

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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M.C.A.D. & IRIS QUINONES,  
Complainants

v.

DOCKET NO. 16-BEM-02792

FARIDOON ZAMANI, D.M.D &  
FARIDOON ZAMANI, D.M.D, P.C.,  
Respondents

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Appearances: Brian W. Brady, Esq. for Iris Quinones

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about October 4, 2016, Complainant Iris Quinones filed a complaint with this Commission charging the above named Respondents with discrimination in employment on the basis of sex and sexual harassment. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed, the case was certified for public hearing and a public hearing was set for June 15, 2018. Hearing notices were sent to the parties via certified mail, return receipt requested. Notices were sent to the Respondents' home and business addresses. A public hearing was held before me on June 15, 2018.<sup>1</sup> Respondents did not appear and were defaulted. Their default was entered on the record and the hearing proceeded as a default hearing pursuant to 804 CMR 1.21 (8) (b). A notice of default sent to Zamani's home address via certified mail, return receipt requested, was returned to the Commission as "UNCLAIMED." The default notice sent to Respondents' business address was

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<sup>1</sup> A Spanish translator, Terrance Moran, was provided for Complainant at the public hearing.

received and the receipt signed on June 20, 2018 was returned to the Commission thereafter. Respondents did not file a timely appeal of the default. Based on the credible, undisputed evidence in the record, I make the following findings of fact, conclusions of law and order.

## II. FINDINGS OF FACT

1. Complainant Iris Quinones, is a certified dental assistant residing in Dorchester, MA. She was hired by Respondents in early January 2016 as a full-time dental assistant, earning \$800.00 per week. (Testimony of Complainant; Ex. C-2)

2. Respondent Faridoon Zamani operates the business Faridoon Zamani, D.M.D., P.C. which does business as Coolidge Corner Dental, located in Brookline, MA. Zamani is the sole owner and holds all of the offices of the P.C. (Ex. C-1) Zamani's daughter was employed by the practice as office manager. Respondents employ six or more persons and are employers within the meaning of M.G.L.c. 151B§1¶5

3. Complainant's job duties included preparing patients and treatment rooms for dental procedures, cleaning instruments and performing other related duties. She was sometimes assigned to the front desk where she answered the phone and scheduled patient appointments. Complainant often wore latex gloves which caused a rash on her left hand.

4. Complainant testified credibly that when she was first hired, the woman whom she was replacing advised her to be careful when alone with Zamani because he had mistreated employees.

5. Complainant's job proceeded without incident until February 8, 2016. On that date a snow storm caused many patient cancellations. Since it was not busy, Zamani agreed to Complainant's request to leave early. At approximately 3:00 p.m., Complainant was seated at

the front desk preparing to leave when Zamani drew close, leaned over her and tried to kiss her on the mouth. Complainant turned her face away and Zamani instead hugged her and kissed her on the cheek. Complainant pushed him away and left the workplace. She was surprised, shocked and upset by Zamani's conduct and became very fearful of him. She considered not returning to the job, but she needed to work in order to support herself and her 20 year old daughter who lived with her.

6. The following day, February 9, 2016, Complainant arrived at work at 8:00 a.m., put her things away and sat down at the front desk. She and Zamani were the only ones in the office. Zamani told Complainant that the 9:00 a.m. patient had cancelled and he then left the office briefly to retrieve something from his car. When he returned Complainant was still at the front desk. Suddenly Zamani drew close and grabbed her left hand, as if to look at her rash. Complainant pulled her hand away and Zamani, who was wearing scrubs, grabbed her hand again and forced it onto his erect penis through his clothing, tightly wrapping his hand around hers to hold her hand in place so that she could not pull away. When Complainant managed to pull her hand away, Zamani instructed her to call a patient but she was unable to speak out of shock and fear. Zamani took the phone from her and apologized to the patient because Complainant was "really nervous." Shortly thereafter, Zamani's daughter entered the office.

7. Complainant testified that following this physical attack, she did not know what to do. She felt "out of it" and had the sensation that her body was present but her mind was elsewhere. She had never had such an experience before in her life and felt terrified. Complainant managed to work for the remainder of the day and never returned. She later sent Zamani a text stating that she had an emergency and wouldn't return to work.

8. At the end of the work day, Complainant called her sister Arielys Quinones and a friend and told them what had happened. A few days later, on February 12, 2016, Complainant reported the physical sexual attacks to the Brookline Police.<sup>2</sup> (Ex. C-3)

9. Complainant testified that immediately after the physical attacks she began to suffer from headaches, insomnia and anxiety and frequently cried. Arielys advised Complainant to seek medical attention.

10. Complainant testified that prior to the attacks she was completely happy. After the attacks, Complainant was very upset and ashamed and at a loss for what to do. Complainant had a close relationship to her parents, with whom she discussed her daily life and she frequently visited her mother who lived nearby. However she did not immediately tell her parents about the physical attacks because she felt ashamed.

11. Complainant testified that the physical sexual attacks by Zamani were the most traumatic event in her life. She stated that for a time after the attacks she had frequent panic attacks with a racing heart, difficulty breathing and the sense of impending death, which interfered with her driving a car. She stated that she was sometimes afraid to leave her house out of fear that Zamani might be stalking her. Complainant continued to visit her mother, but grew distant from other family members and friends, except for her sister Arielys. She withdrew from her long-time boyfriend Freddie Torres and their intimacy diminished for about a year. She delayed telling Torres about the physical attacks for a period of months, but when she finally did so, he was supportive and helped her secure an attorney to pursue a claim against Respondents.

12. Complainant testified that for one to two years after the physical attacks she took medications for insomnia, high blood pressure and anxiety. She testified that while counseling

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<sup>2</sup> There was no testimony regarding the outcome of the report to police.

has helped a lot, when she sees news reports of similar incidents it affects her because she identifies with the people involved. I credit Complainant's testimony in its entirety.

13. At the public hearing, Complainant had difficulty speaking, cried and visibly shook when describing the sexual physical attacks by Zamani. I find that recalling the physical attacks has continued to cause her great anxiety.

14. Freddy Torres, Complainant's boyfriend of eight years testified credibly that when he met Complainant she was a very friendly person and they had a good relationship. Torres stated that after the physical attacks by Zamani, she became distant and defensive, and whenever he got close to her she pushed him aside. As a result, their relationship suffered. He corroborated Complainant's testimony that she did not immediately tell him about the incidents but once she did he was supportive and helped her find a lawyer.

15. Complainant's sister, Arielys Quinones, corroborated Complainant's testimony that Complainant called her the day of the second physical attack and told her about Zamani forcing her hand onto his penis and how she was so upset she was unable to complete a phone call to a patient. Arielys testified that Complainant was scared, did not know what to do and did not want to return to work. Arielys encouraged Complainant to report the attacks and accompanied her to the police the following Monday. She also encouraged Complainant to seek medical treatment.

16. Arielys Quinones testified that prior to the physical attacks, Complainant had been a happy, "strong" person and a "go-getter," who laughed and joked. Arielys stated that she went to Complainant for advice, but that after the attacks by Zamani their roles were reversed. According to Arielys, Complainant was in "very bad shape" and uncharacteristically, often called her for comfort and advice. She testified that Complainant shook and couldn't sleep, no

longer laughed and joked and was not interested in going out as they had before the physical attacks. I credit Arielys Quinones' testimony in its entirety.

17. At the urging of her sister, on February 11, 2016, Complainant sought treatment at Brigham and Women's Advanced Primary Care Center for headaches, insomnia, elevated blood pressure and neck pain. She told a physician's assistant at the Center that she had been sexually assaulted by Zamani. The physician's assistant noted that Complainant had stress related to a traumatic event at work, elevated blood pressure and neck pain secondary to stress. She was prescribed Inderal and Ativan. During that same visit, Complainant was also assessed by a social worker who wrote that Complainant was tearful and expressed shame about a sexual assault by her employer, whom she feared. She was concerned for her physical safety if she returned to her job. Complainant was prescribed anti-anxiety, hypertension and sleep medications. (Testimony of Complainant; Ex.C- 4)

18. Complainant continued to receive treatment at Brigham and Women's from the same providers on a regular basis until late 2016. During this time period she reported to the physician's assistant and the social worker that she rarely left the house and that the assaults had negatively impacted her feelings of safety and her ability to stand up for herself. She continued to have insomnia and suffer from extreme anxiety and nightmares. She was tearful and visibly upset and still suffering from neck and head pain. During this time period Complainant's condition improved somewhat at times, but the assaults had triggered significant fear and a negative belief system and she continued to have panic attacks and anxiety and was diagnosed as suffering from PTSD and anxiety. Her symptoms slowly diminished over time and her sleep improved. By mid-September she reported feeling down but was more active with friends and in December, she continued on her prescribed medications. (Testimony of Complainant; Ex. C-4)

19. In addition to her treatment at Brigham and Women's, Complainant treated with a mental health counselor in private practice on 10 occasions from March 31, 2016 through January 2017. This counselor's notes document that Complainant was assaulted by Respondent and suffered from insomnia, panic attacks; feelings of shame, loss of enjoyment of life and inability to talk about the matter to most of her friends and family. (Ex. C-5)

20. Complainant earned \$800.00 per week working for Respondent. She was unemployed for a period of approximately 16 weeks. Since June 2016, Complainant has been employed as a dental assistant for an oral surgeon in Brookline, where she earns more than she did at Respondents. Her lost wages for the period of time she was unemployed are \$12,800.00 (\$800.00 x 16 weeks)

### III. CONCLUSIONS OF LAW

#### A. Sexual Harassment

M.G. L. c. 151B s. 4 p. 16(A) prohibits sexual harassment in the workplace as an unlawful practice. Hostile work environment sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when ...such advances requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment." G.L. c. 151B §1(18); College-Town Division of Interco v. MCAD, 400 Mass. 156, 165 (1987). See Massachusetts Commission Against Discrimination, Sexual Harassment in the Workplace Guidelines (2002) at II(C).

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").

In determining whether speech or conduct creates a hostile work environment, the standard is whether a reasonable person in the complainant's position would interpret the behavior "as offensive and an interference with full participation in the workplace." Baldelli v. Town of Southborough Police Dept., 17 MDLR 1541, 1547 (1995); Harris v. International Paper Co., 765 F.Supp. at 1512-16 and notes 11 and 12; See Gnerre v. Massachusetts Commission Against Discrimination, 402 Mass. 502, 507 (1988) (sexual harassment in housing).

The conduct must also be unwelcome and be both subjectively and objectively offensive. See College-Town supra. at 162; Ramsdell v. Western Mass. Bus Lines, Inc., 415 Mass. 673, 678 (1993). The objective standard of sexually unwelcome conduct considers the evidence from the perspective of a reasonable person in the plaintiff's position. The reasonable woman inquiry requires an examination into all the 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 subjective standard of sexual harassment requires that the employee to whom the conduct is directed personally experiences the behavior to be unwelcome. See Couture v. Central Oil Co., 12



MDLR 1401, 1421 (1990) (characterizing subjective component of sexual harassment as "in the eye of the beholder.")

I conclude that Zamani's conduct, which involved two instances of egregious and extremely offensive unwelcome physical sexual attacks, including forcing Complainant's hand on his penis, was unwelcome and sufficiently severe and pervasive so as to alter the conditions of Complainant's employment and thus created a sexually hostile work environment. Zamani's conduct created an impediment to Complainant's full and free participation in the workplace by creating an intimidating and fearful work environment. As such, his conduct constitutes unlawful sexual harassment within the meaning of c. 151B§4¶16 (A). Since Zamani was Complainant's supervisor and the sole owner of the business, he exercised authority over her in the workplace and was responsible for assigning her tasks. Thus, the Complainant's employer, the professional corporation, is vicariously liable for his unlawful conduct. College-Town, supra. at 165-66.

#### B. Constructive Discharge

In order to prove constructive discharge, Complainant must show that her employment was, in effect, terminated because the situation at her workplace became intolerable and the threat of physical or psychic harm was so great as to preclude her remaining on the job.

Horzesky v. R&M Construction, Co., 15 MDLR 1171 (1993); McKinley v. Boston Harbor Hotel, 14 MDLR 1241 (1992); Brodeur v. Harney's Superstore, 5 MDLR 1335 (1983).

Complainant testified credibly that she became so fearful and intimidated by Zamani's conduct that her working conditions were sufficiently hostile as to compel her to quit her job.

Complainant testified credibly and convincingly that after she was sexually physically attacked by Zamani on two consecutive days, she was so shocked and fearful of his egregious behavior

that she had no choice but to leave her employment. Since Zamani was the company owner and manager, there was no one with higher authority to whom she could turn for relief. Zamani's actions created a work environment that would have been intolerable to any reasonable woman and Complainant had no expectation of a resolution. Hence, she was justified in resigning from her job. I conclude that Complainant's work environment was sufficiently hostile and abusive so as to support a claim of constructive discharge. Ultimately, both Zamani and the corporate entity under which he operated his business, Faridoon Zamani, D.M.D, P.C., are jointly liable for his conduct.

#### B. Individual Liability

The Commission has held that individuals may be liable under M.G.L.c.151B§4(4A) if they coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter....” Where there is direct evidence of discrimination and the alleged perpetrator of discrimination was in a supervisory position in which he or she had direct control over complainant's employment, the individual may be named as acting in deliberate disregard of complainant's rights. Woodason v. Town of Norton School Committee, 25 MDLR 62, 63 (2003).

The evidence in this record establishes that Faridoon Zamani harbored the requisite intent to discriminate and there is sufficient direct evidence of his discriminatory actions to support a finding that he is individually liable for discrimination. Zamani was the Complainant's direct supervisor and was owner of Faridoon Zamani, D.M.D, P.C. He was the sole decision-maker with respect to establishing the terms and conditions of Complainant's employment and ultimately causing her constructive discharge. The evidence firmly established Zamani's

intention to discriminate and to interfere with Complainant's rights under c. 151B§4(4a) and I conclude that Zamani shall be held individually liable for unlawful discrimination in this matter.

Therefore, I conclude that Respondents engaged in unlawful discrimination on the basis of gender and sexual harassment and constructive discharge in violation of M.G.L.c.151B§4 and I find them jointly and severally liable for unlawful discrimination.

#### IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to grant remedies to effectuate the purposes of G.L. c. 151B. Such remedies may include an award of lost wages and damages for emotional distress.

##### A. Emotional Distress

The Commission is authorized to award damages for emotional distress damages resulting from unlawful discrimination. 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. Court 172(1985). Awards for emotional distress 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. Complainant must show a sufficient causal connection between the Respondent's unlawful act and the Complainant's emotional distress. Id. Based on the credible testimony of Complainant, her sister and boyfriend and the supporting medical records, I conclude that Complainant suffered severe emotional distress as a result of Respondents' unlawful discrimination.

The credible evidence has established that Complainant suffered from persistent anxiety, insomnia, high blood pressure and neck pain and panic attacks as a direct result of sexual physical attacks by her employer. Complainant turned from a joyful, strong “go-getter” to a woman fearful of leaving her house. She lost her sense of enjoyment of life, experienced feelings of alienation from friends and family and sought medical help and for the first time, treatment from mental health providers. Complainant’s medical providers documented Complainant’s stress and anxiety, insomnia, high blood pressure and her feelings of loss of security and shame. Ultimately, the diagnosis of post-traumatic stress disorder was found to have resulted from Zamani’s egregious conduct.

There is ample evidence in the record that the anxiety and stress Complainant experienced immediately after the physical attacks and subsequent thereto for a period of some time resulted from the sexual physical attacks Zamani subjected her to in the workplace. The stress from these incidents affected Complainant physically and mentally and resulted in her constructive discharge. I conclude that the hostile work environment created by Zamani’s unlawful actions was the direct and proximate cause of Complainant’s severe emotional distress that lasted for a significant period of time after her constructive discharge as well.

I conclude that Complainant is entitled to an award in the amount of \$135,000 for the emotional distress she suffered as a direct result of Respondents’ unlawful actions which subjected her to a hostile work environment.

B. Lost Wages

Complainant is also entitled to an award of lost wages for the sixteen-week period from the time of her constructive discharge on February 9, 2016 until she obtained subsequent employment at a higher rate of pay in approximately June 2016. Complainant earned \$800.00

per week at Respondent. She was unemployed for a period of approximately 16 weeks.

Therefore her lost wages are equal to \$12,800.00.

#### V. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that:

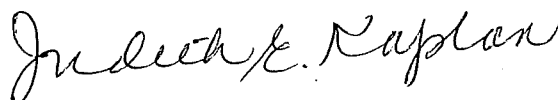
1) Respondents immediately cease and desist from discriminating on the basis of sexual harassment.

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.

4) This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order. Pursuant to s. 5 of c. 151B, Complainant may file a petition for attorney's fees and costs.

SO ORDERED, this 25th day of July 2018

A handwritten signature in cursive script that reads "Judith E. Kaplan".

JUDITH E. KAPLAN,  
Hearing Officer