their findings. The Legal Division is also responsible for defending agency decisions when judicial review is sought in Superior Court and/or the State's Appellate Court pursuant to M.G.L. c. 30A, § 14(7). The Legal Division defends challenges to the Commission's jurisdiction and procedures, and files enforcement actions to obtain compliance with the Commission's final orders.

This fiscal year the Legal Division met the challenges wrought by the COVID-19 pandemic head on. With the assistance of technology support that continued from the previous two fiscal years, personnel in the Legal Division continued to successfully perform most of their work on a remote basis, although some internal meetings were held in person for the first time since March of 2020. The Legal Division continued to conduct depositions remotely, and attended court hearings both via Zoom and in person. It also conducted its external meetings on a remote basis, through telephone conferences and Zoom. As for meeting staffing challenges, the Legal Division filled vacancies in the General Counsel and Full Commission Law Clerk positions, and made efforts to recruit for the Deputy General Counsel position.

The Legal Division also made enormous strides in addressing some delay in the prosecution and certification of cases to public hearing resulting from pandemic slow-downs and the hearing officer retirements from FY21; as a result of measured changes to the certification process, the Clerk's Office was able to triage all active, post-probable cause cases 15 months past conciliation as of October 2022, ensuring the movement of such cases through the MCAD process. Moreover, at the close of the fiscal year there were 11 cases awaiting a Full Commission decision, a number dramatically lower than in previous, pre-pandemic years. The following report highlights the work in the Legal Division for FY22.



## Cases Assigned to MCAD Commission Counsel

Commission Counsel prosecute cases at public hearings after a finding of probable cause by the Investigating Commissioner. Commission Counsel proceed in the public interest to eradicate discriminatory practices by obtaining affirmative relief and victim-specific relief for complainants, particularly those who are not represented by private legal counsel (*pro se* complainants). Of the 207 cases with a probable cause determination in fiscal year 2022, the Legal Division was assigned to prosecute 113 new cases filed by *pro se* complainants. Commission Counsel remained assigned to prosecute the caseload of 93 cases that existed as of June 30, 2021.

## Noteworthy Settlements by Commission Counsel

Commission Counsel resolved 92 discrimination cases through conciliation and negotiation, recovering \$1,900,055 in victim specific relief. In addition, the agency secured affirmative relief in the form of anti-discrimination training and policy reviews. The following is a description of some representative matters, which were resolved by settlement during the 2022 fiscal year, classified by the type of alleged discrimination.

### Employment Cases

- A twenty-year employee with a physically demanding job had, over the years, sought and obtained five medical leaves of absence, after which his employer had always permitted him to return to the same job duties he had always performed and knew well. But after a change in management, the employee was forbidden from returning to his job after taking a medical leave and instead offered, as a reasonable accommodation, only that he take a job in a different department with which he was unfamiliar. The employee alleged disability discrimination. After conciliation, the employer paid the employee \$40,000 and agreed to send its managers to anti-discrimination training. [Middlesex County]
- An employee alleged that, shortly after he began working for Respondent as a temporary employee, two of Respondent's supervisors warned him to avoid a particular subcontractor because the subcontractor had referred to the employee by a derogatory racist name. The next workday, the subcontractor's employee initiated a verbal altercation with the employee, which turned into a physical assault. The employee reported the incident to Respondent, who took no action against the subcontractor or his employees. The employee believes he was racially profiled by Respondent, when he alone was later accused by Respondent of stealing construction gloves and a fellow employee's phone, both of which were located elsewhere. Respondent fired him shortly before he transitioned to becoming a full-time employee when Respondent mistakenly believed that it was no longer working with the employee's temporary placement agency. When the misunderstanding was addressed, Respondent refused to reinstate the employee. Respondent paid the employee \$35,000 in compensation and agreed to provide MCAD-approved anti-discrimination employment training to all employees with supervisory responsibilities, all senior managers, and all other human resources staff. [Hampden County]
- A scheduling and payroll manager for Respondent, a skilled nursing facility, requested an accommodation to work from home due to existing medical conditions that put her at a greater risk of complications should she contract COVID-19. Respondent periodically allowed the accommodation but eventually required the manager to work in the office after alleging that she was not adequately performing her duties off-site. Respondent paid the manager \$12,000 to resolve the matter and Respondent agreed to provide MCAD-approved anti-discrimination employment training for the human resources employee located onsite at Complainant's former work location and the Administrator of the building at which Complainant worked. [Hampden County]

- In 2017, a Resident Assistant reported concerns to Respondent that certain white employees were targeting her because she is from Puerto Rico. Respondent took steps to address the situation, and their conduct appeared to stop. In late 2018, Respondent fired the employee after one of those employees accused her of tampering with a patient's medication. The employee admits that she accidentally damaged the medication package, but alleges that the other employee tampered with the package and Respondent refused to investigate her allegations. Respondent paid the employee \$17,000 to resolve the matter and Respondent agreed to provide MCAD-approved anti-discrimination employment training to three specifically named employees, or their replacements if those individuals were no longer employed. [Hampshire County]
- In the spring of 2020, after working for Respondent for 17 years, the employee requested time off from work to undergo surgery related to a disability. The employee alleges that Respondent refused to meaningfully engage in an interactive dialogue and then terminated her employment when she requested an extension of her leave for another month and a half after her doctor did not clear her to return to work on the initial proposed return to work date. Respondent paid the employee \$15,000 to resolve the matter and Respondent agreed to provide MCAD-approved anti-discrimination employment training to all senior management employees and all other employees involved in the Human Resources process. [Hampden County]
- An employee began working remotely for Respondent in mid-2020. Towards the end of 2020, Respondent required the employee to go into the office two days weekly. The employee requested and received a disability accommodation to continue working remotely. In December of 2020, Respondent requested additional medical documentation to support the request. Before the employee provided the medical documentation, Respondent made the decision to terminate her and notified her of the termination two days after she submitted the requested documentation. While the termination was allegedly based on a failure to meet performance standards, Respondent admits the employee had been praised for her job performance and had not received any written warnings. Respondent paid the employee \$10,000 in compensation and Respondent agreed to provide MCAD-approved anti-discrimination employment training to all senior managers. [Worcester County]
- An employee working at a national fast food chain alleged that she was subjected to sexual harassment by a co-worker during her employment. She informed her supervisor that her co-worker was harassing her, and she was subsequently retaliated against and constructively discharged. The company resolved the case by paying the employee \$17,000 in emotional distress damages and agreeing to provide three managers at the company with training on how to properly conduct internal investigations of discrimination and sexual harassment. [Suffolk County]
- An employee of a flooring company, who was born in Guatemala, alleged that his supervisor subjected him to national origin harassment. The employee reported the harassment to his supervisor's manager, and requested not to work with this supervisor. Subsequently, he was scheduled to work with the supervisor and a physical altercation ensued during which the supervisor allegedly assaulted the employee. The employee left the workplace and when he attempted to return, he was informed that he had been terminated from his employment. The company agreed to pay the Complainant \$21,000 in emotional distress damages and the owners agreed to pay for and attend anti-discrimination training. [Essex County]
- An employee of a franchisee of a national fast food chain of restaurants was subjected to

differential treatment when she informed her employer that she was pregnant, ultimately leading to her constructive discharge. The franchisee settled by paying Complainant \$7,500 in emotional distress damages. In addition, the franchise agreed to train its staff on how to properly investigate claims of sexual harassment. [Bristol County]

- A teacher of English as a Second Language (ESL) was employed by an organization providing ESL classes. He alleged that his employer discriminated against him on the basis of his sex (male) and race (Black). Specifically, he alleged that he had been subjected to differential treatment based on his protected classes, and that this ultimately culminated in his termination from employment. The organization agreed to pay the employee \$55,000 in damages, remove the termination letter from his personnel file, and change its internal records to reflect that the termination was not for cause. In addition, the organization agreed to pay for its chief internal trainer to undergo a three-day training on workplace discrimination, and to subsequently provide anti-discrimination training, with an emphasis on race discrimination, to all managers and directors employed at the location where the employee had previously worked. [Suffolk County]
- An employee, who had previously filed a Complaint at the MCAD against her employer, alleged that she was passed over for a promotional position based on retaliatory bias. The employer agreed to pay the Complainant \$32,500. In addition, the employer acknowledged that it had provided its staff with training on discrimination, harassment and retaliation. [Middlesex County]
- An employee of a major hospital alleged that her employer discriminated against her on the basis of her disability, and then retaliated against her, when the hospital failed to provide her with an accommodation required due to a mobility impairment. The hospital agreed to pay the employee \$25,000 and to provide all managers and employees in the Absence Management Department with training on disability discrimination and retaliation. [Suffolk County]
- An employee of a restaurant alleged that the cook sexually harassed her and discriminated against her on the basis of her sex. She further alleged that the owner of the restaurant failed to take appropriate remedial action to halt the harassment, and constructively discharged her. The restaurant agreed to pay the employee \$8,000 and to require the cook and restaurant owner to attend anti-discrimination training. [Bristol County]
- A white manager with responsibilities for human resources alleged that he was terminated by his employer after he protested the company's discriminatory hiring practices and biased conduct. Specifically, he alleged that he opposed and objected to the president of the company's use of discriminatory language in the workplace, the company's refusal to consider Black and Latino applicants for job openings, and the company's unwillingness to adopt equal employment opportunity policies. The company agreed to pay \$65,000 to the employee, provide discrimination training for eight of the company's owners, managers and employees, include an equal opportunity statement in future advertisements, and develop, implement and adopt equal employment opportunity policies to be distributed to the company's employees. [Norfolk County]
- An employee of a transportation provider alleged that he was sexually harassed by his supervisor. Specifically, he alleged that his male supervisor repeatedly made sexualized comments to him, told his co-workers that he was gay and aggressively targeted him with bullying and sexual conduct. After extensive discovery, the employer agreed to pay the employer \$33,500 to resolve the matter. [Middlesex County]

- An employee of a franchise providing massages alleged that he was discriminated against on the basis of his disability. He alleged that after he told a co-worker that he struggled with depression, his employer placed him on an involuntary leave of absence. This action was taken without conducting an individualized assessment of the employee's present ability to perform the job. Shortly after the leave of absence, the employer allegedly terminated the employee without a legitimate reason. The employee resolved the case with the franchisee for \$6,000. [Essex County]
- An employee with a disabling heart condition worked for several years as a case manager at a psychiatric hospital. She was transferred from one hospital to a second, sister hospital, both of which are owned by a national company. After she was transferred and disclosed her medical condition to the second hospital, she alleged that she was targeted for differential treatment and discipline. She was denied an accommodation, and discouraged by the human resources representative from formally identifying her disability on a Family and Medical Leave Act (FMLA) form. Complainant was ultimately terminated from the hospital on the grounds that her allegations of disparate treatment were untrue. The hospital resolved the case, paying the employee \$35,000, agreeing to redact the employee's personnel file and pay its human resources director to attend a three-day training on reasonable accommodation and disability discrimination. [Bristol County]
- An Area Supervisor for a national off-price retailer alleged discrimination based on sex and retaliation. Specifically, she alleged that on four separate occasions, a manager engaged in sexual conduct, including touching and staring. The supervisor alleged that she was discharged from employment after reporting the behavior. Based on the information received during the Commission's investigation, a split finding was issued, crediting the Complainant's claim of harassment and dismissing her claim of retaliation. At the conciliation conference, the parties agreed to settle the matter for \$7,500 and site-specific anti-discrimination training for all managerial and supervisory employees. [Middlesex]
- A post-construction cleaner alleged that he was discriminated against based on sex, national origin, and retaliation. The employee asserted that shortly after beginning his employment, a co-worker started harassing him based on his gender and national origin. He reported the conduct to his supervisor, who initially assigned both him and the harasser to different work sites. The supervisor's attempt to remediate was ineffective as both individuals continued to interact at the beginning and end of their shifts, and offending conduct was unceasing. After complaining of harassment by a different co-worker, the employee received a written warning. Dismayed, the employee filed a Complaint with the MCAD. Shortly after that, Respondent terminated his employment. This matter settled for \$15,000 and anti-discrimination training for all administrative, managerial, and supervisory employees. [Suffolk County]
- A cashier at a national pharmacy alleged that she was subjected to disability discrimination. The cashier's allegations stemmed from a flawed interactive process about the possible accommodation of her disability, which culminated in the termination of her employment, without good reason and with no showing by the employer that the continued accommodation would be an undue hardship. This matter settled for \$25,176.75. [Worcester County]
- A Unit Coordinator for a skilled-nursing center filed a Complaint alleging disability discrimination after her employer failed to accommodate her shoulder injury, failed to engage in an interactive dialogue regarding possible accommodations, and terminated her employment. The Complainant alleged that she received a termination letter dated the same day as she submitted a request for an extension to her medical leave of absence. The



reason for the termination was the exhaustion of her "accrued sick and vacation leave, and the unpaid leave of absence granted...." This matter settled for \$40,000 and training for the facility's sole human resource professional. [Suffolk County]

- A Radiologist Technician alleged that her manager and her department's Lead Radiologist discriminated against her based on her race (Black) and subjected her to retaliation. The employee specifically alleged that she was subjected to disparate treatment, including the discriminatory failure to provide training opportunities and the disparate approval of time off requests, work breaks and job assignments. She further alleged that she suffered a retaliatory performance evaluation and poor employment references after complaining about the disparate treatment. A similarly situated white co-worker supported the employee's claims. In settlement of this matter, the employee accepted \$65,000. In addition, the employer agreed to the training of all department supervisors and to the training of her manager, who had subsequently transferred to a different position. [Suffolk County]
- An Executive Assistant for a global contract research organization alleged that the Human Resource Manager subjected her to inappropriate comments that created a hostile work environment based on her gender. The employee alleged that the Human Resources Manager's use of vulgar language was widely known among all levels of management. The employee further alleged that the inappropriate conduct was not confined to just one individual and that other members of the senior management team sometimes behaved inappropriately. The employee asserts that on three occasions, she left voice messages for the Vice President of Human Resources, referencing serious concerns but never received a return call. This matter settled for \$15,000 and the training of the Human Resource Manager who engaged in the alleged offensive conduct. [Bristol County]
- A Corrections Officer alleged that he was subjected to discrimination based on his disability when the employer changed its uniform policy and required him to wear the employer's Class A uniform in order to continue his previously approved reasonable accommodation of wearing sneakers at work as recommended by his physician. Comparatively, the employer allowed other non-disabled corrections officers to continue to wear their Class B uniform. The employer later reverted to its original uniform policy after consultation with the employee's union. The employer agreed to resolve the matter with a payment to the employee of \$10,000 and to process requests by its employees to wear sneakers, instead of uniform-issued boots, through its Americans with Disabilities Act accommodation process, and allow MCAD training staff to review and comment upon its relevant training materials. [Bristol County]
- A Truck Driver alleged that he was subjected to discrimination based on his race (African American), and color (Black), when a white Dispatcher changed his clock-in times after he had already clocked-in but did not make similar changes to the timecards of similarly situated white drivers. The employee alleged that he reported the mistreatment to the company's owner and that no corrective action was taken to address his complaint. Rather, he alleged that he was subjected to a retaliatory termination two days later. The employer agreed to resolve the matter for a payment to the employee of \$7,500 and participation in MCAD anti-discrimination training. [Norfolk County]
- A Grave Digger alleged that he was subjected to discrimination based on his race (African American), and color (Black), when his employer failed for a second time to promote him to Foreman, and instead promoted a significantly less senior white applicant. After the employee was passed over for promotion, he felt ostracized by his peers. The employer agreed to resolve the matter for a payment to the employee of \$17,186 and to allow MCAD training staff to review and comment upon its relevant training materials. [Suffolk County]
- A Safety Supervisor alleged that her employer discriminated against her based on her sex

when her employer fired her. Specifically, the employee alleged that she was adequately performing the duties of her job when she was terminated due to an alleged violation of the employer's cell phone policy, while comparable male safety supervisors who used their cell phones while driving were given leniency and were not disciplined or terminated. The employer agreed to pay the employee \$40,000 and to allow MCAD staff to review and comment upon its anti-discrimination policies. [Suffolk County]

- A Healthcare Aide at an assisted living facility alleged that she was subjected to discrimination based on her religious creed (Seventh Day Adventist) and disability (heart condition), when her employer changed its scheduling policy and discontinued her religious accommodation, thereby denying her request to continue to have Saturdays off to observe her Sabbath. She also alleged that she was subjected to disability discrimination when her employer failed to provide a reasonable accommodation for her disability, which limited her to only working daytime shifts. The employee alleged that her employer presented her with various schedule options, all of which required her to either forego her observance of her Sabbath or to work at night in contravention of both her doctor's advice and the previously granted reasonable accommodation for her disability. She alleges that when she did not agree to her employer's proposed schedule, her employer terminated her employment. The employer agreed to resolve the matter by paying the employee \$25,000 and sending its management and supervisory staff to attend MCAD anti-discrimination training. [Worcester County]
- An Associate Professor and Assistant Dean was the only full-time male faculty member in a senior administrative position at his employer's School of Nursing. He alleged that throughout his employment, he was treated differently than his female colleagues and subjected to retaliation. He alleged that the school's Dean regularly shouted at and belittled him in front of his coworkers, and gradually marginalized his role over the course of his employment. The employee also alleged that his employer failed to address his repeated complaints of disparate treatment and harassment. His employer did not respond to his complaints and instead terminated his three-year contract after only two years. The employer agreed to resolve the matter for a payment to Complainant of \$250,000 and its management staff's participation in MCAD anti-discrimination training. [Worcester County]
- A Table Games Dealer at a casino alleged discrimination based on his employer's failure to discuss his requests to accommodate his disabling conditions (knee, heart ailment), and then for terminating him shortly after he provided his employer with a supporting medical note. To resolve the matter, the employer agreed to pay the employee \$30,000 in compensation and send its supervisory employees to participate in MCAD-sponsored training. [Hampden County]
- A long term Registered Nurse at a medical center claimed that her employer failed to accommodate her disability (arthritis/knee issue), terminated her employment, and then replaced her with a significantly younger employee. To resolve the matter, the medical center agreed to pay \$40,000 in compensation. The medical center also agreed to send the employee's former supervisor to two MCAD-sponsored trainings, including one devoted to handling reasonable accommodation requests. [Berkshire County].
- A Secretary/Benefits Administration Clerk for a town, claimed the town eliminated her position, thereafter disregarded her candidacy for other positions, and ultimately terminated her employment based on her age. To resolve the matter, the town agreed to pay the employee \$55,000 in lost wages. The town also agreed to send its EEO training regimen for review by the MCAD. [Hampden County].

- A Compliance & Logistics Manager for a multi-state operator of cannabis cultivation and retail alleged that his employer improperly classified him as an hourly wage employee instead of as a salaried employee because of his race (Hispanic). The employer paid a similarly situated non-Hispanic employee a considerably higher salary. To resolve the matter, the employer agreed to pay the employee \$25,000. Respondent also agreed to send managerial staff to two sets of MCAD-sponsored training. [Worcester County].
- A Sales Director at a senior living facility alleged that a Regional Director engaged in multiple sexually inappropriate discussions in the workplace. The employee alleged that when she complained about this behavior, the employer terminated her employment. While the MCAD dismissed her claims of sexual harassment as time-barred, it found probable cause with regard to her claims of retaliation. The case settled for \$25,000, and fair employment training for the employer's managers. [Norfolk County]
- A Night Cleaner at a hotel alleged race discrimination when his overnight manager made comments alluding to him as a "thug," referred to him as "[Nickname] from the hood," mimicked Black urban stereotypes, and suggested his "homeboys" tried to break into a local coffee shop. The case settled for \$28,000, and fair employment training for the hotel's Human Resources personnel and the Night Manager. [Suffolk County]
- A Detail Specialist for a rental vehicle company alleged that his employer terminated his employment after he filed a Complaint of disability discrimination at the Commission. The employer contended that it terminated the employee for performance reasons. The case settled for \$18,000, and fair employment training for the employer's managers. [Suffolk County]
- A Service Representative for a major hospital suffered a concussion in an accident shortly after she began her employment. The employee alleged that her employer failed to provide her with a reasonable accommodation in the form of a temporary, part-time schedule and instead terminated her because of her disability. The case settled for \$20,000 and fair employment training for the hospital's managers. [Suffolk County]
- After working for approximately four years in the same position, an African American employee began experiencing consistently harsher treatment than his non-Black colleagues did when a new supervisor (white) was put in charge. For several years thereafter, the Black employee received critical reviews and was the target of verbal abuse even as the supervisor withheld information needed to complete assignments. The matter settled for \$40,000 and training. [Hampden County]
- An employee took a job with a company but soon discovered that one of the company's managers, to whom he reported, was intimidating and confrontational. Confiding in his supervisor that he had recently begun seeing a therapist for anxiety and depression caused by the manager, the employee requested and was allowed to take time off during the workday to seek counseling. When the employee's supervisor was fired, he began being bullied by the manager, who, after confronting the employee with a purported job performance issue, then denied his request to leave the room to get some fresh air as an accommodation to the heightened anxiety occasioned by the argument. The case settled with the company paying the employee \$60,000 and sending its managers to MCAD anti-discrimination training. [Suffolk County]
- An employee was hired as a part-time Receptionist at the age of 67 and worked with other receptionists, also in their 60's and 70's. After a number of months, the employee noticed that her hours were being given to younger staff and she voiced her concerns about this practice. Six months later, she was laid off as part of a restructure and alleged that she, but



not other younger workers with less experience, were deliberately targeted for layoff in retaliation for complaining about age discrimination. The matter settled for \$26,250. The employer agreed to undergo anti-discrimination training. [Franklin County]

- An employee worked at a cleaning company as a part-time, night-shift Custodian. Her immediate supervisor called her into an empty office one night ostensibly to provide work-related instruction but instead propositioned her to be intimate with him. When she rebuffed his overtures, he nevertheless made physical contact with her before she could leave the room. He then called her on her cell phone minutes later to repeat his request, warning her that he alone was responsible for her keeping her job. The employer's investigation was inadequate and the supervisor was discharged for reasons unrelated to the encounter. The matter settled for \$18,500 in emotional distress damages with select managers agreeing to undergo anti-harassment training. [Suffolk County]

### *Housing Cases*

- An individual alleged that his neighbor repeatedly subjected him to racist comments while they were in common areas of the property, such as the laundry room and parking lot. The landlord ignored his reports of discrimination and was overheard making racist comments about Complainant. The landlord provided \$2,000 as compensation to Complainant, forgave all past due rental amounts, and filed a Satisfaction of Judgment with Housing Court. The landlord also agreed to attend MCAD-approved anti-discrimination housing training. [Hampden County]
- A tenant living in subsidized housing for the elderly and disabled alleged that the housing authority and property manager discriminated against her on the basis of her disability (mobility impairment). Specifically, she alleged that when she requested the reasonable accommodation of a parking space close to her unit, the housing authority and its manager failed to engage in an interactive process and ultimately, targeted her for differential treatment based on her disability. She ultimately moved out of the apartment complex. The matter was resolved with an agreement by the housing authority that they would pay the former tenant \$5,000 and release her from any claims it allegedly had against her for back rent and damage. Further, the housing authority issued to all of its tenants a reasonable accommodation policy re-stating its commitment to providing accommodations to tenants with disabilities. In addition, the individual property manager underwent training on disability discrimination and reasonable accommodation, the contents of which were reviewed by the MCAD. [Essex County]
- A tenant with arthrofibrosis in her knee that affected her ability to walk, requiring the use of a cane, alleged that her landlord had refused to reasonably accommodate her medical condition by refusing to replace the frayed carpet which was a tripping hazard. The landlord resolved the case by replacing the carpet, reducing the tenant's rent in the amount of \$2,500 over a period of time, and undergoing training on disability discrimination and public assistance discrimination. [Middlesex County]
- A prospective tenant alleged that he was subjected to discrimination when Respondents refused to negotiate to rent an available apartment to him based on national origin (Dominican Republic), race and color (Hispanic). He alleged that he engaged in a series of text messages with the owners' real estate agent in an attempt to view and rent an available apartment unit. During the course of his inquiries regarding the unit, the real estate agent questioned him regarding his ability to speak English and how long he had been in the United States, and subsequently refused to show him the unit or to negotiate the rental of

the property with him. Respondents agreed to resolve the matter for a payment of \$10,000 to the prospective tenant and participation in an MCAD anti-discrimination training. [Middlesex County]

- A prospective tenant alleged that she was subjected to discrimination based on her receipt of public assistance after she inquired about renting an available apartment and informed Respondents that she would be paying for the rental using a Section 8 Voucher. The prospective tenant alleged that she viewed an online advertisement for an available apartment and that she inquired about renting the apartment and viewing the unit. After she informed Respondents of her receipt of public assistance in the form of a Section 8 Housing Choice Voucher, she received a text message from Respondent, stating: "Sorry not interested in section 8, but thanks." As a result, she was deterred from applying for or negotiating to rent the apartment. Respondents agreed to resolve the matter for a payment of \$3,000 to the prospective tenant and participation in an MCAD anti-discrimination training. [Essex County]
- A mother of a 2 year old child alleged that she was subjected to discrimination based on familial status (children), discriminatory statements, and the Commonwealth's Lead Paint Law when, through her real estate agent, she engaged in a series of communications with Respondent's real estate agent, seeking to view an advertised apartment. She alleged that Respondent's agent made discriminatory statements regarding the likely presence of lead paint on the premises in order to dissuade her from pursuing the rental of the property and ultimately refused to let her view the apartment, based on her intention to reside in the property with a child under the age of six years old. She alleged that the property remained on the market for nearly one month after her inquiries and that Respondents eventually rented the property to a family with a child over six years of age. Respondents agreed to resolve the matter for a payment of \$5,000 to the prospective tenant and participation in an MCAD anti-discrimination training. [Suffolk County]
- A tenant alleged that her landlord subjected her to discrimination based on her disabilities, which included anxiety and depression. She alleges that she requested to reside on the premises with an emotional support dog. Despite her providing a letter from her nurse practitioner confirming her need for the accommodation, Respondents failed to engage in an interactive dialogue regarding her request for a reasonable accommodation and unreasonably delayed acting on her request. Respondent agreed to resolve the matter for a payment of \$9,000 to the tenant, forgiveness of \$1,500 in rental arrears and participation in an MCAD anti-discrimination training. [Bristol County]
- A tenant is a recipient of a Section 8 Housing Choice Voucher which she used to rent an apartment from Respondents. She alleged that Respondents subjected her to discrimination based on her receipt of public assistance, when they notified her by text message that they would not be renewing her lease after the unit where she resided failed her voucher provider's annual inspection, despite having previously agreed to renew her lease. Respondents agreed to resolve the matter for a payment of \$10,000 to the tenant and participation in an MCAD anti-discrimination training. [Bristol County]
- A tenant alleged that she was subjected to discrimination based on her disabilities (anxiety, post-traumatic stress disorder). The tenant alleged that she secured the rental of a condominium unit and later brought her emotional support dog to live with her. She alleged that after she informed Respondents that she planned to reside in the unit with her emotional support dog, and requested a reasonable accommodation in the form of a waiver of Respondents' "no pets policy," Respondents requested that she provide documentation of her need for an assistance animal, which she provided in the form of a note from her therapist. Respondents refused to grant her request for a reasonable

accommodation. Respondents agreed to resolve the matter for a payment to the tenant of \$9,750 and to participate in MCAD anti-discrimination training. [Suffolk County]

- A prospective tenant alleged that she was subjected to discriminatory statements based on her sex, familial status, and disability after she viewed an available apartment and provided Respondent's property manager with documentation and application materials in order to apply to rent the property. The prospective tenant alleged that following her submission of the documentation, Respondent's property manager made discriminatory statements relating to her sex, familial status, and disability in relation to the rental of the subject property and denied her the opportunity to rent the unit. Respondents agreed to resolve the matter for a payment to the prospective tenant of \$5,000 and to participate in MCAD anti-discrimination training. [Bristol County]
- A prospective tenant alleged she called a telephone number listed in a Trulia advertisement for an apartment for rent. The man who answered the telephone asked if she had Section 8 Housing Voucher. When she stated that she did, the man told her they did not accept Section 8 and hung up. The prospective tenant alleged that she had a friend call the same number, and when the man asked her if she had Section 8, her friend said she did not, and the man offered to show her the apartment. The case settled for \$2,000, fair housing training for the Respondent, the adoption and dissemination of a fair housing policy, and inclusion of fair housing language in advertisements for one year. [Norfolk County]
- A prospective tenant with multiple disabilities was the recipient of an Alternative Housing Voucher ("AHVP" voucher). She alleges that she sought to rent an apartment, and the realtor initially indicated she could have it. However, the realtor later withdrew the offer to rent, saying that the voucher program was "too complicated." The owners further raised concerns about the potential costs of repairs. The case settled for \$3,000 and fair housing training for the owners. [Middlesex County]
- A young couple with two children under the age of six met with the property owner's real estate agent who then steered them away from a certain rental unit because it contained lead paint. When the couple protested, the realtor denied that she refused to rent to them, but email evidence showed the contrary. The case settled with the realtor and owner paying the couple \$10,000. The realtor also agreed to undergo anti-discrimination training while the owner agreed to de-lead the property. [Middlesex County]
- A long-time condominium unit owner with a mental disability sent a doctor's note to her condominium association and sought a reasonable accommodation in the form of an exception to its "no dogs" policy to enable her to obtain and keep an emotional support dog. When the Association refused without ever having first engaged in an interactive dialogue with her, the condominium unit owner filed a Complaint with the MCAD. The case settled when the Association agreed to undergo anti-discrimination training and pay the unit owner \$15,000 in emotional distress damages. The Association also adopted a reasonable accommodations policy. [Norfolk County]
- A recipient of public assistance in the form of rental vouchers, spoke over the phone with a property owner regarding renting a unit. When the two met in person, the property owner, who had been willing to rent the unit to the prospective tenant over the telephone, suddenly decided not to rent out the unit. Afterwards, the unit remained listed online as available for rent. The landowner claimed that he was afraid the prospective tenant was financially unable to afford the unit even though she had the funds ready and available to rent the unit. The matter settled for \$5,000 and anti-discrimination training. [Middlesex County]

- A tenant with disabilities owned and kept an emotional support cat. When she moved into the subject apartment managed by Respondents, who were aware of the emotional support animal, she was nevertheless charged a “pet fee” despite the fact that an emotional support animal is not a pet. Not wishing to be evicted, she paid the “pet fee” then filed a discrimination Complaint at the MCAD. The matter settled for \$8,500 plus anti-discrimination training. [Plymouth County]
- A recipient of public assistance was denied the opportunity to rent a unit solely because of the requirements of the rental assistance program providing her benefits. The owner of the property, who had encountered difficulty in the past when working with that particular rental assistance provider, denied her application. The case settled when the owner of the property agreed to pay Complainant \$7,000 in emotional distress damages and undergo anti-discrimination training. [Middlesex County]
- A disabled veteran with progressively debilitating mobility issues resides in a condominium complex. He asked the condominium association to install a chairlift in the common area near his unit because walking up and down the stairs was painful and presented a fall hazard. The condominium association initially agreed to allow him to install a chairlift at his own expense and imposed other burdensome conditions on him. Eventually, the condo association removed these conditions but still refused to engage in an interactive dialogue with him. The case settled when the condo association agreed to pay the tenant \$5,000 in emotional distress damages and to install, at its own expense, a chairlift. In addition, members of the condominium Board agreed to undergo anti-discrimination training and adopt and promulgate to all residents a Right to Reasonable Accommodations Policy. [Middlesex County]

### *Public Accommodations Cases*

- A mother filed a Complaint on behalf of her minor son alleging that he was subjected to discrimination in a place of public accommodation based on her minor child’s disability (Autism Spectrum Disorder). She further alleged that he was subjected to retaliation when his membership at Respondent was terminated subsequent to her filing a sexual harassment Complaint with the Department of Children and Families, against one of Respondent’s counselors. Respondent agreed to resolve the matter for a payment to her of \$10,000 and its supervisory staff’s participation in anti-discrimination training provided by an MCAD-certified trainer. [Suffolk County]
- An individual alleged discrimination based on his race (non-Hispanic) and color (Black) and retaliation arising out of an incident at a city dog park. He and another visitor to the park (with their dogs) got into a disagreement over his dogs’ interactions with the visitor’s dog, after which she called the police. A volunteer assigned to oversee the dog park reported the incident to the city’s supervisor of Parks and Forestry and the city summarily banned Complainant from visiting the dog park. This volunteer also posted a picture of Complainant and a warning on the dog park Facebook page, advising people to avoid him and report him to the police if he re-appeared at the dog park. To resolve the matter, Respondent agreed to pay Complainant \$7,500 for alleged emotional distress damages, issue a letter rescinding the “no trespass” order and an apology to him for issuing the “no trespass” order, and complete MCAD sponsored training by management employees in the city’s Parks and Recreation department. The volunteer likewise agreed to provide a letter of apology and complete MCAD sponsored anti-discrimination training. [Bristol County]
- An individual, accompanied by a service animal, called a cab company and announced

that she needed a ride. After hearing that she had a guide dog, the cab company told her to call a different company. The cab company agreed to pay her \$3,000, have its dispatchers trained at the MCAD, and implement an anti-discrimination policy. [Norfolk County]

- A female who is blind and uses a service animal for assistance called a ride-share company seeking a ride. When the first, then second, then third driver saw that she had a dog, none would fulfill her service request. The matters settled with the ride share company paying the person \$20,000, agreeing to anti-discrimination training, and implementing a policy applicable to Massachusetts. [Norfolk County]
- A female with a disability was denied service and asked to leave a restaurant because she was accompanied by a service animal. The service animal, a puppy in training, was prescribed to ameliorate the symptoms of an underlying physical/mental health condition. The customer alleged that the restaurant's general manager accosted her because her service dog lacked any readily observable service animal insignia. The customer alleges that the general manager refused to listen to her explanation and insisted that a service animal was required to have an identifying vest. The general manager then denied her request that she be allowed to dine on the patio and instead called the police. This matter settled for \$3,000 and anti-discrimination training for the general manager and restaurant owner. [Middlesex County]

### *Public Hearings Prosecuted by Commission Counsel*

**MCAD and Michelle Pavlov v. Happy Floors, Inc. and New Floors, Inc.**, 44 MDLR 9 (2022) (Thomas-George) (sex discrimination, employment). In this case, Ms. Pavlov, a female store manager, alleged that she was discriminatorily terminated on the basis of her sex and pregnancy by a flooring company. Ms. Pavlov was hired when she was not pregnant and alleged that the company, Happy Floors, Inc. (Happy Floors) terminated her only after she notified them that she was pregnant. Evidence of sex and pregnancy discrimination included the fact that after Ms. Pavlov was terminated, the company advertised to replace Ms. Pavlov, and stated in writing that it was looking for a candidate who was “preferably male.” The Commission applied a mixed motive analysis in this case, finding that Ms. Pavlov demonstrated that Happy Floors’ discriminatory animus was the determinative cause for terminating her employment.

This case also presented the legal issue of whether Happy Floors had six employees, as required by M.G.L. c. 151B, or whether some of its flooring workers were independent contractors. The analysis centered on the company’s control, and right to control, the flooring workers. The evidence showed that Happy Floors held the flooring workers out to the public as “employees,” described the flooring workers as employees, required the flooring workers to wear a T-shirt with a Happy Floors logo, had the flooring workers appear in the company’s on-line advertisements, and trained the flooring workers to do their work. In light of these facts, and after conducting a detailed analysis of twenty factors laid out in the decision, the Hearing Commissioner concluded that Complainants had presented sufficient evidence to show that Happy Floors employed at least six employees, and would support a claim under M.G.L. c. 151B.

New Floors, Inc., was not subject to successor liability and was dismissed from the complaint. The Hearing Commissioner awarded Ms. Pavlov \$17,800 in back wages and \$20,000 in emotional distress damages, both accruing at a rate of 12% per annum running from the date of filing. In addition, the Commission ordered Happy Floors to pay for and attend training on unlawful sex discrimination, including but not limited to pregnancy discrimination.



After the public hearing, Commission counsel filed a petition for attorneys' fees in the approximate amount of \$57,000 in attorneys' fees and costs. The petition was opposed and is pending.

### *Massachusetts Superior Court Activity*

The Legal Division defends the Commission's Decisions and procedures in the Massachusetts courts. These cases include M.G.L. 30A administrative appeals and challenges to the Commission's investigative and enforcement authority. During fiscal year 2022, Commission Counsel were assigned 11 new Superior Court cases to defend. The Legal Division and Commission Counsel remained responsible during fiscal year 2022 for 32 cases, which were pending as of June 30, 2021. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts Superior Courts.

John Loewy v. MCAD and Ariad Pharmaceuticals, Inc., Suffolk County Superior Court Civil Action No. 2084CV01550E. In September of 2020, Complainant/Plaintiff appealed the MCAD Full Commission Decision in favor of Respondent to the Superior Court in accordance with M.G.L. c. 30A. Plaintiff argued on appeal that the Hearing Officer's findings were arbitrary, capricious, and based on a substantial error of law. Specifically, Complainant alleged that the Commission erred by failing to find proximate cause to establish his claim of retaliation as the Commission disregarded the temporal proximity between the alleged protected activity and adverse action, failed to properly evaluate his cat's paw theory of liability, and did not make any finding as to the underlying claim of discrimination that gave rise to Complainant's protected activity. The agency administrative record, Motion for Judgment on the Pleadings, and Cross Motion were filed with the Superior Court. Oral argument occurred in December 2021, and judgment entered in favor of the MCAD on December 21, 2021.

John Walsh v. Peter Ostroskey, in his individual and official capacity; Glenn Rooney, in his individual and official capacity; the Massachusetts Fire Academy; Department of Fire Services; Commission Against Discrimination, Suffolk County Superior Court Civil Action No. 2181CV02028. On January 27, 2022, Complainant/Plaintiff amended his Superior Court Complaint to add the Commission as a Defendant based on allegations that the MCAD erred in issuing an investigative disposition, which dismissed his Complaint as untimely, and in affirming its Decision after a preliminary appeal. After the parties conferred pursuant to Rule 9C, the Plaintiff filed an Assented to Motion to Amend/Voluntary Dismissal with respect the MCAD on April 8, 2022. The Court granted the Plaintiff's Motion and dismissed the MCAD on April 13, 2022.

Aspen Dental Management v. MCAD & Babu, Suffolk Superior Court, Civil Action No. 2084CV01735-D. In this Complaint and Motion for Judgment on the Pleadings brought under M.G.L. c. 30A, Aspen Dental Management, Inc. (ADMI) sought review of a Full Commission Decision in favor of Complainant Oana Babu ("Babu"). Following a May 24, 2021, hearing in the Superior Court on the parties' respective Motions for Judgment on the Pleadings, on July 29, 2021, the Court summarily granted the Commission's Motion, and denied the Motions of both ADMI and Ms. Babu, without issuing a written decision.

Babu thereafter sought clarification and reconsideration of the Court's order. The MCAD opposed the motion insofar as the request for attorneys' fees related to the appeal to the Full Commission sidestepped MCAD procedural regulations found at 804 CMR 1.23(12) (2020). On January 4, 2022, the Court denied the Motion for reconsideration insofar as it sought attorneys' fees related to the Full Commission appeal. On March 18, 2022, ADMI filed a Notice of Appeal that it withdrew on June 16, 2022.

Gerard Grandoit v. MCAD and Amica General, Suffolk Superior Court, Civil Action No. 2184CV0482-A. *Pro se* Plaintiff Gerard D. Grandoit sought judicial review of the Commission's Investigatory Disposition dismissing his Complaint for lack of probable cause under M.G.L. c. 30A and the *certiorari* statute. As previously reported, the Court consolidated this case with six other matters on the Commission's Motion. The Court has not acted on the Commission's dispositive Motion to Dismiss and a Motion for Sanctions as a vexatious litigant.

Gerard Grandoit v. MCAD and Massachusetts Supreme Judicial Court, Suffolk Superior Court, Civil Action No. 2184CV02065-G. *Pro se* Plaintiff Gerard D. Grandoit sought judicial review of the Commission's investigatory disposition dismissing his Complaint for lack of probable cause under M.G.L. c. 30A and the *certiorari* statute. The underlying MCAD Complaint concerned Grandoit's allegation that the Massachusetts Supreme Judicial Court discriminated against him when it had denied him an application for Further Appellate Review.

On November 16, 2021, the Commission served Grandoit with a Motion to Dismiss and sought a Motion for Sanctions against Grandoit for bringing repeated and frivolous Complaints. By Order dated January 18, 2022, the Court granted the Commission's Motion to Dismiss and granted its Motion for Sanctions, to wit:

*Gerard D. Grandoit shall not file any action at law or equity against the Massachusetts Commission Against Discrimination ("MCAD") in any Massachusetts court without first submitting a verified complaint with the regional administrative justice – in the case of the Superior Court – or the presiding justice of the court in which he seeks to file the action. Only upon a finding of the regional administrative justice, presiding justice, or their designee that the action is not frivolous shall MCAD be required to file a response.* Order, p. 6.

Eric Madonna v. Massachusetts Comm'n Against Discrimination & Fall River Police Dep't, Suffolk County Superior Court Civil Action No. 1984CV01428. In this action, a former police officer at the Fall River Police Department argued unsuccessfully at the MCAD that the Fall River Police Department discriminated against him on the basis of his disability. The MCAD dismissed the case, and Complainant/Plaintiff sought judicial review under M.G.L. c. 30A. In Superior Court, the Commission argued that the Hearing Officer's Decision was supported by substantial evidence and not in error of law. Specifically, the MCAD argued that it properly concluded that the Police Department had engaged in good faith in a flexible interactive dialogue with the officer when he sought an accommodation, that the Department provided the officer with a reasonable accommodation, and that the Department did not discriminate against the officer in any other terms or conditions of his employment.

The Court issued a Decision on April 26, 2022, holding that the Hearing Officer's conclusions were based on substantial evidence and did not constitute error of law.

International Longshoremen's Association v. MCAD and Robar, Bristol County Superior Court Civil Action No. 2073-CV-00475. In July 2020, the International Longshoremen's Association (ILA) sought review pursuant to M.G.L. c. 30A of the Commission's Final Order and Decision in favor of Ms. Robar. In the underlying MCAD case, the Commission found the ILA liable for sex discrimination, and ordered the ILA to pay Ms. Robar \$50,000 in emotional distress damages with 12% statutory interest, a civil penalty of \$10,000, and attorney's fees owed to the Commonwealth. After briefing and oral argument, the Bristol Superior Court issued a Decision on January 2, 2022, denying ILA's Motion for Judgment on the Pleadings and granting the MCAD's Motion for Judgment on the Pleadings. The MCAD sought the issuance of two separate and final amended judgments, which the ILA opposed. In addition, the ILA has filed a Notice of Appeal.

C-Worcester v. MCAD & Tatum, Harris, Worcester County Superior Court, Civil Action Nos. 1585CV01263, 1185CV02497, 1185CM02500. The underlying MCAD matters, initially filed in 1994, involve the failure to promote two Black police officers to sergeant positions because of their race and color. In January 2021, following a long history through the courts that included multiple substantive and procedural reviews by the Commission, the Superior Court affirmed the Commission's underlying Decisions finding race-based discrimination. The City of Worcester filed a Notice of Appeal. In October 2021, the matter was disposed by agreement/settlement.

Sea View Retreat, Inc. et. al. v. Michelle A. Falzone, MCAD, Essex County Superior Court Civil Action No. 1977CV00121. After a Hearing Officer's Decision that Respondents retaliated against Complainant by terminating her employment after she made an internal report of sexual harassment, awarding emotional distress damages and lost wages to the Complainant, the Full Commission affirmed the Hearing Officer's Decision and awarded attorney's fees and costs. Sea View sought judicial review pursuant to M.G.L. c. 30A, challenging the Commission's conclusions and awards of damages and attorney's fees and costs. After the Commission's Motion to Dismiss the Complaint was denied on June 25, 2021, Sea View failed to further prosecute the Complaint. In accordance with the Court's directive, MCAD filed a status update form with the court on October 22, 2021. The court dismissed the case on February 15, 2022.

Wingate Healthcare, Inc. v. MCAD, Cecilia Carta, Norfolk Superior Court No. 2082CV00727. After a Commission determination that Respondent discriminated against Complainant on the basis of disability, in which the Commission awarded emotional distress damages, attorney's fees and costs, and directed that certain personnel of Respondent receive anti-discrimination training, Respondent appealed the Decision to Superior Court pursuant to M.G.L. c. 30A. Wingate filed a Motion for Judgment on the Pleadings and the MCAD filed an Opposition and Cross-Motion, and oral argument occurred on February 28, 2022. The Court denied Wingate's Motion for Judgment on the Pleadings and allowed MCAD's Cross-Motion on February 22, 2022.

CSX Transportation v. MCAD, Peter Joyce, Suffolk Superior Court No. 2084CV02562. After the Commission found Respondent liable for discrimination based on handicap, utilizing the "cat's paw" theory of liability, and awarded damages for back pay, emotional distress, and attorney's fees, Respondent appealed the Commission's Decision to Superior Court. After CSX filed a Motion for Judgment on the Pleadings and MCAD filed an Opposition and Cross-Motion, oral argument was held on October 12, 2021. On December 24, 2021, the Court denied CSX Motion and allowed the MCAD Cross-Motion. Subsequently, CSX filed an appeal with the Appeals Court. Filing of briefs are stayed while CSX and Joyce engaged in settlement discussions.

J. Whitfield Larrabee v. MCAD, Suffolk Superior Court Civil Action No. 1584CV02725; Appeals Court No. 2018-P-0464. In this action, alleging breach of contract and violation of the Massachusetts Public Records Law, Plaintiff, an attorney, sought access to case data and Complaints still under investigation at the Commission. The Commission denied such access under several exemptions to the Public Records Law, as well as its own regulations. Plaintiff also alleged that the Commission breached an earlier agreement as to his ability to access certain case records, which the Commission denied. As a result, Plaintiff sought damages, Preliminary and Permanent Injunctions, a Writ of Mandamus, and other legal and equitable relief. After the Superior Court ruled in the Commission's favor, Plaintiff sought relief in the Appeals Court. Both sides filed briefs. Oral argument was held on March 8, 2019, and a Decision issued on November 19, 2019, holding that MCAD Complaints were public record at the time of filing, under MCAD regulations published in 1999, and remanding the matter to



Superior Court. After Larrabee filed a Motion for Entry of Judgment, Motion for Order Enforcing Judgment, Memorandum in Support of Motion, and Proposed order on December 12, 2019, the Court held oral argument on February 23, 2021. A Supplemental Opposition was submitted to the Court on February 26, 2021. On June 8, 2021, the Court allowed in part and denied in part Larrabee's Motion for Entry of Judgment. On July 23, 2021, the parties entered a Stipulation of Dismissal and the matter was dismissed.

Russell Glover v. MCAD et al., Suffolk County Superior Court Civil Action No. 2184CV02613E. *Pro se* Plaintiff Russell Glover sought judicial review of the Commission's investigatory disposition dismissing his Complaint for lack of jurisdiction pursuant to M.G.L. c. 30A. The Commission filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted. The Court allowed the MCAD's Motion to Dismiss on July 19, 2022.

City of Boston v. MCAD & Drigo, Suffolk Superior Court Civil Action No. 2084CV01634. In July 2020, Complainant/plaintiff filed a limited appeal of the MCAD Full Commission decision in favor of Complainant to the Superior Court, in accord with G.L. c. 30A. Plaintiff's argument on appeal is that the Court should vacate the MCAD assessment of pre-judgment and post-judgment interest assessed against the City of Boston. The matter resolved while on appeal.

### *Massachusetts Appeals Court Activity*

Gerard D. Grandoit v. MCAD & American Health and Life Insurance Company, Massachusetts Appeals Court No. 2021-P-1154. *Pro se* Plaintiff Gerard D. Grandoit sought judicial review of the Commission's investigatory disposition dismissing his Complaint for lack of probable cause under M.G. L. c. 30A and the *certiorari* statute in the Superior Court. See Suffolk Superior Court, Civil Action No. 2084CV01862. On December 3, 2020, the Superior Court allowed the Commission's Motion to Dismiss. Grandoit appealed this Decision. The Commission will serve its Appellee Brief by September 22, 2022.

Eslinger v. Mass DOT and MCAD, Appeals Court No. 2021-P-0653; Barnstable Superior Court Civil Action No. 2072CV00282. In July 2020, the *pro se* Plaintiff filed a Petition for Review of the Commission's final Decision dismissing her Complaint of gender discrimination. Plaintiff's MCAD Complaint concerned the elimination of her position during the consolidation of the State's transportation authorities under the Transportation Reform Act of 2009. In May 2021, the Court issued its Decision in accordance with M.G.L. c. 30A, affirming, in its entirety, the Commission's dismissal of the underlying complaint. Plaintiff appealed, and on May 6, 2022, the Appeals Court issued a Rule 23.0 Decision affirming the Commission's final Decision. The Supreme Judicial Court denied Plaintiff's subsequent request for Further Appellate Review on June 30, 2022.

Slive + Hanna, Inc. v. MCAD et al., Appeals Court No. 2020-P-0290. A Decision of the Full Commission upheld a Hearing Officer's Decision partially in favor of Complainant, in which Respondent was held to have retaliated against Complainant after he filed his MCAD Complaint alleging discrimination based on disability. Respondent obtained a default court judgment against Complainant for money owed, and executed the judgment by taking the Complainant's ex-wife's van, which she used to transport her children. Respondent further told Complainant that she could have the van back if her ex-husband dropped his MCAD claim. Respondent filed an appeal of the Decision in Superior Court, claiming that it could not have retaliated against the Complainant because it had the right under the state and federal constitutions to file a court action for monies owed. After the Superior Court upheld MCAD's Decision, Slive + Hanna appealed the case to the Appeals Court. The Appeals Court held oral argument on May 5, 2021. The Appeals Court issued a Decision in favor of MCAD on October

18, 2021. Slive + Hanna subsequently filed an application for Further Appellate Review on November 9, 2021, which the Commission opposed on November 22, 2021. Slive + Hanna's request for Further Appellate Review was denied on December 21, 2021.

Tufts Medical Center v. MCAD, Marie Lunie Dalexis, Appeals Court No. 2022-P-0015; Suffolk County Civil Action No. 2084CV00156. The Commission found that Respondent discriminated against Complainant on the basis of disability and constructively discharged her, and awarded Complainant back pay, emotional distress damages, and attorneys' fees. Tufts appealed the Decision to Superior Court. Subsequent to filing of the administrative record and briefs, the Superior Court held oral argument on January 25, 2021. The Court issued an Order and Decision in favor of MCAD on February 17, 2021. Tufts filed its Notice of Appeal with the Appeals Court. Appellant's Brief was filed on March 7, 2022. MCAD filed its Appellee Brief on April 20, 2022. Oral argument is scheduled for October 13, 2022.

Melissa Poirier v. MCAD, Appeals Court Nos. 2020-P-0321, 2021-P-1043; Worcester County Superior Court Civil Action No. 1985CV00676. Complainant, whose sex discrimination claim was dismissed at MCAD for lack of probable cause after investigation, filed an appeal in Superior Court, alleging that the Commission is responsible on various grounds for her failure to file a timely court action against her former employer. After the Superior Court dismissed the claim, Poirier filed a Notice of Appeal in the Appeals Court and a motion in the Superior Court, which the Appeals Court deemed a Motion for Reconsideration. The Appeals Court stayed its proceedings pending resolution of the Superior Court matter. A hearing was held August 13, 2021. After a request by the Court, the Commission filed a Supplemental Memorandum, on the issue of sovereign immunity. Poirier's Motion for Relief from Judgment was denied on August 31, 2021. Appellate proceedings were stayed to September 30, 2021, when Poirier filed an Amended Notice of Appeal. On November 23, 2021, two appeals court dockets in this matter were consolidated. After Poirier's Brief was rejected as nonconforming on February 11, 2022, she filed her Brief on March 1, 2022. MCAD filed its Appellee Brief on March 30, 2022. On May 4, 2022, Poirier filed a Reply Brief.

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## Hearings Division Report

In FY22, the MCAD hired a new Senior Hearing Officer (Jason Barshak, Esq.) for the first time in more than 25 years after the retirement of the entire Hearings Unit in 2020. The MCAD added a second Hearing Officer (Simone Liebman, Esq.) to the Hearings Unit this year. Officer Barshak conducted a virtual public hearing in May 2022 and conducted a second virtual public hearing in June 2022 (which was completed in July 2022). The Hearings Unit issued a decision in March 2022 in a case conducted by Chairwoman Sunila Thomas George which is described below and is published in the Massachusetts Discrimination Law Reporter and on MCAD's website.

### Hearing Decisions

**MCAD & Michelle Pavlov v. Happy Floors, Inc. & New Floors, Inc., 44 MDLR 9 (2022).**

Complainant filed a complaint alleging sex ("gender") and pregnancy discrimination in violation of M.G.L. c. 151B regarding the termination of her employment by Respondent, Happy Floors Inc., ("Respondent"). Complainant alleged a theory of successor liability against the other corporation in the caption. The Hearing Commissioner first addressed the jurisdictional issue of whether Respondent employed six or more employees during the pertinent period. The Hearing Commissioner rejected Respondent's contention that the MCAD should examine the number of employees at the time of the alleged unlawful act. The Hearing Commissioner reasoned why the entire period Complainant worked for Respondent should be considered in assessing the number of employees needed to satisfy the statutory requirement, and determined that Complainant established that Respondent had the requisite six or more employees. In analyzing the merits of the claims, the Hearing Commissioner applied the "mixed-motive" framework which examines whether the employee proves that a proscribed factor played a motivating part in the challenged employment decision and, if so, whether the employer then proves it would have made the same decision even without the illegitimate motive. Using this framework, the Hearing Commissioner concluded that Respondent engaged in unlawful sex/pregnancy discrimination. The Hearing Commissioner then explained that a corporation cannot be subject to successor liability unless it is a successor to all, or substantially all, of another corporation's assets, and that Complainant failed to establish that all, or substantially all, of Respondent's assets were transferred to the other corporation thus precluding liability against it. The Hearing Commissioner awarded the Complainant lost wages in the amount of \$17,800 and \$20,000 in emotional distress damages. The Commissioner also imposed certain training requirements upon Respondent.

## Full Commission Decisions

The Full Commission is comprised of the three Commissioners. The Investigating Commissioner shall not participate in the deliberations of the Commission except when necessary to create a quorum of the Commission or resolve a split decision. (804 CMR 1.23(10) (2020)) After review of the decision of the Hearing Commissioner or Hearing Officer, the Full Commission may affirm the decision, or remand the matter for further proceedings before the Hearing Commissioner; or set aside or modify the decision, if it determines that the substantial rights of any party may have been prejudiced.

In FY22, the Full Commission issued three decisions. The decisions issued in FY22 are described below. All of the decisions are published on MCAD's website, and in the Massachusetts Discrimination Law Reporter where noted.

**MCAD and Phillips v. Electro-Term, Inc., 43 MDLR 27 (2021) (sexual harassment, retaliation, employment)** – The Full Commission affirmed the Hearing Officer's Decision finding the Respondent employer liable for sexual harassment and retaliation. The Hearing Officer found that the Complainant was subjected to a hostile work environment when two of her coworkers sexually harassed her for several weeks. Respondent then not only failed to take prompt remedial action after receiving the Complainant's internal complaint but retaliated against her for filing the complaint. The Full Commission found sufficient evidence to support the Hearing Officer's findings. Accordingly, the Full Commission upheld the Hearing Officer's award of \$5,000 in emotional distress damages and \$2,880 in back pay.

**MCAD and Hughes v. Cranberry Dental Associates, 43 MDLR 25 (2021) (gender, employment)** – The Full Commission affirmed the Hearing Officer's Decision dismissing the Complainant's allegation of discrimination based on gender (pregnancy related). The Complainant alleged that the Respondent terminated her employment two weeks after she announced her pregnancy, and that the termination of her employment was related to previous discipline by the Respondent. However, the Hearing Officer found that Respondent terminated the Complainant's employment due to her poor job performance, and it made that decision prior to the Complainant's pregnancy announcement. The Full Commission deferred to the Hearing Officer's credibility determinations and affirmed the Hearing Officer's decision.

**MCAD and Reed v. Pipefitters Association of Boston, Local 537, and Leo Fahey, 44 MDLR 22 (2022) (disability, reasonable accommodation, labor union)** – The Full Commission affirmed the Decision of the Hearing Officer finding the Respondent labor union liable for disability discrimination. The Full Commission also affirmed the dismissal of the individual liability and retaliation claims against Respondent Fahey and the retaliation claim against the union. The Complainant had a hearing impairment that prevented her from understanding what was being said at union meetings, and she submitted written accommodation requests to the union for stenographic recordings of those meetings. Respondents denied those requests and offered alternatives that did not meet the Complainant's needs. The Hearing Officer determined that the union discriminated against the Complainant by failing its duty to reasonably accommodate her. This Decision represents the first time that the Commission interpreted the prohibition on disability discrimination within M.G.L. c. 151B, § 4(2) to encompass a duty on labor unions to reasonably accommodate their members. The Full Commission affirmed the Hearing Officer's award of \$25,000 in emotional distress damages.

## Glossary of Terms

**Administrative Resolution:** A Complaint that is resolved at the MCAD other than through completion of the investigative process or final adjudication. Such cases may be resolved through the actions of the parties or action by the Commission.

**Alternative Dispute Resolution:** The process in which disputants are assisted in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which may avoid the cost, delay, and unpredictability of an adjudicatory process.

**Americans with Disabilities Act (ADA):** The Americans with Disabilities Act is a federal law that was enacted by the U.S. Congress in 1990. The ADA is a wide-ranging civil rights law that is intended to protect against discrimination based on disability.

**Chapter 30A Appeals:** State Administrative Procedures Act governing judicial review of a final agency decision of the Full Commission.

**Chapter 478:** Case closure when the Complaint is withdrawn from MCAD to remove the case to Court.

**Conciliation:** Mandatory post-probable cause resolution process in which the Commission attempts “to achieve a just resolution of the Complaint and to obtain assurances that the Respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory practices, or the prevention of their occurrence, in the future.”

**Disposition:** The official document issued stating the determination by the Investigating Commissioner at the conclusion of an investigation.

**EEOC:** U.S. Equal Employment Opportunity Commission is the agency of the United States government that enforces the federal employment discrimination laws.

**HUD:** The U.S. Department of Housing and Urban Development. Within the Department of Housing and Urban Development, the Office of Fair Housing and Equal Opportunity (FHEO) administers and enforces federal laws to ensure equal access to housing.

**Jurisdiction:** the official power to make legal decisions and judgments.

**Lack of Jurisdiction:** A determination that the MCAD lacks the statutory authority to investigate, adjudicate, or otherwise address the allegations charged.

**Lack of Probable Cause:** A determination by the Investigating Commissioner of insufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent did not commit an unlawful practice.

**Mediation:** Voluntary pre-disposition process in which the parties in the dispute attempt to resolve the outstanding issues and arrive at a settlement with the assistance of MCAD trained personnel.

**Pre-Determination Settlement:** When a settlement is reached before the conclusion of the investigation.

**Probable Cause:** A determination of the Investigating Commissioner that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice.

**Protected Category:** a characteristic of a person which cannot be targeted for discrimination. Protected categories differ based on the type of alleged discrimination. Common protected categories include race, gender, gender-identity, ethnicity, age, national origin, sexual orientation, military status, and disability.

**Regulations:** The whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it.

**Substantive Disposition:** The disposition of a Complaint upon conclusion of the investigation resulting in a finding of either “probable cause” or a “lack of probable cause.”

## Staff List

Eric Allbright  
 Jason Barshak  
 Alisa Bekk\*  
 Joan Beron\*  
 Sarah Biglow  
 Eric Bove▪  
 Bethany Brown\*  
 Kelly Burgess  
 Elizabeth Caiazzi  
 Ashley Cain  
 Kenneth Callahan II  
 Candice Carrington\*  
 Wendy Cassidy▪  
 Alison Caton  
 Laura Chavez  
 Natasha Chavez  
 Rachel Chavez  
 Joseph Cohen  
 Ethan Crawford  
 Jessica Crutatti-Flavius  
 Kristen Dannay  
 Elizabeth Davey  
 Vanessa Davila▪  
 Edith Demont-Rosenthal  
 Cory England  
 Jillian Fisher  
 Amie Fox  
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 Sunila Thomas George▪  
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 Joseph Greenhalgh  
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 Judy Kalisker~  
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 Sangyeol Lee  
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 Melanie Louie-Tso▪  
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 Peter Mimmo  
 Ying Mo▪  
 John Montgomery  
 Carol Mosca▪  
 Carol Murchison▪  
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 Tania Taveras▪  
 Nancy To▪  
 Devin Wintemute  
 Paul Witham▪  
 Emma Wolters  
 Pattie Woods\*▪  
 Sabrina Zafar  
 Carmen Zayas\*▪  
 Michael Zeytoonian

### Key

\* Employed by MCAD for a portion of FY22

▪ 10+ years of service to MCAD

~ Contract employee



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Aleena Abraham	Lawrence Ferrara	Lindsay Lake
Haley Allbee	Emma Fisher	Kurtis Lee
Talat Aman	Myra Flemming	Brendan Maguire
Melissa Atocha	Victoria Fontes	Brendan McHugh
Jessie Baek	Leonard Giarrano	Max Miller
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Riya Balachandran	Claudia Gunn	Hannah Scott
Gethin Binns	Sanika Gupta	Trent Smith
Key Bird	Carissa Halston	Jordan Smith
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Dion Bunch	Dylan Hosmer-Quint	Jonathan Sturr
Gianny Cepeda	Owen Hwang	Sydney Teabout
Kirsten Chandonnet	Harrison Kaish	Philip Thompson
Kyle Chaney	Aleksia Kleine	Holly Vitello
Caitlin Doyle	Beth Koeller	Matt Walsh
Ashley Edwards	Stephen Kubick	



*In Loving Memory of*

**Pattie Woods**



*1957—2021*





