COMMONWEALTH OF MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION and IRIS QUINONES, Complainants

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DOCKET NO. 16-BEM-02792

FARIDOON ZAMANI &
FARIDOON ZAMANI, D.M.D, P.C.
d/b/a COOLIDGE CORNER DENTAL,
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision by Hearing Officer Judith Kaplan in favor of Complainant, Iris Quinones ("Ms. Quinones"). Following an evidentiary hearing, conducted as a default hearing pursuant to 804 CMR 1.21(8) (1999), the Hearing Officer found both Faridoon Zamani and Faridoon Zamani, D.M.D., P.C. ("Respondents") liable for sexual harassment in violation of M.G.L. c. 151B, § 4(16A). The Hearing Officer awarded \$12,800.00 in lost wages and \$135,000.00 in emotional distress damages with 12% interest per annum. Respondents appealed to the Full Commission. Ms. Quinones opposes Respondents' appeal and requests attorney's fees in the amount of \$15,330.00. For the reasons discussed below, we affirm the Hearing Officer's decision in full and grant Ms. Quinones' request for attorney's fees without modification.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 (2020)), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, §§ 3(6), 5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "....such evidence as a reasonable mind might accept as adequate to support a finding...." Katz v. MCAD, 365 Mass. 357, 365 (1974); M.G.L. c. 30A, § 1(6).

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). Fact-finding determinations are within the sole province of the Hearing Officer who is in the best position to judge the credibility of witnesses. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); MCAD and Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). It is nevertheless the Full Commission's role to determine whether the decision under appeal was supported by substantial evidence, among other considerations, including whether the decision was arbitrary or capricious or an abuse of discretion. 804 CMR 1.23(10) (2020).

LEGAL DISCUSSION

On appeal, Respondents argue that 1) the public hearing should not have proceeded without Respondents' presence; 2) the findings are contrary to the results of a separate criminal trial; 3) the emotional distress damages awarded by the Hearing Officer are excessive; and 4) the

back pay award is unjustified as Ms. Quinones failed to show that she attempted to mitigate her damages.

After careful review we find no material errors with respect to the Hearing Officer's findings of fact and conclusions of law. We properly defer to the Hearing Officer's findings that are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42. This standard does not permit us to substitute our judgment for that of the Hearing Officer even if there is evidence to support a contrary point of view. See O'Brien v. Director of Employment Security, 393 Mass. 482, 486 (1984).

First, Respondents argue that the public hearing should not have proceeded by default, without their presence. Respondents were issued hearing notices via certified mail, return receipt requested, on March 2, 2018, over three months in advance of the scheduled June 15, 2018 public hearing in this matter.\(^1\) As Respondents failed to appear for the public hearing on June 15, 2018, the Hearing Officer conducted the hearing as a default hearing pursuant to 804 CMR 1.21(8) (1999).\(^2\) Accordingly, an Order of Entry of Default together with a Notice of Entry of Default were issued to Respondents on June 18, 2018, instructing them that they had ten days from receipt to petition to remove the default for good cause. See 804 CMR 1.21(8)(d) (1999). Respondents did not petition to remove the default for good cause in response to the June 18, 2018 notice, and the Hearing Officer issued her decision on July 25, 2018, memorializing these events and concluding that Respondents had failed to file a timely appeal of the default.\(^3\)

¹ The Hearing Officer did not indicate the date of the hearing notices in her decision, but the Commission takes judicial notice of its own records (see, e.g., <u>Dwight v. Dwight</u>, 371 Mass. 424, 426 (1976)), clarifying herein that the date of the hearing notices was March 2, 2018, and signed return receipts for the public hearing notices sent to both Respondents were returned to the Commission.

² The regulations in effect at the time of the hearing. Equivalent provisions can now be found at 804 CMR 1.12(10) (2020).

³ In her decision, the Hearing Officer noted that the notice of default sent to Respondent Zamani's home had been returned to the Commission as "UNCLAIMED" but the return receipt attached to the default notice sent to Respondents' business address was signed on June 20, 2018, and returned to the Commission.

We find no error in the Hearing Officer's determination that Respondents had adequate notice of the public hearing and the default, and failed to timely appeal the default. Moreover, even if Respondents had timely appealed the default, their arguments on appeal for removing the default are unavailing. On appeal, Respondents request that a new public hearing be scheduled, arguing that they made good faith efforts to postpone the public hearing. In support of those arguments, Respondents submitted an affidavit from Dr. Zamani showing that: they received multiple notices from the Commission related to the case; they were aware of the date of the public hearing; communications with the Clerk of the Commission confirmed the requirement to appear; and one of their employees signed for the delivery containing the default order.

Accordingly, Respondents' arguments on appeal do not demonstrate good cause to vacate the entry of default pursuant to 804 CMR 1.21(8)(d) (1999).

Respondents next argue that the criminal acquittal should have resulted in the dismissal of this matter before the Commission. While the sexual harassment claim pursuant to M.G.L. c. 151B, § 4(16A) and the criminal charges may have shared underlying facts, the legal elements of the charges are substantially different. Moreover, unlike a criminal proceeding where the burden of proof is beyond a reasonable doubt, the standard here is substantial evidence. "It is well established that an acquittal in a criminal trial does not prevent civil proceedings addressing the same facts because civil sanctions require a different standard of proof than a criminal conviction." In the Matter of Alan H. Segal, 430 Mass. 359, 363 (1999).

Respondents also argue that the Hearing Officer's award of \$135,000.00 in damages for emotional distress is excessive. Awards for emotional distress must be supported by substantial evidence and the emotional suffering must be causally connected to the unlawful act of discrimination. DeRoche v. MCAD, 447 Mass. 1, 7 (2006); Stonehill College v. MCAD, 441

Mass. 549, 576 (2004). Factors to consider in awarding emotional distress damages include "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." DeRoche, 447 Mass. at 7. Contrary to Respondents' arguments, awards for emotional distress are not limited by the time period an individual seeks treatment. While the record indicates that Ms. Quinones may have only continued medical treatment and therapy for approximately one year after the attack, she testified that she continues to experience ongoing emotional problems, and Ms. Quinones' sister and boyfriend both testified to long-term changes to her personality. An award of emotional distress damages does not require medical documentation and as such may be based on a complainant's own credible testimony. Stonehill, 441 Mass. at 576. The emotional distress award is supported by substantial evidence and sufficiently causally linked to the harm caused by Respondents.

Finally, Respondents argue that the \$12,800.00 back pay award is not justified as there is no evidence that Ms. Quinones attempted to mitigate her damages during the time she was unemployed. While the complainant has a duty to mitigate back pay damages by making a good faith effort to search for employment, the evidentiary burden is on the respondent to prove the failure to mitigate. Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172, 185 (1985). Ms. Quinones was unemployed for a relatively short period of time and Respondents did not present any evidence that she failed to mitigate her damages. The Hearing Officer was within her discretion to award back pay for Ms. Quinones' entire period of unemployment.

In short, we have reviewed Respondents' grounds for appeal and the record in this matter and have weighed all the objections to the decision in accordance with the standard of review

herein. As a result of that review, we find no material errors of fact or law identified in Respondents' appeal with respect to the Hearing Officer's findings and conclusions of law.

ATTORNEY'S FEES REQUEST

M.G.L. c. 151B, § 5 allows prevailing complainants to recover reasonable attorney's fees. Ms. Quinones filed a request for Attorney's Fees on August 3, 2018, along with an affidavit and contemporaneous billing records from Attorney Brian W. Brady. Ms. Quinones seeks to recover fees of \$15,330.00 for 43.8 hours of work performed by Attorney Brady at a rate of \$350 per hour. Respondents have not submitted any opposition to the attorney's fees request.

The determination of whether a fee sought is reasonable is subject to the Commission's discretion and includes such factors as the time and resources required to litigate a claim of discrimination in the administrative forum. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). The Commission has adopted the lodestar methodology for fee computation. Id. By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by an hourly rate it deems reasonable. The Commission then examines the resulting figure, known as the "lodestar," and adjusts it either upward or downward or determines that no adjustment is warranted depending on various factors, including complexity of the matter. Id.

Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission will consider

⁴ Since 804 CMR 1.00 (1999) et seq. was in effect at the time of the request for attorneys' fees, the Full Commission determines the award rather than the Hearing Officer.

⁵ Though the final page of Attorney Brady's billing records indicates a total of 43.4 hours, the individual entries add up to a total of 43.8 hours, which is consistent with the total billed amount of \$15,330.00.

contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. <u>Id.</u> at 1099. Compensation is not awarded for work that appears to be duplicative, unproductive, excessive, or otherwise unnecessary to the prosecution of the claim. Hours that are insufficiently documented may also be subtracted from the total. <u>Grendel's Den v. Larkin</u>, 749 F.2d 945, 952 (1st Cir. 1984); <u>Brown v. City of Salem</u>, 14 MDLR 1365 (1992). The party seeking fees has a duty to submit detailed and contemporaneous time records to document the hours spent on the case. <u>Denton v. Boilermakers Local 29</u>, 673 F. Supp. 37, 53 (D. Mass. 1987); <u>Baker v. Winchester School Committee</u>, 14 MDLR 1097 (1992).

We determine that the hourly rates sought by Attorney Brady are consistent with rates customarily charged by attorneys with comparable experience and expertise in these cases. Ms. Quinones' fee request is supported by an affidavit of counsel and contemporaneous detailed time records noting the amount of time spent on each task. These documents reveal a fair accounting of the work performed in furtherance of Complainant's case. We therefore grant Ms. Quinones' request and award attorneys' fees in the amount of \$15,330.00.

ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer in its entirety. Respondent's appeal to the Full Commission is hereby denied. It hereby ordered that:

- 1) Respondents immediately cease and desist from acts of sexual harassment;
- 2) Respondents pay to Complainant Iris Quinones the sum of \$135,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue;

- 3) Respondents pay to Complainant Iris Quinones the sum of \$12,800.00 in damages for back pay with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post judgment interest begins to accrue; and
- 4) Respondents pay to Complainant Iris Quinones the sum of \$15,330.00 in attorney's fees with interest thereon at the statutory rate of 12% per annum from the date the request for attorney's fees was filed until such time as payment is made or until this order is reduced to a court judgment and post judgment interest begins to accrue.

In accordance with 804 CMR 1.24(1) (2020) and 804 CMR 1.23(12)(e) (2020), the within Order is not a final decision or order for the purpose of judicial review by the Superior Court in accordance with M.G.L. c. 151B, § 6 and M.G.L. c. 30A. Pursuant to 804 CMR 1.23(12)(c) and (d) (2020), Complainant has fifteen (15) days from receipt of this Order to file a petition for supplemental attorney's fees and costs incurred as a result of litigating the appeal to the Full Commission, and Respondent has fifteen (15) days from receipt of the petition to file an opposition.

The Commission will issue a Notice of Entry of Final Decision and Order when either the time for filing a petition for attorney's fees and costs has passed without a filing, or a decision on the petition is rendered. The Commission's Notice of Entry of Final Decision and Order will represent the final action of the Commission for purposes of M.G.L. c. 151B, § 6 and M.G.L. c. 30A § 14(1). The thirty (30) day time period for filing a complaint challenging the Commission's Final Decision and Order commences upon service of such Notice.

SO ORDERED 6 this $\underline{5}^{th}$ day of August, 2022.

Sunila Thomas George

Chairwoman

Managerata Quiñaras

Monserrate Quiñones Commissioner

⁶ Commissioner Neldy Jean-Francois was the Investigating Commissioner in this matter, so did not take part in the Full Commission Decision. See 804 CMR 1.23(6) (2020).