

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
MARY CATHERINE ROUGHNEEN
Complainants

v.

DOCKET NO. 05-BEM-02334

BENNINGTON FLOORS, INC.,
BLACKWOOD DEVELOPMENT CORP.,
EDGEWATER KITCHEN and BATH, INC.,
R.C. HOMES, INC. d/b/a RIDGEWOOD CUSTOM
HOMES, INC., RIDGEWOOD DEVELOPMENT CORP.,
RIDGEWOOD EXCAVATING and RIDGEWOOD
ARCHITECTURAL & DESIGN, RIDGEWOOD REALTY,
LAURIE DICKEY and JOHN WEBBY,
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Eugenia Guastaferrri in favor of Complainant Mary Catherine Roughneen on her charge of sexual harassment against Respondents in violation of MGL c. 151B, Sec. 4(1), 4(4A), 4(5), and (16A). The Hearing Officer concluded that Complainant was the victim of both quid pro quo and hostile environment sexual harassment perpetrated by Respondents' General Manager John Webby and that all of the named businesses, John Webby and Laurie Dickey, were liable for Webby's actions. The Hearing Officer held that Respondents were not liable for discriminatory/retaliatory termination. Respondents were ordered to pay Complainant the sum of \$50,000 in damages for emotional distress she suffered as a result of being subjected to a sexually hostile work environment and having to endure Webby's sexually hostile and offensive behavior. The

Hearing Officer also ordered Dickey to institute training in any company she continues to own or operate, and assessed a civil penalty against both Dickey and Webby of \$5,000 apiece. Only Respondent Dickey has appealed the Hearing Officer's decision to the Full Commission.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 *et. seq.*) 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, §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. Massachusetts Comm'n Against Discrimination, 365 Mass. 357, 365 (1974); G.L. c. 30A.

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 the determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. Massachusetts Comm'n Against Discrimination, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The role of the Full Commission is to determine, inter alia, whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion or was otherwise not in accordance with the law. See 804 CMR 1.23.

SUMMARY OF THE FACTS

Complainant, Mary Catherine Roughneen, began working for R.C. Homes Inc. d/b/a/ Ridgewood Custom Homes, Inc. ("Ridgewood Custom Homes" or "Ridgewood") in April of

2004 with the title of General Manager. Complainant testified that she was hired by Ridgewood to run and manage a new custom kitchen showroom located in Sagamore Beach, Massachusetts. She initially received her paychecks from Ridgewood, however, Complainant came to be employed by the related entity known as Edgewater Kitchen and Bath, Inc. (“Edgewater”). Respondent, Laurie Dickey and her husband, William Dickey, were the principals of Respondents Ridgewood Custom Homes, Edgewater, Bennington Floors, Inc., Ridgewood Development Corp., and Ridgewood Realty.

In May of 2004, John Webby was hired to work for Respondent companies as a construction supervisor and to oversee the three supervisors in the field, one of whom was Complainant. Shortly after his hire, Webby became General Manager of Ridgewood. Thereafter, he began to make sexually inappropriate and suggestive comments and gestures towards Complainant, including propositioning her. When Complainant informed Webby that his conduct was unwelcome and asked him to stop, he initially ceased all communication with her, and began to usurp her managerial authority and to hold meetings with Complainant’s subordinates without her knowledge. When Complainant made efforts to discuss the situation and attempted to “bury the hatchet” with Webby, he merely resumed his prior sexually offensive conduct. In March of 2005, after learning of a clandestine meeting between Webby and her subordinates, Complainant confronted Webby telling him his actions were inappropriate and unacceptable. Upon learning from Webby that it was her employees who called the meeting, she apologized and hugged him as a gesture of reconciliation and he grabbed her buttocks. Complainant testified that this continuing behavior was a source of great distress to her and that she became exhausted and attempted to avoid Webby entirely in the workplace.

Complainant was terminated by Laurie Dickey, principal and co-owner of Respondent

businesses, on March 29, 2005 for reasons the Hearing Officer found to be legitimate and non-discriminatory. The Hearing Officer concluded that Complainant's termination was unrelated to Webby's conduct, that she had never complained to Laurie Dickey about such conduct and that Dickey had legitimate work related reasons for no longer trusting the Complainant, including her unauthorized sale of a custom kitchen to another employee. . The Hearing Officer also found that there was no evidence that Webby directed or influenced Dickey's decision to terminate Complainant's employment, or that her termination was related to her rejecting or protesting his sexual advances.

BASIS OF THE APPEAL

In her Petition for Review, Respondent Dickey argues that the Hearing Officer erred by finding that Webby was Complainant's supervisor with control over her employment; by finding that Dickey's individual liability comes from her failure, as a principal, to adhere to the corporate formalities of separate legal entities; and by finding that Dickey, in her individual capacity, participated in and condoned inappropriate and offensive sexual conduct in the workplace that allowed Webby to perpetrate an abusive work environment for Complainant. She also argues that the Hearing Officer's emotional distress damages award was arbitrary and capricious.

We find that each of these issues was properly decided by the Hearing Officer as discussed below. We properly defer to the Hearing Officer's findings which are supported by substantial evidence in the record. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). The key to substantial evidence is whether a "reasonable mind" might accept the evidence as adequate to form a conclusion. M.G.L. c. 30A, s. 1(6). See also, Gnerre v

Massachusetts Comm'n Against Discrimination, 402 Mass. 502, 509 (1988). The standard does not permit us to substitute our judgment for that of the Hearing Officer even if there is evidence to support the contrary point of view. See O'Brien v. Director of Div. of Employment Security, 393 Mass. 482, 486 (1984).

There was no error of law in the Hearing Officer's determination that the various corporate Respondents are vicariously liable for Webby's quid pro quo and hostile work environment sexual harassment. Webby was the General Manager of the various businesses related to custom home design and construction. There was credible testimony that in this role he was charged with oversight of the other three supervisors and establishing rules and timelines for the proper completion of the home construction projects. As such, Complainant reported to him. As the highest level manager reporting directly to the owners of the company, Webby had substantial authority over his subordinates. We conclude that there is ample evidentiary support for the Hearing Officer's determination that Webby was Complainant's supervisor. As Complainant's employers, the Respondents are liable for the discriminatory acts of Complainant's supervisor. College-Town, Div. of Interco, Inc. v. Massachusetts Comm'n Against Discrimination, 400 Mass. 156, 165 (1987)

The Hearing Officer also found that Respondent Laurie Dickey has personal liability for the actions of Webby because she was a principal owner of the businesses for which he was the General Manager, and that it was appropriate to pierce the corporate veil. There was sufficient evidence for the Hearing Officer to determine that the corporate veil should be pierced. She found that the corporate owners failed to adhere to corporate formalities of separate legal entities, all the related businesses were owned by Dickey and her husband and all did business under the rubric of Ridgewood Custom Homes. Dickey testified that not one of the corporate

Respondents under the umbrella of the construction company was adequately capitalized as of 2004.¹ The Hearing Officer made detailed findings regarding the various business entities that comprised the corporate Respondents, and noted that no official documents verifying the independent existence or dissolution of any of these business entities were produced in response to discovery or admitted into evidence. The Hearing Officer concluded that the various named businesses shared space, resources, officers and managers and that there was a confused intermingling of the various corporations, their employees, assets and management. Laurie Dickey was an active principal in all of them. The discriminatory acts giving rise to liability all occurred when Complainant was employed by the various intertwined entities. By the time of the public hearing, all of the related companies were out of business.² We conclude that these findings support the equitable doctrine of corporate disregard, permitting piercing the corporate veil to render Laurie Dickey personally liable for the conduct of her General Manager. See, My Bread Baking Co. v. Cumberland Farms, Inc., 353 Mass. 614, 619 (1968).

Moreover, Laurie Dickey's individual liability was properly predicated on her actions as an aider and abettor to Webby's unlawful discriminatory conduct. We are not persuaded that the Hearing Officer erred in finding that Dickey personally participated in and condoned inappropriate and offensive sexual conduct in the workplace that allowed Webby to perpetrate an abusive work environment for Complainant. The Hearing Officer found that Complainant's first interaction with Laurie Dickey included her making a sexually charged comment about her husband, William Dickey, illustrating that Laurie Dickey ("Dickey") had no hesitation to participate in the sort of inappropriate conduct that contributed to a workplace rife with

¹ Transcript of Public Hearing, Nov. 18, 2009 (Tr. Vol. III) , pp. 27 – 31.

² Laurie Dickey testified that Blackwood Development Corporation was formed to take over the jobs of Ridgewood Custom Homes when Ridgewood went out of business, it had no assets and she was the sole principal. John Webby became employed by Blackwood Development Corporation. (Tr. Vol. III, pp. 31 -32).

offensive sexual behavior. There was also ample evidence that Dickey worked in close proximity to the employees, and was aware of and condoned sexual jokes and banter that occurred in the workplace. We find that the Hearing Officer's findings with respect to Dickey's condoning an offensive work environment are supported by the evidence, and that Dickey was properly found to have personally participated in or implicitly condoned such behavior. We see no basis for disturbing the Hearing Officer's finding of individual liability.

Respondent also challenges the Hearing Officer's award of emotional distress damages, arguing that award was arbitrary and capricious and that there was insufficient evidence of emotional distress presented by Complainant to justify the \$50,000 award. Respondent maintains there was ample testimony to suggest there were reasons unrelated to Webby's conduct that Complainant was stressed by the business environment and her inability to perform the requirements of the job. We conclude that the Hearing Officer's award is based on Complainant's credible testimony that she found Webby's persistent and continuous advances, gestures and comments to be abusive and offensive and that Complainant protested when he engaged in such conduct. The Hearing Officer also credited Complainant's testimony that she suffered from sleeplessness, weight loss, hair loss, and broke out in a rash due to the stress of the hostile work environment. She also began avoiding Webby and worked longer hours, coming in to the office when Webby was not there in order to avoid encountering him. There was testimony that Complainant had been seen crying in the office, and exhausted from the abusive environment that persisted over a period of many months. The Hearing Officer's decision noted the other workplace stressors which she considered in apportioning damages for emotional distress. In reaching her determination as to the appropriate compensation, the Hearing Officer found that Complainant's stress was in part attributable to some of those other stressors. We

conclude that the damage award is supported by sufficient evidence and should be affirmed.

Having carefully reviewed Respondent's grounds for appeal and the full record in this matter in accordance with the standard of review stated herein, we find evidentiary support for the Hearing Officer's findings of fact and no material errors of law. We conclude that the Hearing Officer's decision was rendered in accordance with the law and we therefore deny the appeal and affirm the decision of the Hearing Officer in its entirety.

COMPLAINANT'S PETITION FOR ATTORNEY FEES AND COSTS

Having affirmed the Hearing Officer's decision in favor of Complainant we conclude that Complainant has prevailed in this matter and is entitled to an award of reasonable attorney fees and costs. See M.G.L. c. 151B, § 5.

The determination of what constitutes a reasonable fee is within the Commission's discretion and relies upon consideration of such factors as the time and resources required to litigate a claim of discrimination in the administrative forum and the degree of success achieved, which may include the relief awarded. In reaching a determination of what constitutes a reasonable fee, the Commission has adopted the lodestar method for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). This method requires the Commission to undertake a two-step analysis. First, the Commission calculates the number of hours reasonably expended to litigate the claim and then multiplies that number by an hourly rate considered to be reasonable. The Commission then examines the resulting figure, known as the "lodestar", and adjusts it either upward or downward or not at all depending on various factors.

The Commission's efforts to determine the number of hours reasonably expended involves more than simply adding up all the hours expended by all personnel. The

Commission carefully reviews the Complainant's submission and will not simply accept the proffered number of hours as "reasonable." See, e.g., Baird v. Bellotti, 616 F. Supp. 6 (D. Mass. 1984). Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours that are insufficiently documented. Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir. 1984); Brown v. City of Salem, 14 MDLR 1365 (1992). Only those hours reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission considers contemporaneous time records maintained by counsel and reviews both the hours expended and tasks involved.

Complainant's counsel filed a Motion for Issuance of Attorney's Fees in this matter, requesting \$82,745.98 for fees and costs accompanied by the affidavit of Thomas E. Romano, the attorney who represented the Complainant at public hearing. Counsel's billing rate is \$240.00 per hour and he seeks compensation for 322.50 hours (including time of predecessor counsel at \$245.00 per hour), for a total of \$77, 840.00. Counsel also seeks reimbursement of costs in the amount of \$4,905.98 for court reporter services. Respondent Dickey filed an Opposition to the fee petition arguing the amount sought is duplicative and excessive and must be reduced to reflect only partial success since Complainant did not prevail on all her claims. Respondent Dickey also asserts that the court reporter fees of \$4,905.98 are unreasonable and excessive.

We have reviewed the Motion and Opposition and determine the fee request should be reduced to reflect the fact that Complainant did not prevail on her claim of retaliatory termination and was not entitled to damages for lost wages or benefits. Since retaliatory termination was a substantial claim, and since most of the case presented involved Webby's

inappropriate sexual behavior and the offensive workplace environment, we conclude that the fee request should be reduced. We also recognize that some of the time by counsel spent was necessarily duplicative due to work completed by predecessor counsel and transfer of the case within the law firm. Recognizing these facts, we discount the fee petition by some \$32,745 or almost 40%. Accordingly, we conclude that an award of \$50,000 for attorneys' fees is appropriate given these circumstances. We find that the request for reimbursement of costs is reasonable and will grant Complainant \$4,905.98 for court reporter services.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact and conclusions of law of the Hearing Officer and issue the following Order of the Full Commission:

(1) Respondents shall cease and desist immediately from engaging in, condoning or sanctioning acts of quid pro quo sexual harassment or any practices that have the purpose or effect of creating or condoning a sexually hostile work environment in any businesses they own, manage, or operate.

(2) Respondents³ shall pay to Complainant, Mary Catherine Roughneen, the sum of \$50,000 in damages for emotional distress, with interest thereon at the 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 Webby and Dickey shall each pay to the Commonwealth a civil penalty in the amount of \$5,000.

³ The Commission acknowledges that it received a Suggestion of Bankruptcy in Case No. 13-10318-WCH for Laurie A. Dickey in May of 2015. The federal Bankruptcy Act's automatic stay provisions provide an exception for the Commission's exercise of its law enforcement regulatory power, including the entry of monetary judgments. In re Mohawk Greenfield Motel Corp., 239 B.R. 1 (D. Mass. 1999).

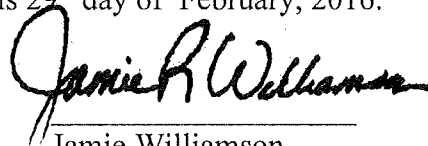
(4) Respondent Dickey shall conduct a training session in any and all businesses which she currently owns or operates, addressing the prevention of sexual harassment in the workplace. Said training shall occur within 120 days, and shall include all of managers and supervisors employed in any business currently owned or operated by her. Respondents shall utilize a trainer approved by the Commission or a graduate of the Commission's "Train the Trainer" course. Respondent shall submit a draft training agenda to the Commission at least one month prior to the training date and note the location of the training. The Commission retains the right to have a designated representative attend and observe the training session. The Respondent shall notify the Commission of the names and job-titles of those who attend any training session. The training shall be repeated at least one time within one year of the first session for any and all managers or supervisors who did not attend the initial training or who were hired thereafter.

(5) Respondents shall pay attorneys' fees to Complainant in the amount of \$50,000 and costs in the amount of \$4,905.98 with interest thereon at the rate of 12% per annum from the date the petition for attorney's fees was filed until such time as payment is made or this order is reduced to a court judgment and post judgment interest begins to accrue.

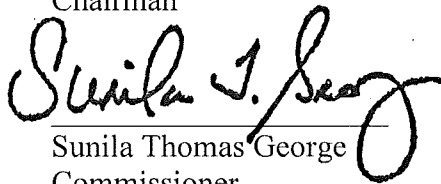
For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. Respondents' appeal to the Full Commission is hereby dismissed. This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this Decision may file a complaint in Superior Court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of service of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Standing Order on Judicial Review of Agency Actions. Failure to file a petition in court within

thirty (30) days of service of this order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED this 29th day of February, 2016.



Jamie Williamson
Chairman



Sunila Thomas George
Commissioner



Charlotte Golar Richie
Commissioner