

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & BETH MOORE

Complainants

v.

DOCKET NO: 07-BEM-00013

SMALL WORLD LEARNING  
CENTER, INC. & ALBERT DECRISTOFORO,  
Respondents

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Appearances:

Joseph L. Sulman, Esquire for Beth Moore

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about December 12, 2007, Complainant Beth Moore filed a complaint with this Commission charging Respondents Small World Learning Center and Albert DeCristoforo with discrimination in employment on the basis of gender and pregnancy in violation of M.G.L.c.151B§4 (1) & (4A). The Investigating Commissioner issued a probable cause determination. A public hearing was held before me on May 5, 2010. At the request of Complainant's counsel, Small World Learning Center was dismissed as a party-Respondent since it is now defunct. Respondent Albert DeCristoforo did not appear at the public hearing<sup>1</sup> and a default was entered on the record and the hearing

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<sup>1</sup> On March 9, 2010, DeCristoforo's wife Rosemary, who is neither a party to this matter, nor an owner or officer of Small World, had written a letter to the Commission describing her husband's poor health and purporting to give Carlos Delgado the status of "Power of Attorney" to represent Respondents. Notwithstanding, Respondents never sought a continuance of the public hearing, never requested that DeCristoforo's appearance at the hearing be excused, and did not engage counsel to appear on his behalf.

proceeded against him as a default hearing, pursuant to 804 CMR 1.21(8).<sup>2</sup> Respondent was duly notified of the default by certified mail. On May 8, 2010, DeCristoforo's wife, Rosemary DeCristoforo, filed a request to vacate the entry of default because of DeCristoforo's poor health. Complainant opposed the request to vacate the entry of default. Since DeCristoforo did not appear at the hearing, did not move for a continuance of the hearing due to poor health, did not appear or send a representative to the pre-hearing conference and did not submit a prehearing memorandum pursuant to the Commission's Order, it is apparent that he did not take the Commission's proceedings seriously and chose to ignore its orders. His request to remove the default is hereby denied for failure to show good cause. Upon consideration of the entire record of the proceedings, I make the following findings of fact, conclusions of law, and order.

## II. FINDINGS OF FACT

1. Small World Learning Center, Inc. ("Small World") was a day care center located in Danvers, Massachusetts. Respondent Albert DeCristoforo was President of Small World, Inc. The Small World day care center was closed down by the state Department of Early Education on July 7, 2008. Albert DeCristoforo did not work at the Small World site, but worked out of the Rosemary Walker Insurance Co., which is owned by him and his wife and is also located in Danvers, Massachusetts.

2. On January 12, 2007, Complainant Beth Marie Moore, who resides in Plaistow, New Hampshire, was hired as the Director of Small World. Complainant

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<sup>2</sup> Carlos Delgado, the finance controller for Small World Learning Center, Inc., appeared at the hearing but was not permitted to represent Respondent DeCristoforo in his individual capacity. Delgado is not an attorney and presented no documentation whatsoever that he had legal authority to represent Mr. DeCristoforo, as an individual or to testify on his behalf. Even if Delgado was authorized to appear on behalf of the corporate Respondent, Small World Learning Center, Inc. was dismissed as a party Respondent.

testified that she is certified as a Director II by the Massachusetts Department of Early Education and Care which allows her to oversee a day care center and requires her to be present at the center at all times. Complainant's duties were to create a warm staff environment, insure the health and safety of the children, increase enrollment and tuition, develop a pre-school curriculum and a parent handbook, maintain health care policies, maintain files on staff and children, collect payments and oversee compliance with state regulations. When Complainant became Director, Small World had 40 students. Her salary was \$35,000 per year with no fringe benefits. I credit her testimony.

3. Complainant testified that when she commenced working at the center she had a good relationship with Albert DeCristoforo, who was happy that she had come on board to help maintain the facility and create new programs. Complainant reported to Albert DeCristoforo on a daily basis.

4. Complainant became pregnant in February 2007. She informed DeCristoforo of her pregnancy at his insurance company where she often met with him. Complainant stated that DeCristoforo's response was to "snicker" and "half smile." Complainant testified that when she told DeCristoforo that she planned to take a three month maternity leave, he had no response.

5. Complainant testified that after informing DeCristoforo of her pregnancy, he became "cold" and "mean," and they often argued about matters related to the day care center. The center was at the time out of compliance with state regulations, requiring Complainant to be in frequent contact with state regulators. She testified that she would attempt to update DeCristoforo on her discussions with state regulators, but he did not seem to care. She testified that during their arguments DeCristoforo sometimes told her

to “shut up,” or “be quiet,” or threatened to “kick her ass out the door.” According to Complainant DeCristoforo never spoke to her in this manner before she informed him of her pregnancy. I credit her testimony.

6. On Wednesday, July 25, 2007, at a meeting attended by DeCristoforo, Carlos Delgado, the Finance Director, Complainant and assistant Director Shannon Cyr, DeCristoforo informed Complainant that she was to be laid off due to low enrollment, that Shannon Cyr would take over as Director, and that Small World’s license would be changed to allow a maximum of 79 children, a decrease from its then current license limit of 90 children. The change in license would allow Cyr, who possessed only a Director I license, to run the program. Complainant and Cyr told DeCristoforo that the plan would not work because they would be understaffed and parents would not be happy with another change. DeCristoforo stated he had already spoken with parents who found the change acceptable. Complainant documented this meeting in a memorandum. (Ex.4) No date was specified for Complainant’s impending lay off. Complainant testified that the news of her lay-off upset her and she did not think it was fair. I credit her testimony. She reported to work on July 26, 27 and 30, 2007.

7. On Monday, July 30, 2007, Complainant went to the hospital after work and was admitted overnight with pregnancy complications, chest pains and an increased heart rate. She testified that the stress of her impending lay off contributed to the symptoms that required her to be hospitalized. She did not report to work on July 31 because she was in the hospital. I credit her testimony.

8. Complainant informed Respondent she intended to return to work and submitted a note from her midwife, Ruth Keen, dated July 30, 2007, stating that she

would be out of work due to pregnancy complications and would return to work on August 6, 2007. (Ex. 5)

9. Deborah McHugh, whose child attended Small World in 2007, testified that she attended a meeting on July 31, 2007 to address parents' concerns about Small World. DeCristoforo and Delgado attended the meeting. McHugh testified that quite a few parents observed that Complainant was not present, and when they inquired about her absence they were surprised to be told that Complainant had voluntarily left the Director's position. According to McHugh, DeCristoforo made contradictory statements also stating that he had to let Complainant go for her own benefit and would hire her back after her maternity leave. Some parents challenged DeCristoforo's conflicting explanations and were promised that Complainant would return after her pregnancy. I credit McHugh's testimony.

10. In a memorandum dated August 2, 2007, DeCristoforo wrote to Complainant, in part, "Due to low enrollment....you will be laid off as of August 3, 2007 until enrollment at the center has increased. We will contact you when the center had increased its enrollment..." The memorandum also stated that Respondent would not contest Complainant's unemployment benefits. (Ex. 7) Complainant testified that she signed the memorandum so that Respondent would not contest her unemployment. At the time she believed she had been laid off because of low enrollment, although enrollment at the time was around 50, which was higher than when Complainant started the job.

11. In August 2007, Deborah McHugh received a letter from DeCristoforo stating that the kitchen at Small World would be closing. Since she had chosen Small World in part because it had a kitchen, McHugh called DeCristoforo on August 9 to discuss the

change. She testified that during their conversation, DeCristoforo told her that he did not feel comfortable having Complainant commute during her pregnancy. McHugh responded that was not his decision and was between Complainant and her doctor. Because of these and earlier comments by DeCristoforo, McHugh began looking for new day care after that conversation. She stated that Small World closed in September 2007. I credit McHugh's testimony, except that I find that Small World did not close until the following year, which is consistent with the documentary evidence.

12. On August 10, 2007, McHugh wrote Complainant a letter detailing her previous day's conversation with DeCristoforo, and an earlier conversation with him in mid-July 2007, wherein DeCristoforo told McHugh he was disappointed that Complainant got herself "knocked up" after he had just lost the previous day care center director. (Testimony of McHugh; Ex. 8) Complainant testified that after reading McHugh's letter she had good reason to believe she had been laid off because of her pregnancy and not due to low enrollment. I credit Complainant's testimony

13. Shannon Cyr replaced Complainant as the day care director. At the time, Cyr was going to school in order to obtain her Director I certification and had fewer credentials than Complainant.

14. Complainant's son was born on October 12, 2007. Based on her testimony that she planned to take maternity leave after the birth of her child, I draw the reasonable inference that Complainant would have taken a maternity leave after the birth of her child even if she had remained working for Small World. There is no indication that such a leave would have been a paid leave. The evidence is that she did not seek work after the birth of her child for a period of approximately two months. Complainant was next

employed in December 2007 as Director of Little Professionals in Woburn, MA where she was paid a salary of \$60,000 per year, significantly more than she earned at Small World. She worked at Little Professionals until July 2008 when she decided to stay at home with her child. In September of 2008 she began working 28 hours per week at a pre-school program at the rate of \$11.75 per hour.

15. Complainant received unemployment in 2007 for the period that she was unemployed, but she does not recall the amount she received.

16. Small World Learning Center was closed on July 8, 2008 when the Massachusetts Department of Early Education issued an Emergency Suspension due to numerous violations of the law. DeCristoforo unsuccessfully appealed the closing to the Division of Administrative Law Appeals. (Ex. 9)

17. I find that Complainant is entitled to lost wages for the time period from August 2, 2007 when her employment with Respondent was terminated until the birth of her son on October 12, 2007, or 10 weeks. At a salary of \$35,000.00 per year, Complainant made approximately \$673.08 per week at Small World. Multiplying \$673.08 by 10 weeks, Complainant's lost wages total \$6,730.80

### III. CONCLUSIONS OF LAW

#### A. Gender/Pregnancy Discrimination

M.G.L. Chapter 151B, section 4, paragraph 1 makes it an unlawful practice to discharge an employee because of her sex. "Pregnancy and childbirth are sex-linked characteristics and any actions of an employer which unduly burden an employee because of her pregnancy or the requirement of a maternity leave are considered sex discrimination." School Committee of Braintree v. MCAD, 377 Mass. 424, 430 (1979);

Massachusetts Electric Co. v. MCAD, 375 Mass. 160, 167 (1978); Carmichael v. Wynn & Wynn, 17 MDLR 1641, 1650 (1995); see also, Gowen-Esdaile v. Franklin Publishing Co., 6 MDLR 1258 (1984) (termination of complainant during troubled pregnancy because of fears of further absences and coverage during leave deemed unlawful sex discrimination)

Complainant asserts that she was terminated because of her pregnancy. She may prove a claim of discrimination by utilizing the three-stage order of proof articulated in both federal and state court decisions. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000); Wheelock College v. MCAD, 371 Mass. 130 (1976). Complainant has established a prima facie case of pregnancy discrimination; she was pregnant and informed her employer; as her due date approached, Respondent terminated her employment, ostensibly because of falling enrollment. Complainant later learned of discriminatory statements that Respondent made to the mother of child who attended the center that he did not want her to commute while pregnant and was disappointed that she had become pregnant so soon after a previous director had left Small World. Since Respondent did not appear at the hearing and I credited Complainant's testimony, I conclude that Complainant's prima facie case of gender/pregnancy discrimination is un rebutted and she must prevail on her claims.

#### B. Individual Liability

The Commission has held that individuals may be liable under M.G.L.c.151B§4(4A) if they "interfere with a Complainant's right to be free from



discrimination in the workplace. In order to prove interference with a protected right, Complainant must show that DeCristoforo had the authority or the duty to act on behalf of the employer; his action or failure to act implicated rights under the statute; and there is evidence articulated by the complainant that the action or failure to act was in deliberate disregard of the complainant's rights, allowing the inference to be drawn that there was intent to discriminate or interfere with complainant's exercise of rights.

Woodason v. Town of Norton School Committee, 25 MDLR 62, 63 (2003).

The evidence establishes the requisite intent to discriminate that would permit one to find DeCristoforo individually liable for unlawful discrimination. He was the president of Small World. He was the ultimate decision-maker with respect to terminating Complainant's employment. The evidence firmly established DeCristoforo's discriminatory motive and intentional interference with Complainant's rights under G.L.c. 151B. I conclude that DeCristoforo engaged in unlawful discrimination on the basis of gender/pregnancy in violation of M.G.L.c.151B§4(4A), and is individually liable for unlawful discrimination in this matter.

#### IV. REMEDY

The Commission is authorized to award damages for lost wages and emotional distress resulting from unlawful discrimination. G.L. c. 151B § 5; Stonehill College v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549 (2004); Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303 (1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172 (1985).

A. Emotional Distress

Emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill, supra., at 576. Some of the factors to be considered are: the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has suffered and reasonably expects to suffer and whether the complainant has attempted to mitigate the harm. Id. The Complainant must show a sufficient causal connection between the Respondent's unlawful act and the Complainant's emotional distress. Id.

Complainant provided little testimony regarding her emotional distress, except to say that she was upset and thought it was unfair that she was laid off and that she believed the stress associated with her lay off contributed to the complications of her pregnancy that landed her in the hospital overnight. I believe that Complainant was distressed by her unlawful termination and that the stress of learning of her impending lay-off impacted her physically. However there was little medical evidence to substantiate her allegations and given the meager evidence regarding her emotional distress, including the absence of testimony regarding its nature, severity and duration, I am constrained by the guidelines set forth in the Stonehill case to make a relatively small award of damages for emotional distress in the amount of \$10,000.00.

B. Back Pay

I conclude that Complainant is entitled to damages for lost wages as a result of Respondent's unlawful conduct. Complainant was unemployed from August 2, 2007 until December 2007. But for her unlawful termination I conclude that she would have worked until her baby was born on October 12, 2007. She then remained at home with

her child until becoming employed in December 2007. Based on these conclusions and as calculated in finding of fact #17, Complainant is entitled to lost wages in the amount of \$6,730.80.

C. Civil Penalty

M.G.L.c.151B§5 states, in part, “if, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against the respondent: (a) in an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice.” Having found that Respondent has engaged in a discriminatory practice and, given the direct evidence of discriminatory animus based on pregnancy, I conclude that a civil penalty in the amount of \$5,000.00 is warranted.

V. ORDER

For the reasons stated above, it is hereby ordered:

1. That Respondent Small World Learning Center be dismissed as a party Respondent in this matter.
2. That Respondent Albert DeCristoforo cease and desist from any further acts of discrimination on the basis of sex and pregnancy.
3. That Respondent Albert DeCristoforo pay to Complainant Beth Moore the sum of \$10,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum, from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

4. That Respondent Albert DeCristoforo pay to Complainant Beth Moore the sum of \$6,730.80 in lost wages, plus interest at the statutory rate of 12% per annum, from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

5. Respondent Albert DeCristoforo pay to the Commonwealth a civil penalty in the amount of \$5,000.00

Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within 30 days of receipt of this order.

SO ORDERED, this 22nd day of December, 2010.

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JUDITH E. KAPLAN  
Hearing Officer