

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
MARY CATHERINE ROUGHNEEN,

Complainant

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 HEARING OFFICER

Appearances: Thomas E. Romano, Esq. for Complainant
Laurie Dickey and John Webby, pro se

I. PROCEDURAL HISTORY

On August 3, 2005, Complainant, Mary Catherine Roughneen, filed a complaint of discrimination alleging sexual harassment and retaliatory termination in violation of G.L. c. 151B, against Respondents, Edgewater Kitchen and Bath, Inc., Laurie Dickey and John Webby. On May 9, 2006, the Complaint was amended to add the following parties as Respondents: Blackwood Development Corp.; Ridgewood Development Corp.; R.C. Homes, Inc. d/b/a Ridgewood Custom Homes Inc.; and or Ridgewood Custom Homes

and Remodeling; Ridgewood Reality; Bennington Floors, Inc.; Ridgewood Excavating; and Ridgewood Architectural and Design.

The Investigating Commissioner found probably cause to credit the allegations of the complaint and after efforts at conciliation were unsuccessful, the matter was certified for hearing. A Hearing was held before the undersigned hearing officer on November 16, 17, and 18, 2009. All Respondents failed to provide responses to discovery requests and the named business Respondents did not appear at the pre-hearing conference or the hearing, resulting in a default being entered against them. Laurie Dickey and John Webby appeared pro se at the pre-hearing conference and at the public hearing held on November 16, 17 and 18, 2009. They purported to appear in their individual capacity only, and stated they were not representing the named businesses, but were defending the allegations of discrimination brought against them personally.

The Complainant submitted a post-hearing brief. Having reviewed the entire record of the proceedings and the submission of Complainant I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Complainant, Mary Catherine Roughneen, began working for Ridgewood Custom Homes, Inc. in April of 2004 after interviewing in February of that year, with William Dickey, now ex-husband of Respondent, Laurie Dickey. Complainant has degrees in interior design and industrial design and ran a show room at the Boston Design Center from 1989 to 1991. Complainant testified that she was hired by Bill Dickey to run

Ridgewood Custom Home's new showroom in Sagamore Beach, Massachusetts, at a salary of \$50,000 per year. (Tr. Vol. I, pp. 46-47; 49-52).

2. Complainant's job title was General Manager and her initial start-up duties were as follows: to set up accounts with wholesale distributors for cabinet lines; order and line up installation for kitchen and bath displays; advertise for and hire kitchen designers and installers; set up a computer software program for kitchen design; set up advertising for sales & marketing of product line; and set up pricing & budgeting of product lines. (Ex. C-1) In addition to these responsibilities, her daily duties included overseeing and managing design assistants and installers, ordering and scheduling of installation, managing the advertising and marketing, monitoring work progress on a daily basis and assisting customers. Complainant worked Tuesdays through Saturdays from 8 a.m. to 4 p.m. (Ex. C-1)

3. Respondent, Laurie Dickey and her husband William Dickey operated a construction company that built custom designed homes, a kitchen company that installed custom designed kitchens, and various other related companies named as Respondents in this matter. Laurie Dickey testified that she and her husband were the principals of the named businesses except for Blackwood, which Laurie Dickey owned alone, and that most of named Respondents were under the umbrella of the construction company, R.C. Homes, Inc. (Tr. Vol. III, pp. 28-31) She also testified that the corporate Respondents were run under the name of the "Sagamore Design Center." (Tr. Vol. III, p. 37) According to Dickey, her husband was the President of the "multi-million dollar company," and was responsible for running the business. (Tr. Vol. III, p. 8, 26) She testified that she began taking a more active role in the company in 2003 and 2004 and

eventually took on more responsibility to make sure all the companies ran smoothly, including the flooring company, the excavation company, the real estate company, the kitchen and the construction company. (Tr. Vol. III, p. 8, 26)

4. According to Dickey, Blackwood Development Corporation was formed after the events in question and was a successor to R.C. Homes, Inc. after that company went out of business. Laurie Dickey stated that she is the sole principal of Blackwood Development Company. Dickey stated that Ridgewood Excavating and Ridgewood Architectural & Design did not exist as business entities, as far as she knew.

5. Complainant testified that one of her first interactions with Respondent Laurie Dickey was on the day she was hired, shortly after she was interviewed. She stated that her introduction to Respondent Dickey came by way of a comment/warning to Complainant that she [Complainant] was a beautiful woman, “and the last beautiful woman we hired ‘f’d’ my husband.” (Tr. Vol. I, p. 53) Complainant testified that this was her introduction to what would prove to be a sexually hostile work environment sanctioned by Dickey.

6. Complainant testified that she was hired to work for Respondent Ridgewood Custom Homes, and initially received her pay checks from that entity, but that she inexplicably came to be employed by Edgewater Kitchen and Bath, Inc., without ever having formally left the employ of Ridgewood. (Tr. Vol., p. 73-74) Shortly thereafter, in May of 2004, Respondent John Webby was hired to work for Respondent companies. (Tr. Vol. I, p. 82-83; Vol. III, p. 91) Webby testified that he was hired by Laurie Dickey as construction supervisor to oversee the other three supervisors out in the field, including Complainant, who were having difficulties completing their projects. Shortly thereafter,

he became the General Manager of R.C. Homes, which he referred to as the parent company, and from which he received his pay check. (Tr. Vol. III, p. 59, 61, 92, 93) Webby testified that he set up rules that the employees did not like and began going out to job sites to investigate what was going on and uncovered projects being done incorrectly. (Tr. Vol. III, p. 61) I credit this testimony.

7. Complainant testified that shortly after John Webby was hired, he began eyeing her in a sexually provocative manner, staring at her and licking his lips in her direction. She testified that soon after, he began making overt comments, such as telling Complainant she had nice lips and that he wanted to suck on them. (Tr. Vol. I, pp. 86-88) Respondent Webby did not deny telling Complainant that she had nice lips and admitted in his statement that “maybe it was out of line,” and that Complainant indicated she was offended by his comment, and told him not to talk to her that way. (Tr. Vol. III, p. 62) I credit Complainant’s testimony that the comment he made about her lips was more salacious than Webby claims.

8. Complainant testified that Webby’s offensive conduct continued and the incidents were numerous. The next incident she recalled was Webby lying down on a couch in the office with his arms behind his head, thrusting and gyrating his hips at her. (Tr. Vol. I, p. 89) Complainant stated that she covered her eyes in response to this gesture as a way of sending a message that the conduct was disgusting. (Tr. Vol. I, p. 90) Another employee, Liz Casoni¹, was hired to work directly for Complainant in kitchen and bath design. (Tr. Vol. III, p. 68) She testified that she witnessed Webby making sexual gyrations on the couch in the office while saying, “Do you want some Lebanese in

¹ Casoni also filed a complaint against Respondents for sexual harassment and retaliation which is pending for hearing at the Commission.

you? It won't take long." (Tr. Vol. I, p. 208) Complainant confirmed that Webby made this comment to her, but she could not recall precisely when it occurred. (Tr. Vol. I, p. 99) Casoni also testified that Webby made a reference to wanting to chew on Complainant's nipples, but could not recall precisely when this occurred, but stated it was sometime after the Fall of 2004. (Tr. Vol. I, p. 209-210)

9. Complainant also witnessed Webby's behavior with other women in the office, including, but not limited to his pinching Liz Casoni's breasts, and commenting to Liz, "Oh nice tits. I'd like to squeeze them," and stating that he wanted to "f"[Liz] up the ass." (Tr. Vol. I, 96, 105-107; Complaint)

10. Complainant testified that while on a job site with Webby when they were sitting in the company van, Webby said to her, "you know I'm going to do you one day, don't you?" Complainant understood this to be a statement of his intent to have sex with her and not a request. She told him that his conduct had to stop and that she had had enough of his continuous sexual comments and behavior. (Tr. Vol. I, pp. 94-95)

11. Complainant testified that after insisting to Webby that his inappropriate sexual comments and behavior toward her had to stop, Webby began to cease all communication with her, both business and otherwise. Complainant stated that he "just stopped talking to me at that point. I got the cold shoulder." (Tr. Vol. I, p. 102)

12. Webby testified that there was a lot of sexual bantering and sexual jokes in the office, and that Liz Casoni and other "girls" in the office participated in the sexual banter but admitted that Complainant was never involved in any of the sexual bantering and joking. (Tr. Vol. III, p. 69) Webby admitted commenting on Complainant's lips but denied making other sexually offensive comments or gestures to her and others. (Tr. Vol.

III, pp.89, 117-119) I do not credit his denials and find that he engaged in offensive conduct.

13. Webby admitted telling Liz Casoni that he “came on to” Complainant and asked her about her lips after she told him he had beautiful eyes, and he took her comment as opening the door to a possible dating relationship. He told Casoni that when Complainant indicated she was not interested, he stopped joking with her, and she then asked him why he was “strictly business.” Webby admitted that “it go to the point where there was no communication in the office between Mary Kay and myself.” (Tr. Vol. III, p. 69) He also testified that this was because whenever he and Dickey would have a meeting to ask Complainant for customer lists or schedules for the workmen, and for kitchen installations, they would never get the information and it always seemed to be a secret. (Tr. Vol. III, p. 80) I find that a communication breakdown between Webby and Complainant did occur for the reasons stated by both.

14. Complainant testified that Webby began to usurp her managerial authority and to hold meetings with her employees without her knowledge. She stated that her employees began to feel like she was not their supervisor. (Tr. Vol. I, p. 104) She felt like she was “on the outside versus being part of a team,” and that she was “being undermined as a manager.” (Tr. Vol. I, p. 108-109) Webby testified that there were problems with kitchen installations, including the wrong cabinets being ordered, and that no one was accepting accountability for these mistakes. He stated that he and Laurie Dickey tried to implement some structure and accountability and this made the employees unhappy. (Tr. Vol. III, p. 72-74)

15. Complainant testified that emotionally it was getting harder to work with Webby and that she was losing sleep, working more hours and coming in to work before him. (Tr. Vol. I, p. 108) She stated that eventually she and Webby went out for a drink and she asked him why he was not speaking to her any longer. (Tr. Vol. I, p. 110) Webby testified that Complainant asked to meet him for a drink to discuss what had happened between them and she told him she was not angry at him and asked if they could “bury the hatchet.” He stated that after their talk Complainant gave him a hug and things were fine between them. (Tr. Vol. III, p. 70) Complainant testified that things improved after that for a time and she was brought back in up until Christmas of that year. (Tr. Vol. I, p.111)

16. Complainant testified that at the company Christmas party she and another female employee were dancing with Webby and “someone” loosened his tie and then Webby groped Complainant’s buttocks. (Tr. Vol. I, pp. 112-113) Complainant testified that she mentioned this incident to human resource director, Melinda Pierce. (Tr. Vol. I, p. 113) Webby testified that Complainant and Liz Casoni undid his tie while they were dancing and took his tie off. (Tr. Vol. III, p. 66) Complainant testified that she was dancing with Webby because it was the holidays and they should just move on and enjoy themselves and relieve some stress. (Tr. Vol. I, p. 112) I find that the female employees participated in this playful incident, but that Webby crossed a line to engage in unwelcome touching. Complainant testified that after the Christmas party, Webby was back to his old ways making offensive comments while sarcastically stating he wasn’t supposed to talk that way any longer, but was supposed to be good. (Tr. Vol. I, pp. 113-114) On a subsequent occasion, as a group of employees were entering a restaurant,

Webby commented aloud of Complainant, “Doesn’t she have a great ass? Look at her ass.” (Tr. Vol. I, p. 115)

17. Liz Casoni testified that she both witnessed and was subjected to sexually harassing behavior from Webby. She recounted an incident where Complainant got up from a seat and in the presence of other employees, Webby said, “I want to sniff your seat.” She stated that Complainant was appalled and told him to “knock it off.” (Tr. Vol. I, pp. 206-208) This incident was witnessed by another employee, Barbara Mooney whose testimony corroborated Casoni’s. (Tr. Vol. II, pp. 16-17) Mooney testified that the incident made her feel “disgusted.” She stated “it was a very hostile environment,” but not in reference to sexual harassment, but to all the other situations going on between the people that worked there. (Tr. Vol. II, p. 18-19) Casoni also corroborated Complainant’s testimony that Webby grabbed Casoni’s breasts while stating that he wanted to “f her up the ass,” and that the incident was witnessed by another employee, Chris Mulvehill. (Tr. Vol. I, pp. 211-212) Casoni recalled Webby telling a group of female employees that he was lucky to work with such beautiful women and that he wanted to see them all naked in furs and high heels. (Tr. Vol. I, p. 213)

18. Chris Mulvehill testified that he was hired by Laurie Dickey to work for Ridgewood Realty doing home sales. His ex-wife is Laurie Dickey’s sister. Mulvehill corroborated Casoni’s testimony about Webby grabbing her breasts and when he later asked Webby if they were dating, Webby responded, “I’m planning on nailing her,” and that in the same conversation Webby referred to Complainant as “a frigid bitch.” (Tr. Vol. II, p. 92-93) Mulvehill was terminated over a dispute with Dickey on a home sale commission he believed was due him and he was upset about this. (Tr. Vol. II, pp. 79-80,

106, 107) Webby stated that Mulvehill threatened to get back at Webby over the commission, and Mulvehill was instrumental in getting criminal charges brought against Webby for the incident involving Casoni. (Tr. Vol. II, p. 111; Vol. III, pp. 60, 71-72, 81)

19. Chad Gingras, a construction manager for Respondent Ridgewood Homes testified that he witnessed Webby make comments about Complainants “lips and bust.” (Tr. Vol. II, pp. 45-46) He testified that these types of comments were made “more often than not.” He once heard Webby comment about Laurie Dickey’s body, “all ass and no tits, what a shame.” (Tr. Vol. II, p. 52) Gingras testified that he never complained about these comments because there was already enough going on in the office that he didn’t need to get involved in. Webby testified that Gingras was in the running for the general manager’s position prior to Webby being hired. Gingras confirmed that he had been talking with Bill Dickey about assuming the role of general manager of the company and getting into sales. Once it was announced that Webby would be the general manager, Gingras believed that Webby wanted him out of the company, because Gingras posed a threat to him. (Tr. Vol. II, p. 57) According to Gingras, shortly after Webby was hired, all the employees met to discuss their displeasure with Webby’s demeanor toward the employees and customers. (Tr. Vol. II, pp. 71-72) Gingras was terminated from the company over a dispute about whether the company would pay for an oversight by a site engineer, in lieu of billing the client. Gingras denied that this was his error, but nonetheless, Webby recommended to Bill Dickey that he be fired. (Tr. Vol. II, pp. 57-59, 72)

20. On March 17, 2005, after Complainant discovered what she viewed as a clandestine meeting between Webby and her employees, Complainant went to his office

and yelled at him, telling him it was unacceptable for him to have a meeting with her employees. Webby told Complainant that the employees, and not he, had called the meeting and she verified that this was true. Complainant testified at this point she apologized and they hugged and he lowered his hand and grabbed her behind. (Tr. Vol. I, p. 118) Complainant testified at that point, she was “just exhausted.” Mulvehill testified that on one occasion he witnessed Complainant crying because of the stress and pressure she was under from Webby and Dickey and stated, “it was clear they were just putting pressure on her and making her feel incompetent.” (Tr. Vol. II, p. 98) There is no evidence that Complainant ever complained about any instances of Webby’s unwelcome sexual conduct to Laurie or Bill Dickey prior to her termination.

21. Complainant was terminated from her employment on March 29, 2005. Respondent Laurie Dickey testified that she made the decision to terminate Complainant, along with her husband, for a number of reasons, including the fact that Complainant installed two kitchens, including one in her own home, at cost and without prior authorization. Dickey testified that she became aware of the fact that Complainant had installed cabinets and counter-tops in her own home at cost when she overheard a cabinet installer discussing the installation, and then asked Complainant about it. Dickey stated that she was appalled that Complainant never sought her permission to purchase materials at cost, to use the company credit line to purchase cabinets for her personal residence, or to utilize the services of the company’s delivery man to deliver the materials to her home. (Tr. Vol. III, pp. 17-19) Complainant testified that she received permission from Bill Dickey to install the kitchen in her own home at cost, (Tr. Vol. I, p.119) but Dickey

denied that her husband had any knowledge of this and that he claimed to be stunned by it also. (Tr. Vol. III, p. 19)

22. Dickey testified that it became clear to her soon after Complainant was hired that she was in over her head. Complainant did not get the kitchen show room up and running on the timetable she promised, did not implement a marketing plan as requested, did not have a sales strategy, and thus was not generating business. Dickey testified that Complainant also did not keep accurate company and customer files and could not explain to Dickey why they were so far over-budget on the kitchen show-room. (Tr. Vol. III, p. 11) According to Dickey at least two of the three employees Complainant supervised had complaints about her, including the fact that she frequently left the workplace locking her door so that they did not have access to files, and was not carrying her share of the workload. According to Dickey, Complainant's subordinates lodged complaints that she was not doing her work, was engaging in extra-curricular activities on company time and took credit for work she did not do. (Tr. Vol. III, pp. 11-13) Barbara Mooney, who worked for Complainant admitted complaining to Webby about not receiving commissions from Complainant that were due her for kitchen designs she had worked on. (Tr. Vol. II, p. 13) Dickey also testified that Complainant made a several costly mistakes for the company which included cabinet sales that had design flaws or were delivered late. On one occasion she ordered a kitchen installed too soon, after twice being instructed not to do so because the flooring had not yet been laid. The kitchen had to be ripped out and re-installed at the company's cost. Dickey stated that Complainant did not look after the company's bottom line. (Tr. Vol. III, p. 17) I credit Dickey's

testimony that she was displeased with Complainant's performance and thought that Complainant was insubordinate for ignoring her directives.

23. Dickey testified that Complainant resented and felt threatened by Joanne O'Keefe, a personal friend of Dickey's whom Dickey hired to assist Complainant with sales and marketing in the kitchen showroom. (Tr. Vol. III, p. 15) Joanne O'Keefe testified that she was hired in November of 2004, to assist Complainant with sales and marketing and to relieve her of some of her duties. According to O'Keefe, Complainant refused to work co-operatively with her, refused to attend her sales meetings and at some point stopped talking to her. O'Keefe believed that Complainant was overwhelmed and could not handle what was on her plate. She had complaints about Complainant's record keeping, the data base, and the inability to track customer's orders or when kitchen installations were due to occur. (Tr. Vol. 151,152) O'Keefe testified that Complainant was surly and disrespectful and once stamped her foot and screamed at O'Keefe in the showroom. (Tr. Vol. II, p. 143-145)

24. Dickey also testified that Complainant became very disrespectful of her and that it seemed almost like a "personal vendetta." (Tr. Vol. III, p. 15) According to Dickey if Complainant did not like a directive from her, she would call Dickey's husband to get a different answer. (Tr. Vol. III, p. 16) As an example, Dickey stated that she wanted the kitchen showroom open on the Friday after Thanksgiving, because it is the biggest retail shopping day of the year, but because Complainant did not want to work that day, Complainant called Dickey's husband to get him to agree to close the showroom. (Tr. Vol. III, p. 16) I credit Dickey's testimony in this regard. As an example of how their personal relationship had deteriorated, Complainant testified that

Dickey swore at her for inviting Dickey's husband's girlfriend to the opening of the new design show room. (Tr. Vol. I, p. 196)

25. According to Dickey the final straw came in March of 2005 when Dickey discovered that Complainant had ordered and sold a kitchen to another employee at cost, with minimal mark-up. Dickey stated the Complainant had specifically disregarded her prior directive that all pricing matters had to be discussed with her first. Dickey stated that it was apparent that Complainant thought she could do whatever she wanted without consulting the owners and that Dickey needed to think about the situation. She stated that she discussed the issue with her husband that evening and decided to fire Complainant the next day. (Tr. Vol. III, pp. 19-20) Dickey stated that she was not aware of any complaints of sexual harassment by Webby until after Complainant was terminated when allegations were made by Casoni in a letter to her husband. (Tr. Vol. III, p. 22) I credit Dickey's testimony that she had problems with Complainant's attitude and that no complaints were made to her or her husband about Webby's conduct prior to Complainant's termination.

26. Laurie Dickey testified that she and her husband were going through a very public divorce at the time, and that her husband suffered from alcoholism and substance abuse, and was elusive and not dependable. She stated that employees of the company took sides in their dispute, and often tried to get her orders countermanded by her husband. (Tr. Vol. III, pp. 8-9) She stated that, unlike her husband, she held employees accountable for their actions and when she took on a more authoritative role, some employees were not happy about that. (Tr. Vol. III, p. 8) I credit this testimony.

27. Chad Gingras described the dysfunction of Respondents' workplace at the time in very similar terms as follows: "Between all the jobs that were going on, the jobs that were going awry, the hiring and firing of staff, the split up of the principal owners, the split up of the company, the tug of war back and forth as to who was going with Laurie, who's going with Bill. There was just enough going on at that time that it was a shake-your-head moment." (Tr. Vol. II, p.51)

28. Laurie Dickey denied having observed any inappropriate sexual conduct by Webby. (Tr. Vol. III, p. 6) However there was testimony that Ms. Dickey worked in close proximity to the employees, and she testified that she was a hands-on manager, and that she took over the responsibility of making sure that all the companies ran smoothly. There was also testimony from Liz Casoni that Dickey was present on at least two occasions when Webby made obnoxious and offensive sexual comments, and that she giggled and told him to "knock it off." (Tr. Vol. I, p. 211-212) I find that Dickey was aware of, and condoned, the sexual jokes and banter that occurred in Respondents' workplace. Dickey also stated she had no knowledge of complaints of sexual harassment against Webby and I credit her testimony that no one complained to her about sexual harassment perpetrated by Webby towards Complainant and that no employees complained that the work environment was abusive or hostile. Complainant admitted that she did not bring Webby's conduct to the attention of Dickey or Dickey's husband. (Tr. Vol. I, p.128) Dickey testified that Complainant was not terminated for reasons relating to any claims of sexual harassment, as Dickey was not aware of these allegations until months later when Complainant filed her complaint with MCAD. (Tr. Vol. III, p.24) I credit this testimony.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

General Laws Chapter 151B §4(1) prohibits discrimination in employment based on gender, which includes gender based sexual harassment and §4(16A) specifically prohibits the sexual harassment of any employee. Ramsdell v. Western Bus Lines, Inc., 415 Mass 673, 677 (1993). M.G.L.c. 151B; Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or sexually offensive work environment." G.L. c. 151B § 1(18); Collegetown Division of Interco v. Massachusetts Commission Against Discrimination, 400 Mass. 156, 165 (1987).

Complainant in this case alleges that she was a victim of both quid pro quo and hostile work environment sexual harassment perpetrated by Webby. She and numerous other witnesses testified credibly that as General Manager of Respondent corporations, Webby made frequent offensive sexual overtures and comments to her and that his conduct was severe and pervasive. She alleges that his actions constituted quid pro quo sexual harassment, because when she rejected his advances or let him know unequivocally that his behavior was unwelcome, he essentially stopped speaking to her and began to freeze her out of meetings. I credit the testimony of Complainant's witnesses that Webby engaged in inappropriate, offensive and unwelcome sexual conduct

toward Complainant. Complainant communicated to Webby, in no uncertain terms, that she was uninterested in his sexual advances and that she found his comments and gestures to be offensive and sophomoric. Although there was ample testimony that the work environment was raucous, that sexual jokes and banter were not uncommon, and that some female employees participated in the joking, even Webby admitted that Complainant did not participate in this conduct. While there were times when Complainant sought rapprochement with Webby, her conduct, whether it be offering Webby a hug, or dancing playfully with him at the office Christmas party, did not signal that she was inviting more intimate contact or a romantic relationship with him, nor does it defeat her claim that his sexual advances and comments were unwelcome.

To establish a claim of hostile work environment sexual harassment, Complainant must demonstrate that she was subjected to unwelcome sexual advances or remarks in the workplace where she was intimidated, humiliated, or stigmatized because of an abusive atmosphere. Complainant must show that: (1) she was subjected to sexually demeaning conduct; (2) the conduct was unwelcome; (3) the conduct was objectively and subjectively offensive; (4) the conduct was sufficiently severe and pervasive as to alter the conditions of her employment and create an abusive work environment; (5) her employer knew or should have know of the harassment and failed to take prompt and effective remedial action. *College-Town, supra.* at 162; *Fluet v. Harvard University et al.*, 23 MDLR 145, 161 (2001). Complainant has established that Webby subjected her to demeaning conduct of a sexual nature, that he touched her inappropriately on a number of occasions and made lewd comments and sexual advances to her. She has also established that this conduct was unwelcome and sufficiently severe and pervasive to create an

uncomfortable and difficult work environment for her. Webby's conduct continued after Complainant informed him it was unwelcome and made it clear that she was not interested in a romantic relationship with him. The evidence supports a conclusion that Webby perpetrated a sexually hostile work environment and his behavior certainly had the effect or purpose of altering the conditions of Complainant's employment.

Complainant testified that dealing with Webby's conduct was emotionally exhausting and that after refusing his advances, she worked longer hours, coming in early to avoid him. She testified there were times when Webby stopped speaking to her, except to deal with business related issues, usurped her managerial authority and made her feel like she was on the outside, versus being part of a team. Based on the credible testimony of Complainant and others, I conclude that Complainant was the victim of both quid pro quo and hostile environment sexual harassment perpetrated by Webby.

Termination

Massachusetts General Laws, c. 151B § 4(4) prohibits an employer from retaliating against an employee who has participated in prior protected activity. Paragraph 4 makes it unlawful "for any person, employer... to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five." Retaliation is motivated, at least in part, by a distinct intent to punish or rid the workplace of someone who complains about an unlawful practice." *Ruffino v. State Street Bank and Trust Company*, 908 F. Supp. 1019, 1040 (D. Mass. 1995). Participation in protected activity includes making internal complaints that

oppose unlawful practices and not just the filing of a formal complaint of discrimination. *Auborg v. American Drug Stores*, 21 MDLR 238, 242 (1999).

In order to establish a claim of unlawful retaliation, Complainant must establish by credible evidence that (1) she participated in protected activity; (2) she suffered an adverse employment action; (3) her employer knew of her participation in the protected activity prior to taking the adverse employment action; and (4) a causal connection exists between Complainant's participation in the prior protected activity and the adverse employment action. *Kelley v. Plymouth County Sheriff's Dept.*, 22 MDLR 208 (2000).

Complainant alleges that she was terminated from her employment in retaliation for her having rejected Webby's advances, however she has not proved by a preponderance of the evidence the necessary elements of a prima facie case of retaliation. Complainant did not prove that she engaged in any protected activity that Dickey was made aware of. By her own admission, Complainant did not notify either Dickey or her husband about Webby's conduct or that she considered it to be sexual harassment. While such a complaint is not necessary to find Respondents vicariously liable for sexual harassment, Dickey's knowledge of protected activity is necessary to find that Respondents retaliated against her for opposing unlawful practices. I credit Dickey's assertion that she was not aware of any complaints of sexual harassment by Complainant or anyone else, prior to making her decision to terminate Complainant. While Dickey was aware of and condoned sexual joking and banter in the workplace, there is no evidence that any employees complained to her that the work environment was sexually hostile or intimidating. Since Dickey was unaware of any protected activity by

Complainant, she could not have retaliated against her for opposing Webby's unlawful conduct.

However, even if one were to argue that knowledge of Complainant's protestations may be imputed to Dickey, Complainant's claim of retaliatory termination must fail for lack of causation. Complainant would have me find that she was fired for crossing Webby, but notes that other male employees, with no claims of sexual harassment, were also allegedly fired for crossing Webby. The evidence supports a conclusion that Complainant's termination resulted from a number of complex circumstances, both personal and professional, but not from retaliation stemming from Webby's sexual harassment. I credit Dickey's testimony that she took issue with Complainant for reasons unrelated to Webby, and that she made the decision to terminate Complainant after being displeased with Complainant's performance and attitude for sometime, but only after Complainant had installed a second kitchen for an employee at cost in violation of Dickey's directive. Dickey testified that from the outset, Complainant did not meet expectations as manager of the show room, missed deadlines and failed to implement a marketing plan and sales strategy. Dickey hired O'Keefe to assist Complainant with organizing sales and marketing functions. According to Dickey, complaints were being lodged against Complainant by her staff and Complainant corroborated that her staff called a meeting with Webby without her knowledge. The evidence also suggests that Dickey resented Complainant's relationship with her husband. She was furious at Complainant for going to her husband to countermand her orders and for inviting her husband's new girlfriend to the design show room opening and expressed her anger to Complainant.

Complainant would have me find that these reasons were a pretext for retaliation, but am not persuaded that Dickey acted with retaliatory intent related to Webby's sexual harassment. I credit Dickey's testimony that she believed Complainant ignored her directives and was insubordinate and that this was the reason Dickey decided to terminate Complainant's employment after consulting with her husband. While I might reasonably draw the inference that Webby supported this decision, there is no evidence to suggest that he instigated Complainant's termination or unduly influenced Dickey's decision. While Webby may have been upset that Complainant rejected his advances, there is insufficient evidence that this was the "but-for" cause of her termination.

Finally, the evidence suggests that a number of employees who testified in this case disliked Dickey and Webby and had disputes with them related to the business and various projects that were problematic. Other employees besides Complainant were terminated during this period. I find that a number of issues, including the implosion of the business, contributed significantly to create a dysfunctional and unpleasant work environment. There was ample testimony that the workplace was chaotic and stressful as a result of Bill Dickey's problems, the break-up of the Dickey's marriage, and the infighting of employees who were taking sides against Dickey or her husband partially in pursuit of their own financial gain. Jobs were not getting done in a timely fashion, significant mistakes were being made, and the employees resented Webby having been hired and Laurie Dickey taking over the reigns of the company. Complainant was not the only employee to get mired in this family feud and dysfunctional environment. Given all of the above, I find that Complainant's termination was not unlawful retaliation.

Liability

Complainant charges a number of corporate and business entities operating under the umbrella of R.C. Homes, Inc., as well as John Webby and Laurie Dickey individually. She did not bring charges against William Dickey who was President of the various companies and with whom she had a good relationship. The corporate Respondents named in this matter defaulted and were not formally represented at the hearing. Laurie Dickey asserted that the businesses are now dissolved and no longer operating² and that she was not representing the corporations, but appearing in her individual capacity only. Complainant seeks a finding of liability against all of the named business entities for unlawful sexual harassment and termination of her employment. However, having concluded that Complainant's termination was not in retaliation for protected activity or for rejecting Webby's advances, I decline to find the Respondents, corporate or individual, liable for discriminatory termination.

I turn next to the question of liability for sexual harassment. I have concluded that John Webby was the perpetrator of unlawful sexual harassment directed at Complainant. As General Manager of the various companies doing business under the rubric of, or related to R.C. Homes, Inc., Webby was Complainant's direct supervisor. As a high level manager he was imbued with substantial authority over his subordinates in all the named business entities, or their successors. "It is the authority conferred upon a supervisor by the employer that makes the supervisor particularly able to force subordinates to submit to sexual harassment." *College-Town, supra.* at 166. Complainant has testified that she was hired by R.C. Homes, Inc., but came to work for, and be paid

² No corporate documents verifying the existence of or dissolution of any of these business entities were admitted into evidence.

by, Edgewater Kitchen and Bath, Inc. Given the intermingling of corporate forms, employees and assets (see discussion *infra.*) and the ambiguities and confusion regarding the question of exactly who the employer is in this case, I find all the businesses named as Respondents vicariously liable for Webby's actions.³ *Id.* at 167. The named business Respondents are therefore liable for violations of G.L.c. 151B ss. 4(1) and (16A).

In order to prove an individual liable for discrimination, where there is direct evidence, Complainant must show that the perpetrator of the harassment was a supervisor with direct control over Complainant's employment who acted in deliberate disregard of her rights. *Woodason v. Town of Norton*, 25 MDLR 62, (2003) Complainant has proven that John Webby is individually liable for the acts of sexual harassment that he perpetrated against Complainant in violation of G.L.c. 151B s. 4(4A). This section of the statute prohibits any person from intimidating or interfering with ones rights protected by c. 151B, including the right to be free of sexual harassment in the workplace. Likewise, I find that Laurie Dickey, both as the employer (see discussion *infra.*) and in her individual capacity, participated in and condoned inappropriate and offensive sexual comments and joking in the workplace ultimately sanctioning behavior that allowed Webby to perpetrate an abusive work environment for Complainant. As a principal in the company, who had authority and an obligation to act to ensure that such conduct ceased, Dickey is both individually liable, as an aider and abettor, and liable as the employer, for her actions in condoning and sanctioning conduct that led to a sexually charged work environment. *See*

³ There is a question as to whether assets from R.C.Homes were diverted to Blackwood Development Corp. There was testimony that Blackwood is the successor to R.C. Homes. (see below)

Beaupre v. Smith & Assocs. et al., 50 Mass. App. Ct. 480 (2000) (president of company found individually liable for harassment as aider and abettor) This is true even in the absence of any formal complaints from employees. I conclude that Dickey is liable for violation of sections 4(1), (16A) and 4(5) of the statute.

Notwithstanding the above, Complainant also argues that given the tangled web of corporate entities and successor corporations owned and operated and possibly dissolved by the principals, it is legally appropriate to pierce the corporate veil to find Laurie Dickey individually liable for Webby's acts of sexual harassment. Complainant asserts that Dickey's individual liability comes from her failure, as a principal, to adhere to corporate formalities of separate legal entities. Some of the factors to consider in piercing the corporate veil are: common ownership; pervasive control; confused intermingling of business assets; non-observance of corporate formalities; and non-functioning of officers and directors. *See Platten v. NG Bermuda Exempted Ltd.*, 437 F. 3d 118, 128 (1st Cir, 2006). The corporate fiction may be disregarded where there is substantial disregard of the separate nature of the entities or serious ambiguity about the manner in which various corporations and their respective representatives are acting. *Zimmerman v. Cambridge Credit Counseling Corp.*, 529 F. Supp. 2d 254, 272 (D. Mass. 2008) The doctrine of corporate disregard is an equitable tool that authorizes courts to pierce the corporate veil where necessary "to provide meaningful remedy for injuries and to avoid injustice." *Hutchins v. Cardiac Science, Inc.*, 456 F. Supp.2d 173, 194 (D. Mass 2006).

The testimony at hearing was that the corporate Respondents were run under the name of the "Sagamore Design Center," and under the umbrella of Ridgewood Custom

Homes, Inc. Complainant was hired by one corporation, paid by another corporation, and seemingly came to be employed by the second, without ever having left the first. She was hired by R.C. Homes, Inc. as the General Manager of the kitchen and bath center and came to be paid by Edgewater Kitchen and Bath, Inc. Almost simultaneously, John Webby was hired as the General Manager of all the related corporate Respondents, but was only paid by one of the corporations. The corporate Respondents shared space, resources, officers and managers. There was a confused intermingling of the various corporations, their employees, assets and management, but Laurie Dickey remained an active principal in all of them. She testified that not one of the corporate Respondents was adequately capitalized as of 2004, and only had worth under the “umbrella” of the construction company. According to Dickey, Blackwood Development Corporation was formed after the events in question as a successor to R.C. Homes, Inc. after that company went out of business, and that she is the sole principal of Blackwood Development Company. Dickey stated that Ridgewood Excavating and Ridgewood Architectural & Design never existed as business entities as far as she knew. No corporate documents verifying the existence of or dissolution of any of these business entities were admitted into evidence. Dickey testified the corporations are now out of business. Equity dictates that given the circumstances of this case, where the corporate forms were blatantly disregarded and intermingled, that Dickey not be allowed to hide behind the corporate form. The circumstances require piercing the corporate veil to find Dickey individually responsible for sexual harassment and to provide a meaningful remedy to Complainant. Therefore, I find the above named corporate Respondents and Laurie Dickey liable for violations of G.L. c. 151B s. 4(1) and (16A). Laurie Dickey is also liable for violations

of s. 4(5). John Webby is liable for violations of s. 4(4A). I conclude that all Respondents are jointly and severally liable for damages arising from their violations of c. 151B.

IV. REMEDY

Upon a finding of discrimination, the Commission is authorized to award remedies to make the Complainant whole, and to ensure compliance with the anti-discrimination statute. G.L.c. 151B s. 5; *Stonehill College v. MCAD*, 441 Mass. 549, 576 (2004). *Buckley Nursing Home v. MCAD*, 20 Mass. App. Ct. 172 (1988). The Commission may award monetary damages for, among other things, lost compensation and benefits, lost future earnings, and emotional distress suffered as a direct and probable consequence of the unlawful discrimination. In addition the Commission may issue cease and desist orders, award other affirmative, non-monetary relief and assess civil penalties against a Respondent.

Since I have concluded that Complainant's termination was not discriminatory, she is not entitled to back pay. She is, however, entitled to damages for emotional distress she suffered from being subjected to sexually hostile work environment and having to endure Webby's egregious and offensive behavior. Complainant's claim for emotional distress need not be based on expert testimony and can be based solely on her testimony as to the cause of the distress. Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. *Stonehill, supra.* at 576. An award must rest on substantial evidence that it 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 Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. *Id.* Complainant testified that she found Webby's advances, gestures and comments abusive and offensive and that she protested whenever he engaged in such conduct. She stated that working with Webby became emotionally difficult. After she rejected his advances she got the cold shoulder from Webby and felt frozen out. Complainant testified that she lost sleep, lost weight because of the stress, broke out in a rash, lost hair and worked longer hours, coming in to the office when Webby was not working in order to avoid him. There was testimony that Complainant was seen crying in the office on one occasion because of the stress she was under. At some point, Complainant extended an olive branch to Webby and their working relationship improved for a time, but when he reverted to his offensive behavior, she felt "exhausted." I find that Complainant suffered emotional distress as a result of Webby's harassment and is entitled to damages for the harm she suffered.

However, there was ample testimony suggesting that the business environment of this workplace was hostile and stressful for many other reasons unrelated to Webby's inappropriate sexual behavior. There was evidence that employees were under a great deal of pressure because of the many changes in company, the break-up of the marriage of the principals, William Dickey's personal issues, the large number of ongoing projects with jobs going awry, and employees taking sides and feuding with one, or the other, of the principals. Dickey testified that she was trying to make employees accountable, demanding better performance and trying to hold the company together. Employees were not happy that Laurie Dickey and Webby were taking over the reigns of the business and demanding greater accountability. I find that Complainant's stress is also attributable to

some of these factors. Given these circumstances, I find that Complainant is entitled to an award of emotional distress damages in the amount of \$50,000.

V. AFFIRMATIVE RELIEF / CIVIL PENALTY

The Commission is also authorized to order affirmative relief where appropriate to effectuate the purposes of G.L. c. 151B and to assess civil penalties for egregious violations of the statute. While the companies owned by Dickey at the time of these events may no longer be in operation, it is unclear that she does not continue to be involved in running a home construction business. Therefore the imposition of training is appropriate to help ensure the prevention of future discriminatory conduct at businesses owned and operated by her. Therefore, Dickey shall institute training as detailed below in any and all companies she continues to own or operate.

I also conclude that a civil penalty is in order against Respondent Webby for his unabated conduct as of the perpetrator of sexual harassment and against Dickey for condoning and sanctioning such behavior. The conduct of both was sufficiently egregious to warrant the imposition of a \$5000 penalty against each of them.

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, s. 5, Respondents are hereby ordered to:

- (1) 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) 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 \$5000.
- (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. Respondents 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 for a designated representative to 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.

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

So Ordered this 29th day of October, 2010.

Eugenia M. Guastaferr
Hearing Officer