COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and SOMAIRA OSORIO,

Complainants

Docket No. 15-BEM-01365

v.

STANDHARD PHYSICAL THERAPY,
VINCENT BULEGA and ROBERTSON TAMBI,
Respondents

Appearances: Emily Boney, Esq. for Complainant Osorio
Brandon Toste, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On May 18, 2015, Complainant Somaira Osorio filed charges of sexual harassment and retaliation against Standhard Physical Therapy, Robert Tambi, and Vincent Bulega. Complainant alleges that Respondent Bulega made sexual overtures to her of a verbal and physical nature and that when she complained, he and Respondent Tambi fired her.

A probable cause finding was issued and the matter was certified for a public hearing on October 12, 2017.

A public hearing was held on March 6, 2018. The following individuals testified at the hearing: Complainant, Respondent Tambi, and Respondent Bulega.

Based on all the credible evidence that I find to be relevant to the issues in dispute and based on the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant Somaira Osorio resides in Boston. She began working at Standhard Physical Therapy as a receptionist in October, 2013 at $12.50 per hour. In December 2013, she became office manager and received an increase in her hourly wage to $13.00. As office manager, Complainant handled intake, billing, and collection work, ordered supplies, arranged for substitute physical therapists when needed, and advertised the business. Complainant at 8:20.[1] In October 2014, Complainant received an increase in pay to $16.00 per hour. Complainant's Exhibit 1. Complainant worked between thirty-five to forty hours per week. Complainant at 35:00.
2. Respondent Standhard Physical Therapy was, at all relevant times, a business providing physical therapy services to patients. The business had between four to six employees in addition to Respondents Tambi and Bulega. Tambi at 105:10.
3. Respondent Robertson Tambi was, at all relevant times, the clinic manager of Standhard Physical Therapy. Tambi at 1:06:20. He screened patients for insurance purposes prior to their commencing physical therapy, oversaw the office's clinical services, and served as Complainant's direct supervisor. Id at 1:07:02. He testified that Complainant never complained about sexual harassment until February 16, 2015. Id. at 1:07:30. I do not credit this testimony.
4. Respondent Vincent Bulega was, at all relevant times, the business manager of Standard Physical Therapy. Bulega at 205:10. He described his duties as overseeing staff payments, working with insurance companies, and interacting with attorneys.

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[1] Testimony is recorded on disks and designated by hours, minutes, and seconds.

5. Complainant testified that at the end of January 2014, Respondent Bulega began to sexually harass her by smacking her behind as she walked into the billing area of the office. Complainant at 10:00. Complainant estimates that this occurred two to three times a week from mid-January 2014 to mid-February 2015. Complainant at 10:30. Complainant states that she would hit his hand away when he smacked her behind. I credit Complainant's testimony.

6. Complainant testified that in addition to smacking her behind, Respondent Bulega would frequently stand behind her while she sat at a computer and put his hand down her shirt. Complainant at 11:50; 20:35. She states that, on several occasions, he reached inside her bra and touched her nipple. Id. at 12:38. She states that he would also snap her thong underwear on days when she wore clothes that exposed the thong, causing her to "jump up" and tell him to stop. Id. at 14:25; 15:30. She said he did so weekly until she made certain to wear clothes that covered her thong. I credit Complainant's testimony.

7. According to Complainant, Bulega said at work that he wanted to "fuck" her, texted her to say that he wanted to "fuck" her, once stuck his hand up her dress, and invited her to sex parties "quite a few times." Complainant at 12:50; 17:56. Complainant asserts that Bulega "assaulted" her in the billing office while her fiancé (who cleaned floors and picked up patients) was working in the next room. Id. at 13:35; 20:35. According to Complainant, Bulega seemed to become aroused knowing that her fiancé was in the next room. Id. at 20:50. Complainant states that when she pushed Bulega's hand away and asked him to stop harassing her, he would smile and say, "But I want to fuck you."

Id. at 16:29; 22:00. According to Complainant, she complained several times to Tambi, but he only shrugged. Id. at 22:20; 51:10. I credit Complainant's testimony.

8. Complainant testified that towards the end of her employment when she sat in the billing office, she could hear moaning coming from the front area. When she went to investigate, she found Respondents Tambi and Bulega watching pornographic videos. Complainant at 19:15. I credit Complainant's testimony.

9. Respondent Bulega testified that he never touched Complainant inappropriately and that he had a good relationship with her. Bulega at 2:06:18. I do not credit his testimony.

10. According to Complainant, beginning in November 2014, she displayed fliers at work for a product (a weight-loss "wrap" for stomach fat called "It Works") that she was trying to market and sell on her own. She claims that other employees were allowed to advertise babysitting and other services on the office's front counter. Complainant at 26:00. Complainant states that she "wrapped" two fellow employees during their breaks but did not otherwise take steps to sell the product at work. Id. at 27:00. If patients displayed interest in the wrap at work, Complainant would tell them to call her later using the number on the flier. Id. at 28:30. The number was for a cell phone paid for by Respondents but was provided to Complainant for personal as well as business use. Id. at 45:30. Complainant testified that no one ever called her about the product. Id. at 59:30.

11. On Tuesday, February 10, 2015, Complainant asked to be paid for several days when the office was closed due to snow. Complainant at 23:25. She testified that in response to her request, "things got heated" so she gave Tambi her office keys, took her fliers,

and left, thinking she was fired. Id. at 25:00; 29:25; 52:50. According to Respondent Tambi, Complainant became angry, threatened to quit, and left when he said he would only compensate her for snow days by crediting her vacation time. Tambi at 1:20:18. I credit Tambi's testimony in this regard.

12. Complainant states that Bulega called her several hours later, promised to pay her for some of the snow days, and asked her to return, but that upon her return to work on Wednesday, February 11, 2015, she learned that she would not be paid for any of the snow days. Complainant at 30:00, 50:30. Complainant worked full days on Wednesday and Thursday, but went home early on Friday, February 13, 2015, ostensibly because she wasn't feeling well. Id. at 48:30.

13. Respondent Bulega testified that he decided to terminate Complainant because she asked to be compensated for snow days, she did not want to continue to open the office in the morning, and she marketed her beauty product in the office. Bulega at 2:07:50; 2:14:40; 2:23:11.

14. According to Complainant, she never exhibited her fliers after she was told not to market them in the office. Complainant at 49:20. I credit Complainant's testimony over Tambi's in regard to the marketing of the weight-loss wraps.

15. The termination letter given to Complainant only identifies the marketing of the weight-loss wraps as the reason for termination. Complainant's Exhibit 1. It states that Respondents were taking "immediate" action to address the unauthorized marketing of the item. Id. Despite the reference to "immediate" action, Tambi testified that he had previously told Complainant to refrain from marketing the wraps in the office, and

Bulega testified that he knew as early as January 2015 that Complainant was marketing them in the office. Tambi at 1:15:10; Bulega at 2:23:40.

16. On Monday, February 16, 2015, Complainant met with Respondents Bulega and Tambi. According to Tambi, the February 16th meeting was the first time that Complainant asserted that she had been sexually harassed. Tambi at 1:09:20. I do not credit Tambi's testimony.

17. Respondent Tambi describes the February 16th meeting as a "termination meeting." He testified that he brought a termination letter to the meeting which he and Bulega had already drafted but asserts that Complainant walked out before he could hand it to her. Tambi at 1:17:42, 1:19:50; 1:24:25; 1:47:30; 1:50:19. I do not credit this testimony.

18. Complainant states that she was told definitively at the February 16th meeting that she would not be paid for snow days, was told that everyone but the physical therapist was replaceable, was told by Tambi that he was upset at her request for snow day compensation, was told that she should look for another job for comparison purposes, and was told that she should think about whether she wanted to continue to work for the company. Complainant at 30:00; 53:35; 56:30. Complainant testified that was "tired" of the snow day conversation and informed Tambi and Bulega that she was willing to continue working for the company as long as Bulega kept his hands to himself. Id. at 32:28; 54:00. Complainant states that Respondents Tambi and Bulega wanted her to sign a handwritten statement of duties which she declined to sign. Id. at 33:00. According to Complainant, she was not terminated at the meeting. I credit Complainant's testimony.

19. Tambi states that after the meeting, he interviewed all office employees about whether they had witnessed or heard about Bulega inappropriately touching Complainant or anyone else and they said no. Tambi at 1:09:20 et seq. Tambi states that he then asked Bulega if he had ever done anything to Complainant and Bulega denied it. Id. at 1:13:21. There is no documentation of the alleged investigation. I do not credit that Tambi conducted a credible investigation nor do I credit Bulega's denial of sexual harassment. Instead, I credit Complainant's assertion that on several prior occasions she told Tambi that she was being sexually harassed by Bulega and that Tambi only shrugged. I also credit that Bulega sexually harassed Complainant on multiple occasions and that Tambi took no action in regard to the harassment.

20. On February 17, 2015, Complainant returned to work and was handed a termination letter purporting to terminate her for "selling therapeutic products to clients without Respondents' permission for personal pecuniary gain." Complainant at 34:00; Complainant's Exhibit 1. Complainant read the letter and left.

21. Two weeks after being terminated, Complainant started working for a temp agency as a provider service representative for a health insurance company earning $12.00 per hour. Complainant at 35:40. Three months later, she was hired permanently by the company at $19.00 or $20.00 per hour. Id. at 36:00.

22. Complainant testified that as a result of being sexually harassed, she couldn't eat or sleep, didn't want to be touched by her fiancé, felt nervous all the time, changed the way she dressed, and changed her lifestyle. Complainant states that these feelings lasted six or seven months after the commencement of the harassment. Complainant was depressed because she felt "dirty" and felt that she was "cheating" on her fiancé

whenever Bulega touched her. After six or seven months, Complainant was better able to deal with the bad feelings caused by the harassment.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

In order to establish a sexually-hostile work environment claim, Complainant must prove by credible evidence that: (1) she was subjected to conduct of a sexual nature; (2) the conduct was unwelcome; (3) the conduct had the effect of creating an intimidating, hostile, humiliating, or sexually-offensive work environment; and (4) the conduct was sufficiently severe or pervasive as to interfere with Complainant's work performance or alter the conditions of employment. See MCAD Sexual Harassment in the Workplace Guidelines, II.C. (2002) ("Sexual Harassment Guidelines").

The credible evidence in this case establishes that at the end of January 2014, Respondent Bulega began to sexually harass Complainant by smacking her behind as she walked into the billing area of the office. This behavior occurred approximately two to three times a week from mid-January 2014 to mid-February 2015. Complainant would push or swat Bulega's hand away when he smacked her behind. Bulega also stood behind Complainant while she sat at a computer and put his hand down her shirt on multiple occasions. Several times he reached inside her bra and touched her nipple. He snapped her thong underwear if she wore clothes that exposed the thong in response to which she would "jump up" and tell him to stop. Complainant thereafter began to wear clothes that covered her thong.

Bulega told Complainant and texted her at work that he wanted to "fuck" her and invited her to sex parties "quite a few times." Towards the end of her employment when

she sat in the billing office, she heard moaning coming from the front area. When she went to investigate, she found Respondents Tambi and Bulega watching pornographic videos.

I arrive at the above findings based on Complainant's extremely believable testimony. Throughout the proceedings, Complainant was clear and consistent in presenting her story. Her description of what transpired while she worked for Respondents did not vary nor was it undermined during cross-examination. I believe that Complainant continued to push or swat Respondent Bulega's hand away every time he touched her and that she changed her mode of dress to forestall some of his unwanted touching. That Complainant continued to work for Respondents despite Bulega's degrading treatment may be explained by economic necessity rather than having no objection to the treatment she experienced. In any event, the fact that Complainant continued to endure a sexually-hostile work environment does not prevent her from pursuing her statutory right to redress pursuant to Chapter 151B where, as discussed below, the evidence establishes that the sexually-harassing conduct was both objectively and subjectively unwelcome.

By any measure, Bulega's actions were objectively offensive. See Sexual Harassment Guidelines II.C.3; Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677-78 (1993). The objective standard means that the evidence of sexual harassment must be considered from the perspective "of a reasonable person in the plaintiff's position." Ramsdell, 415 Mass. at 678. Such an examination looks at all relevant circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker's performance, and what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) *citing* Harris v. Forklift Systems, Inc., 510 U.S.17 (1993); Lazure v.

Transit Express, Inc., 22 MDLR 16, 18 (2000). The sexually-offensive conduct of Respondent Bulega, which Complainant described in credible detail, was frequent, severe, physically-threatening, humiliating, and interfered with Complainant's ability to perform her job.

The subjective standard of sexual harassment means that the employee subjected to the conduct must personally experience the behavior as unwelcome, intimidating, humiliating, and offensive. See MCAD Sexual Harassment in the Workplace Guidelines, II. C. 3 (2002); Ramsdell v.Western Bus Lines, Inc., 415 Mass. at 678-679. The record supports such a reaction in this case. I credit that Complainant swatted Bulega's hand away when he smacked her behind, jumped up when he accosted her, changed her clothing so that her thong was not exposed, and ultimately stated that she would not continue to work for Respondents unless Bulega kept his hands to himself. There is no evidence that Complainant ever engaged in sexual repartee with Respondents or behaved as if she enjoyed the sexually-charged atmosphere in the office. Her testimony at the public hearing was straightforward and compelling. Her sincerity contrasted with the wandering and obfuscating testimony of Respondents and their unconvincing denials. Complainant presented a vivid picture of a workplace permeated by sexually-charged conduct that was sufficiently severe and pervasive to interfere with her work performance and alter the conditions of her employment.

Complainant candidly admitted that she sought to be paid for snow days, but this matter did not undermine her claim of sexual harassment. I found Complainant to be extremely credible when she acknowledged that she became "tired" of the snow day dispute and informed Tambi and Bulega that she was willing to continue to work for the

company as long as Bulega kept his hands to himself. Rather than undermine Complainant's charge of sexual harassment, her testimony was a nuanced admission that she refused to continue being subjected to unwanted touching but nonetheless sought to keep her job provided that Respondent Bulega cease his humiliating, sexually-offensive conduct. In sum, the credible evidence in this case supports Complainant's contention that she was subjected to sexual harassment for a protracted period and that it was humiliating and unwelcome to her.

B. Retaliation

Retaliation is defined by Chapter 151B, sec. 4 (4) as punishing an individual's opposition to practices forbidden under Chapter 151B. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000) *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995).

In the absence of direct evidence of a retaliatory motive, the MCAD follows the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 Mass. 972 (1973) and adopted by the Supreme Judicial Court in Wheelock College v. MCAD, 371 Mass. 130 (1976). The first part of the framework requires that Complainant establish a prima facie case by demonstrating that: (1) she engaged in a protected activity; (2) Respondent was aware that she had engaged in protected activity; (3) Respondent subjected her to an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action. See Mole v. University of

Massachusetts, 442 Mass. 82 (2004); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000).

Protected activity may consist of internal complaints as well as formal charges of discrimination but regardless of the type of complaint, the charges must constitute a reasonable and good faith belief that unlawful discrimination has occurred. See Guazzaloca v. C.F. Motorfreight, 25 MDLR 200 (2003) *citing* Trent v. Valley Electric Assn., Inc., 41 F.3d 524, 526 (9th Cir. 1994); Santiago v. Trel Lloyd and Lupi's Enterprises, Inc., 66 F. Supp. 2d 282 (1999); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208 (2000).

Applying the aforementioned principles to the credible evidence in this case, there is no doubt that Respondents were on notice of Complainant's protected activity through her credible testimony that she consistently pushed Respondent Bulega's hand away when he inappropriately touched her, asked him to stop harassing her, complained to Respondent Tambi more than once, and told Tambi and Bulega on February 16, 2015 that she would only continue to work for the company if Bulega kept his hands to himself.

By purporting to conduct an investigation into Complainant's allegations, Respondent Tambi, in effect, admits that Complainant reported her concerns about sexual harassment to him. The so-called investigation was wholly inadequate insofar as it was conducted by an interested party and failed to conform to procedural norms for an impartial inquiry. The fact remains, however, that Tambi's contention that he delved into the matter serves as an acknowledgement that he was aware of and was responding to allegations made by Complainant regarding sexual harassment.

It is noteworthy that on the day following the so-called investigation into Complainant's allegations about Bulega, Respondents terminated Complainant. On February 17, 2015, Complainant was handed a termination letter professing to dismiss her for "selling therapeutic products to clients without Respondents' permission for personal pecuniary gain." Just twenty-four hours previously, Complainant had told Tambi that she would only continue to work for Respondents if Bulega kept his hands to himself. Such close proximity in time between protected activity and adverse action is a strong factor supporting a causal connection between Complainant's allegations against Bulega and her termination. See MacCormack v. Boston Edison Co., 423 Mass. 652 n.11 (1996) *citing* Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996). Based on this sequence of events as well as the credibility of Complainant and the unconvincing nature of Respondents' testimony, I conclude that there is evidence of a causal connection between Complainant's allegations of sexual harassment and her termination.

Once a prima facie case is established, the burden shifts to Respondent at the second stage of proof to articulate a legitimate, non-retaliatory reason for its action supported by credible evidence. See Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116-117 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000); Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973).

The termination letter identifies the marketing of "therapeutic products" as the reason for termination. At the public hearing, Respondent Bulega added two more rationales -- that Complainant asked to be compensated for snow days and that she did not want to continue to open the office in the morning. These reasons constitute a non-retaliatory basis for

terminating Complainant. At stage two they are sufficient to fulfill Respondents' evidentiary responsibility and cause the burden of persuasion to shift back to Complainant at stage three to convince the fact finder, by a preponderance of evidence, that the articulated justifications are not the real reasons but a pretext for retaliation. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001); Wynn and Wynn, P.C. v. MCAD, 431 Mass. 655, 666 (2000). Complainant may carry this burden of persuasion with circumstantial evidence that convinces the fact finder that the proffered explanation is not true and that Respondent is covering up a retaliatory rationale which is a motivating cause of the adverse employment action. Id.

I conclude that Complainant has fulfilled her stage three burden by demonstrating that Respondents' alleged reasons for terminating her are contradictory and shifting. The unconvincing nature of the proffered reasons suggests that a retaliatory rationale is the motivating cause of her adverse treatment. See Wynn and Wynn, 431 Mass. at 666-667 (2000).

In arriving at the above conclusion, I deem it significant that the sole reason for dismissal cited in the termination letter of February 16, 2015 is the unauthorized marketing of the weight loss wraps in the office whereas new justifications were added at the public hearing focusing on compensation for snow days and failing to open the office in the morning. Not only do the belated reasons detract from the original rationale, they are unconvincing on their face. Seeking compensation for snow days does not pass muster as a reason for dismissal because the evidence establishes that Complainant acceded to Respondents' refusal to pay her for days when the office was closed. Likewise, the assertion that Complainant was fired for refusing to open the office in the morning is

unconvincing because there is no credible evidence in the record that Complainant was charged with this responsibility and refused to perform it.

As far as the original reason is concerned -- the marketing of weight-loss wraps -- it appears that Complainant's fliers were permitted in the office for at least a month before they were used as an excuse to fire her. This finding is not only supported by Complainant's credible testimony that she began displaying fliers in the office in November 2014, but by testimony of Respondents Bulega and Tambi acknowledging that they were aware of Complainant's marketing activities prior to February of 2015. Accordingly, the reference in the termination letter to Complainant's "immediate" termination upon learning of her marketing activities is simply untrue.

The lack of consistent and credible rationales for Complainant's termination undercut Respondents' position that there were valid, job-related reasons for terminating her. Instead, the evidence establishes that retaliatory animus was a "material and important ingredient" in the action taken against Complainant. Chief Justice of the Trial Court, 439 Mass. at 735 *quoting* Lipchitz v. Raytheon Co., 434 Mass. 493, 506 (2001).

The flawed investigation conducted by Respondent Tambi lends additional support to the contention that Complainant was the victim of retaliatory animus. Rather than arrange for a neutral individual to conduct an investigation into Complainant's charges, Respondent Tambi states that he conducted his own inquiry into the allegations against his business partner, Vincent Bulega. Tambi claims to have interviewed all employees in the office but there is no record of such interviews ever taking place. No employees corroborated Tambi's claim that he conducted such in inquiry.

The aforesaid circumstances establish, by a preponderance of evidence, that the

articulated justifications are not the real reasons but a pretext for retaliation.

C. Individual Liability

The MCAD recognizes individual liability under M. G. L. c. 151B, section 4 (4A) by making unlawful any practice whereby a person "coerce[s], intimidate[s] threaten[s] or interfere[s] with another person in the exercise or enjoyment of any right granted or protected by this chapter." Similarly, M. G. L. c. 151B, section 4 (5) makes it unlawful for any person to "aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so." These provisions apply to claims of sexual harassment. See Beaupre v. Cliff Smith & Associates, 50 Mass. App. Ct. 480, 490-491 (2000) (stating that G. L. c. 151B does not limit the categories of people who may be liable for sexual harassment in an employment context).

Both Respondents Bulega and Tambi are individually liable for damages to redress the existence of a sexually-hostile work environment for the following reasons. Bulega was a company supervisor and the perpetrator of Complainant's harassment. As such, he may be held accountable for his actions. See Beaupre, 50 Mass. App. Ct. at 492 (recognizing individual liability of supervisor who was named as a party and who was alleged to be personally responsible for harassment). Tambi is also subject to individual liability as business manager of the office who oversaw clinical services and functioned as Complainant's direct supervisor. Credible evidence establishes that Tambi was aware of the harassment perpetrated by Bulega, tolerated its existence, participated in the sexually-hostile work environment by watching pornographic videos in the office, failed to arrange for a good faith investigation of Complainant's charges, and participated in her termination. As

such, Respondent Tambi is jointly and severally liable for damages in his individual capacity. See Woodason v. Town of Norton School Committee, 25 MDLR 62, 64 (2003) (Full Commission) (individual liability where person who has authority to act on behalf of employer demonstrates intent to discriminate by acting in deliberate disregard of Complainant's rights).

IV. Remedy

A. Emotional Distress Damages

Upon a finding of unlawful discrimination, the Commission is authorized to award damages for the emotional distress suffered as a direct result of discrimination. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). An award of emotional distress damages must rest on substantial evidence that the distress is causally-connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. See Stonehill College, 441 Mass. at 576. Complainant's entitlement to an award of monetary damages for emotional distress can be based on Complainant's own testimony regarding the cause of the distress. See id. at 576; Buckley Nursing Home, 20 Mass. App. Ct. at 182-183. Proof of physical injury or psychiatric consultation provides support for an award of emotional distress but is not necessary for such damages. See Stonehill, 441 Mass. at 576.

Complainant testified that as a result of being sexually harassed, she couldn't eat or sleep, didn't want to be touched by her fiancé, felt nervous all the time, changed the way

she dressed, and changed her lifestyle. Complainant was depressed because she felt "dirty" and felt that she was "cheating" on her fiancé when Bulega touched her.

I conclude that Bulega subjected Complainant to persistent and severe sexual harassment. He ignored her numerous efforts to get him to stop. He violated Complainant's most personal and private space and her emotional well-being. He was impervious to the impact of his actions on the relationship between Complainant and her fiancé who was another employee of the company.

Complainant candidly admitted that after six or seven months of being sexually harassed on the job, her negative feelings remained, but she was better able to deal with the situation at work by slapping Bulega's hand away. Complainant's self-assertion and resolve to resist the unwelcome conduct do not erase the impact of Bulega's conduct although they are a factor in assessing the degree of emotional distress Complainant sustained.

Based on the foregoing, I conclude that Complainant is entitled to $50,000.00 in emotional distress damages.

B. Lost Wages and Benefits

Chapter 151B provides monetary restitution to make a victim whole, including back pay and other types of compensatory relief. See Stonehill College v. MCAD, 441 Mass. 549, 586-587 (2004) *citing* Bournewood Hosp., Inc. MCAD, 371 Mass. 303, 315-316 (1976).

The evidence establishes that when she was terminated, Complainant was earning $16.00 per hour and worked between thirty-five to forty hours per week. She was without employment for two weeks, sustaining a loss of $1,280.00. For a three-month period

thereafter, Complainant worked for a temp agency as a "provider service representative" for a health insurance company earning $12.00 per hour. During that three-month period, I compute her loss of earnings to be $1,920.00. Three months later, her losses ended when she was hired permanently by the company at $19.00 or $20.00 per hour.

Based on the foregoing I conclude that Complainant is entitled to $3,200.00 in lost wages. I decline to award damages pertaining to lost benefits as the record does not address this matter.

V. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondents are subject to the following orders:

(1) As injunctive relief, Respondents are directed to cease and desist from engaging in acts of sexual harassment.

(2) Respondents, jointly and severally, are liable to pay Complainant the sum of $50,000.00 in emotional distress damages, 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.

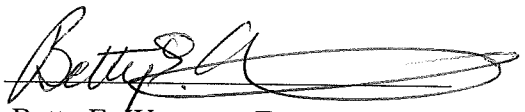
(3) Respondents, jointly and severally, are liable to pay Complainant the sum of $3,200.00 in lost wages, plus interest at the statutory rate of 12% per annum from

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.

(4) Respondents are directed to attend an MCAD-sponsored training pertaining to sexual harassment within ninety (90) days of this order and provide documentation of their attendance.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 3rd day of May, 2018.



Betty E. Waxman, Esq.,
Hearing Officer