COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and LULU SUN,
Complainants

v. DOCKET NO. 05-BEM-00783
DOCKET NO. 06-BEM-02993

UNIVERSITY OF
MASSACHUSETTS, DARTMOUTH,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty E. Waxman in favor of Complainant, Lulu Sun. Following an evidentiary hearing, the Hearing Officer concluded that Respondent had violated G.L. c. 151B and was liable for unlawful discrimination and retaliation. The Hearing Officer found that Respondent denied Complainant's application for a promotion during the 2003-2004 and the 2004-2005 academic years on the basis of her gender, race/ancestry and national origin. The Hearing Officer also found that the Complainant was subjected to retaliatory conduct after engaging in protected activity, including filing formal charges with the Massachusetts Commission Against Discrimination (MCAD). The Hearing Officer ordered that the Complainant be promoted to the status of Full Professor, awarded Complainant back pay of $154,503.30, as well as $200,000 in damages for emotional distress and assessed interest on the entire award of damages. In addition, the Hearing Officer ordered Respondent to pay a civil penalty of $10,000 and ordered Respondent to undergo training.

Following the decision of the Hearing Officer, Respondent promoted Complainant to the position of Full Professor. It is the understanding of the Commission that Respondent paid all back pay payments required by the Hearing Officer's decision. The Respondent does not challenge the Hearing Officer's decision with regard to liability for its discriminatory practices or retaliation, nor does it challenge the promotion of Complainant to the status of Full Professor or the award of back pay. On appeal to the Full Commission, Respondent only challenges the award of emotional distress damages, the civil penalty and the training requirements, and asks that they be vacated, modified or set aside.

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. MCAD, 365 Mass. 357, 365 (1974); M.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 these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Hearing Officer's decision cannot be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. The Full Commission's role is to determine 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 otherwise not in accordance with the law. See 804 CMR 1.23.

We have reviewed the Respondent's Petition for Review and the Complainant's opposition to the same. All objections raised to the Hearing Officer's Decision were weighed in accordance with the standard of review described above. Having carefully reviewed the record of proceedings, we find no material errors of law or fact. We also conclude that there is substantial evidence in the record to support the Hearing Officer's findings. To the extent the findings of material facts were in accord with the decision, they are accepted and herein incorporated by reference; to the extent they were not, they are rejected. To the extent that testimony of various witnesses was not in accord with the decision, it is not credited.

I. EMOTIONAL DISTRESS

Respondent challenges the Hearing Officer's $200,000 award for emotional distress as unfair, unreasonable, disproportionate, arbitrary and capricious and unsupported by substantial evidence.

Respondent argues that the only evidence to support Complainant's emotional distress was witness testimony and that there were no corroborating documents or medical records to support the nature, character, severity, frequency, duration and or/mitigation of Complainant's emotional distress. Respondent asserts that two of Complainant's witnesses who were fellow academic professors had a personal stake in the matter due to their continuing support for Complainant's promotion, suggesting that their testimony was biased. The Hearing Officer found the testimony of the Complainant's professional colleagues credible and their testimony provided factual basis

as to the nature and severity of the harm suffered by the Complainant, as well as its relationship to Respondent's conduct. These witnesses were able to contrast Complainant's demeanor prior to her unsuccessful promotional attempts. The Hearing Officer was in the best position to evaluate the credibility of these witnesses, and we defer to her findings. She was also in the best position to evaluate Complainant's testimony as to her emotional distress, as well as the testimony of Complainant's 89 year old father, who provided corroborating testimony regarding the effect of Respondent's actions upon his daughter. Complainant's father testified that his daughter has been very sad since 2005, is often unable to sleep, telephones him crying and has developed a rash on her hands and legs.

Respondent further asserts that Complainant's rash, one of the physical manifestations of her emotional distress, did not persist for as long as stated in the Hearing Officer's decision, arguing "**the rash did not occur in the Fall of 2003**..." Respondent's Petition for Review, page 27 (emphasis in the original). [1] Whether or not the Complainant's rash persisted for the entirety of the time between the beginning of her failed promotional process through to the time of hearing is not dispositive as to whether or not Complainant suffered emotional distress during the same period. Although such evidence is beneficial, it is well recognized that there is no requirement for a physical manifestation of the emotional distress. Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Further, Respondent does not dispute that Complainant suffered from a rash as a result of the distress associated with its actions.

[1] The Hearing Officer's finding stated, "**Since** the Fall of 2003, she has suffered from an inability to sleep, nightmares, weight loss, and a rash." Decision of the Hearing Officer, ¶72 (emphasis added).

Respondent argues that Complainant's continued performance as an English Professor and very good attendance record contradicts the severity of her emotional distress. That Complainant was able to perform her position during the period of time in question is not evidence which precludes the persistent and severe emotional distress she suffered. Witnesses observed by the Hearing Officer and deemed credible testified that Complainant became timid about her place in the classroom and upset as a result of her experiences in her thwarted promotion attempts. Moreover, the Hearing Officer found that Complainant was not able to produce any scholarship since Respondent denied her promotion, over a substantial period of time, because of the stress induced by Respondent's discriminatory and retaliatory actions.

To be compensable, there must be a sufficient causal connection between Complainant's emotional distress and the Respondent's unlawful acts. Stonehill College v.MCAD, 441 Mass. 549, 576 (2004). An award of emotional distress damages is case specific, and must rest on substantial evidence with its factual basis clear on the record. Id. The Hearing Officer found the testimony of Complainant and her witnesses' testimony credible. Among other findings, she concluded that "the vivacity, confidence, and vigor Complainant exhibited prior to the events at issue are hard to square with the fragile and wan woman who presented herself for public hearing. It appears that the Respondent's discriminatory acts undermined the self-confidence and verve of a woman described by students as one of the finest teachers they had at UMass Dartmouth and by fellow academics as performing 'cutting edge' research." Respondent's arguments do not justify a reduction of the award. The Hearing Officer's decision provides sufficient evidence to support the award; it evaluated and considered the nature and character of the

harm she suffered, the severity of the harm, and the length of time Complainant suffered. Stonehill College v. MCAD, 441 Mass. 549 (2004). Her award was not excessive or an abuse of discretion. The Full Commission appropriately gives great deference to the Hearing Officer's determination as to the compensation necessary to make a victim of discriminatory conduct whole. See, Baldelli v. Town of Southborough Police Dept., 18 MDLR 167 (1996) (affirming Hearing Officer's $250,000 emotional distress award). We find no error in the Hearing Officer's determination.

II. CIVIL PENALTY AND TRAINING

Respondent appeals the Hearing Officer's award of a civil penalty of $10,000.00 and the eight hour training session to be attended by the human resource staff, the Dean of the College of Arts and Sciences, the Provost and the Chancellor. As recognized by the Respondent, the MCAD is authorized by G.L. c. 151B §5 to impose a civil penalty against a Respondent who has been found to commit a discriminatory practice. The statute authorizes a penalty of $10,000 if the Respondent has not been adjudged to have committed any prior discriminatory practice. Respondent has not appealed the Hearing Officer's determination that it committed a discriminatory practice, yet takes issue with the Hearing Officer allegedly acting as a "super-promotion committee." While the Respondent may be dissatisfied with the Hearing Officer's determination, this dissatisfaction does not negate the finding that it committed a discriminatory practice – the predicate for the civil penalty. We conclude that the civil penalty was well within the discretion of the Hearing Officer.

Similarly, when, as here, the MCAD has found that Respondent has engaged in unlawful practices, it is authorized by statute to take affirmative action as in the judgment

of the commission will effectuate the purposes of G.L. c.151B. We determine that the training requirements imposed by the Hearing Officer will effectuate the purpose of G.L. c.151B, are reasonable and are hereby affirmed.

In sum, we have carefully reviewed Respondents' Petition and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. We conclude that the Hearing Officer's findings as to emotional distress damages and civil penalty and training are supported by substantial evidence in the record. We therefore deny the appeal.

III. ATTORNEYS FEES AND COSTS

Having affirmed the Hearing Officer's emotional distress and affirmative relief awards in favor of Complainant, and recognizing that the Respondent does not challenge liability for its discriminatory practices, 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. Complainant's counsel filed an initial petition on June 13, 2011 seeking attorney fees in the amount of $554,854.50 for work performed by attorneys and paralegals at the law firm of Petrucelly, Nadler & Norris, P.C. (PNN) and costs in the amount of $11,331.47. In addition, Complainant's initial petition sought attorney's fees for work performed by her prior attorney, Betsey Ehrenberg, of Pyle, Rome, Lichten, Ehrenberg and Liss-Riordan, P.C. (PRLEL) in the amount of $4,500. The total award for attorney's fees and costs sought in the June 2011 petition is $570,685.97. Respondent opposed the June 2011 petition. Complainant's counsel also filed a supplemental petition seeking fees in the amount of $ 24,916.50 and costs in the amount of $87.90 on August

10, 2011.[2] The August 2011 supplemental petition sought fees associated with Complainant's intervention and opposition to Respondent's Petition for Review of the Hearing Officer's decision and her reply to Respondent's Opposition to Complainant's Petition for Fees. In total, Complainant seeks $584,271 in fees and $11,419.37 in costs.

Following a public records request to obtain records from the Respondent concerning time spent defending the discrimination and retaliation claims during the period from October of 2006 through January of 2011, Complainant submitted a supplemental memorandum in support of its Petition. The supplemental memorandum indicates that the billed attorneys hours incurred by Respondent for that period (October 2006 through December of 2010) totaled at least 1,855.25 hours. In contrast, Complainant's attorneys apparently billed 1,205.8 hours for the same period.[3] Respondent opposed the supplemental memorandum, arguing that the submission was untimely and comparison between the parties' billed attorney's hours is irrelevant. Respondent did not dispute the amount of hours it allegedly was billed by its counsel for the period to defend the discrimination and retaliation claims.

A. Determination of a Reasonable Fee Award

The Commission has adopted the lodestar method to determine what constitutes a reasonable fee. Baker v. Winchester School Committee, 14 MDLR. 1097 (1992). First, the Commission calculates the number of hours reasonably expended to litigate the claim and multiplies that number by a reasonable hourly rate. Second, the Commission may adjust the resulting "lodestar" based on a number of factors to determine a reasonable

[2] The Respondent did not specifically oppose the August 2011 Supplemental Petition for Attorney's Fees.
[3] These hours did not include time spent following the public hearing which occurred in December of 2010.

award of attorney's fees and costs. Id., See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); Joyce v. Town of Dennis, 720 F.3d 12, 26–27 (1st Cir. 2013).

In exercising its discretion to adjust the lodestar, the Commission may consider a number of factors, including the nature of the case and issues presented, the likelihood of success at the time the attorney was retained, the risk of nonpayment inherent in not prevailing, difficulty of proof of liability, length of time and number of hours consumed by the case and whether the respondent was prepared to provide a vigorous and strong defense. Baker v. Winchester School Committee, 14 MDLR 1097, 1101 – 1105 (1992); See, Haddad v. Wal-Mart Stores, Inc., 455 Mass. 1024 (2010) (Rescript). The determination of what constitutes a reasonable fee is one that the Commission approaches utilizing its discretion and its understanding of the litigation and of the time and resources required to litigate a claim of discrimination in the administrative forum. However, in adjusting the lodestar, the Commission is not required to do a factor-by-factor analysis. Diaz v. Jiten Hotel Management, Inc., 741 F.3d. 170, 177 (1st Cir. 2013) citing Berman v. Linnane, 434 Mass. 301, 303 (2001).

Further, in awarding attorneys' fees, the Commission recognizes the strong public interest in allowing claims to proceed with competent counsel to vindicate the public interest to discourage unlawful discrimination. Baker v. Winchester School Committee, 14 MDLR 1097, 1102 (1992) ("This Commission, as part of its obligation to ensure the effectiveness of Chapter 151B, will liberally interpret the attorney's fees provision of Chapter 151B, including considerations of enhancement, to recognize the importance of private enforcement of civil rights legislation."); See, Haddad, 455 Mass. at 1025; Diaz v. Jiten Hotel Man't Inc., 741 F. 3d at 178 ("rules surrounding fee-shifting

in civil rights cases are designed to encourage attorneys to take these types of cases and are based on full compensation for the work performed").

The Commission's efforts to determine the number of hours reasonably expended involves more than simply adding all hours expended by all personnel. The Commission reviews the Complainant's submissions and will not simply accept counsel's calculations of the number of hours expended 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 should be deducted from the total, as should time spent on work that is insufficiently documented. See, Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir. 1984); Brown v. City of Salem, 14 MDLR 1365 (1992). Counsel should be compensated only for those hours reasonably expended to advance the successful claims before the Commission. In determining whether hours are compensable, the Commission reviews the contemporaneous time records maintained by counsel and considers the hours expended and tasks involved.

This was a complex case that was tried by able counsel for Complainant, aggressively litigated by Respondent and resulted in a totally favorable outcome for Complainant. However, having reviewed the contemporaneous time records that support the attorney fee request and Respondent's opposition, we conclude that the fee request should be modified downward. Where we find that the hourly rates are excessive, we will adjust those rates downward. Where it is apparent that work performed did not advance the claims before the Commission, we will deduct those hours. In addition we will take a further percentage reduction from the total to account for billing that we deem not reasonable.

B. Reasonable Hourly Rates and Costs

The Commission determines a reasonable hourly rate for calculation of an attorney's fee award by comparing the petitioning attorney's hourly rate with the rates that are customarily charged by attorneys with comparable expertise and experience in the same geographic region. Baker, 14 MDLR at 1100. The hourly rates proposed by Complainant for the fee petitions are as follows: Attorney Jeffrey Petrucelly - $435.00, Attorney Eliza Minsch - $265.00, Attorney Betsy Ehrenberg - $200.00, Paralegal Susan Jacoby - $140.00 and law clerks - $80.00.

Attorney Petrucelly's billing rate of $435 per hour conforms to the guidelines set by the Massachusetts Law Reform Institute (MLRI)[4]. He has been engaged in the practice of law for over forty years, is a well-respected practitioner in the field of employment law, a long-time member of the Massachusetts Employment Lawyer's Association and substantiated his experience in a detailed affidavit. We deem his hourly rate of $435 to be reasonable. Similarly, we view the rates sought for Attorney Betsy Ehrenberg and the law clerks as reasonable.

With respect to the rates sought for Paralegal Susan Jacoby and Attorney Eliza Minsch, however, we agree with Respondent that there is an insufficient basis for applying these rates. The MLRI Fee Schedule provides a rate of $125.00 per hour for

[4] The MLRI guidelines are a helpful tool for determining the reasonableness of an attorney's hourly rate, however we note other factors may guide our determination of whether the hourly rate is reasonable, including experience in the particular subject area, number of successful cases litigated, reputation in the employment bar, etc. For lawyers with 1-3 years of experience, the suggested hourly rate from the 2010 MLRI Attorneys Fees Scale is within the range of $156-179; for lawyers with 4-6 years of experience, the suggested hourly rate is the range of $190-212; for lawyers with 7-10 years of experience, the suggested hourly rate is in the range of $229-265; for lawyers with 27 or more years of experience, the suggested hourly rate is $435. Although the attorney's fees were incurred over the period from 2005 through 2011, we exercise our discretion to apply a single reasonable rate to the petition. See, Rolland v. Cellucci, 106 F.Supp.2d 128, 142 (D. Mass. 2000) (recognizing discretion to award rates appropriate to the moment of the fee request, rather than calculating various rates over time).

paralegals, yet the Complainant seeks $140.00 per hour for paralegal work without specific justification relative to this particular matter. We deem $125.00 to be a reasonable rate for the paralegal work. Similarly, although Attorney Minsch graduated from law school in 2004, the rate sought for her work beginning in 2008 of $265.00, is at the high end of the MLRI fee scale for attorneys with seven to ten years of experience. When Attorney Minsch joined the case on January 15, 2008, she had been a licensed attorney for three years and one month.[5] Although a higher rate may be justified with sufficient relevant experience, the Complainant has not submitted adequate evidence by affidavit or otherwise to support this rate. By August 9, 2011, the last date for which Attorney Minsch apparently billed in the matter, she had been practicing as a licensed attorney for six years and nine months. In accordance with the 2010 MLRI guidelines, the suggested hourly rates for an attorney of this level of experience would be as follows: $179 (the recommended rate for a lawyer with three years of experience) for the work she performed until December 16, 2008; and $201 (the mid-range between $190 and $212 for a lawyer with 4-6 years of experience) for the work she performed between December 17, 2008 and August 9, 2011. Given these ranges and the level of experience of Attorney Minsch's experience demonstrated by Complainant's submissions, we determine that $190 is a reasonable hourly rate for Attorney Minsch's work.

Complainant seeks costs in the amount of $11,331.47, including the costs of photocopying, facsimile transmissions, long distance telephone calls, courier services, deposition transcripts and service of depositions and trial subpoenas in her initial petition for counsel fees and costs. In her Supplemental Petition, Complainant seeks costs in the

[5] Attorney Minsch was admitted to the Massachusetts Bar on December 16, 2004.

amount of $87.90 for photocopying and courier services. We find these costs to be sufficiently documented and reasonable to award to Complainant.

C. Hours Reasonably Expended

The Complainant seeks compensation for attorney's fees based upon the following total hours through August 9, 2011 by timekeeper: 1142.65 hours for Attorney Petrucelly, 246.4 for Attorney Minsch, 22.50 hours for Attorney Ehrenberg, 4.15 hours for Paralegal Jacoby, and 215.65 hours of law clerks' time. Hours for which compensation is sought that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to the prosecution of the claim are subtracted, as are hours that are insufficiently documented. Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir.); Miles v. Samson, 675 F. 2d 5 (1st Cir. 1982); Brown v. City of Salem, 14 MDLR 1365 (1992). Only those hours that the Commission determines were expended reasonably will be compensated. In determining whether hours are compensable, the Commission considers contemporaneous time records maintained by counsel and reviews both the hours expended and tasks involved.

1. Time entries lacking specificity

An attorney fee petition may be discounted where the time records are considered too vague or generic. Walsh v. Boston University, 661 F.Supp.2d 91, 106 -108 (D. Mass. 2009). Time records require specificity in order for the Commission to determine whether the work performed was excessive, unproductive, duplicative or otherwise unnecessary. The nature of the work performed is an important detail to be included in each entry. Id. Entries that simply reflect an email or telephone call with opposing counsel absent an explanation of the nature or subject matter of the task may be deemed

insufficient and may be refused. Id. The Commission has discounted time entries where sufficient itemization was not provided. Waite v. Associated Heating Corp., 18 MDLR 38 (1996) (no itemization of work was provided to support attorneys' fees request). Similarly, in Williams v. New Bedford Free Pub. Library, 24 MDLR 171 (2002), the Commission reduced attorney fees because the lack of specificity prevented the Commission from identifying to which proceeding the hours applied.

For each time entry, PNN's records identified the date, professional service, hour(s) expended, hourly rate charged, and dollar amount. The description of each professional service for which PNN billed ranged from such generic entries as "Legal research, memorandum" and "e-mail to attorney" to more detailed descriptions such as "prepare deposition questions." In this case, although PNN has itemized its time entries, the description of professional services lacks a sufficient level of detail in some instances to permit the Commission to determine whether it was necessary and if the amount of time expended was reasonable. By way of example, PNN billed a total of 167.4 hours with time entries marked "Legal research, memorandum." These entries lack the requisite level of detail for the Commission to determine whether the time expended was excessive or redundant. Similarly, the time entries for "E-mail" without any description of the subject matter and without any context in the surrounding entries do not permit the Commission to evaluate the task. In contrast, PRLEL's time entries contain sufficient detail to permit the Commission to evaluate the reasonableness of the fee petition.

We discount the attorneys' fees petition associated with PNN's entries by 25% to account for this lack of specificity.

2. Block-billing

The Respondent raised the concern that PNN engaged in the disfavored practice of block-billing listing multiple tasks in single entries, citing Haddad v. Wal-Mart Stores Inc., 455 Mass. 1024, 1028 (2010) (Rescript). The Haddad decision, did not, however, state that block-billing should lead to an automatic reduction of attorney's fees. Instead, when block-billing is used, the reasonableness of each task listed may be evaluated by dividing the hours billed by the number of tasks listed to arrive at the average time for each task or by allocating the time to what appears to be the primary task. Id. at 1026-27.

In this case, PNN frequently listed multiple services for a single time entry. For example, on 9/18/2009, PNN billed $435 for 1 hour of the following professional services: re-draft memorandum, research, conference with client." Despite PNN's failure to specifically allocate the time expended on each of these three discreet services, the amount billed appears reasonable under either of Haddad's guidelines. Dividing the hour by the three tasks listed, 20 minutes is not an unreasonable length of time for each of the three tasks. Alternatively, one hour may also a reasonable amount of time for the primary task of re-drafting the memorandum. A review of all block-billed time entries through this lens did not reveal any specific instances of unreasonable billing. As discussed above, however, the lack of specificity concerning the particular memorandum or research creates difficulty for the Commission in evaluating whether the task was an unreasonable expenditure of time. The Commission has already discounted the fee petition on that basis by 25%. Consequently, while ordinarily block-billing should be discouraged and will result in a discount of fees, in this particular case the Commission will not further reduce attorney's fees based on this practice.

3. Duplicative and excessive time entries.

The Respondent objects to the fee petition based on hours that it believed to be duplicative or excessive billed by PNN. The Complainant's counsel avers that he thoroughly reviewed the billing records and deleted amounts of time that were duplicative and excessive. Affidavit of Jeffrey Petrucelly in Support of Complainant's Petition for Counsel's Fees and Costs, ¶ 9. Hours expended that are duplicative ought to be deducted from the total award requested. Williams v. Karl Storz Endovision, Inc. 26 MDLR 157 (2004). Respondent argues that where Attorney Petrucelly and Attorney Minsch were working on the same documents or at the same hearing, this effort was duplicative. We have examined entries where the Complainant's attorneys were both working on the same effort. For example, both attorneys appeared at the public hearing. However, both attorneys had an active role examining witnesses during the hearing. We have determined that in this case, it was reasonable for two attorneys to prepare for and participate in the public hearing for Complainant. Similarly, in this case, we have determined that it was reasonable for both attorneys to work on documents together.

Respondent also argues that particular tasks conducted by PNN took excessive time. Respondent argues that PNN expended excessive time on its discovery effort, particularly on the review of documents produced as a result of Complainant's "extensive, unnecessary and overbroad" discovery requests. [6] Respondent also argues that Complainant spent excessive time preparing for and reviewing depositions. Respondent

[6] The Respondent and Complainant engaged in disputes and motion practice concerning the scope of discovery in the course of the proceedings. For example, the Hearing Officer, in response to Complainant's Second Motion to Compel and/or Sanctions issued a Discovery Order on December 10, 2009. This Discovery Order reopened discovery for a period of three months to obtain deposition testimony and the production of certain documents. To the extent Respondent continued to view the discovery as overbroad, it could have separately moved for a protective order pursuant to 804 C.M.R. 1.19(4).

also asserts that Complainant's billing to prepare its post-hearing brief is excessive, noting that the Commission has reduced such fees in prior decisions. See Cheeks v. Dep't of Corrections, 29 MDLR at 153 (2007). We have examined these entries, and cannot conclude that excessive time was spent on these entries in this particular case.

The factual issues associated with this prolonged failure to promote case were complex. The case had a long litigation history at the Commission which consolidated two separate complaints. The public hearing was conducted over six days. It appears that Respondent waged a formidable defense, which required Complainant in turn to expend significant attorney time to pursue the claims. Ultimately, Complainant was completely successful in this protracted case, obtaining the long sought-after promotion and damages. Recognizing these facts as well as the particular entries disputed by Respondent, leads us to conclude that the hours expended by counsel for Complainant were required in order to obtain the favorable result.

D. Calculation of Attorney's Fees

1. Attorney's Fees Based on Work Performed by PNN

We calculate the attorney's fees to be awarded based on work conducted by PNN as described in the initial Petition for Counsel Fees as follows:

Timekeeper	**Initial Petition Hours**	**25% Discount Applied**	**Rate**	**Total per Timekeeper**
Jeffrey Petrucelly	1095.6	821.7	435	$357,439.50
Eliza Minsch	230.5	172.88	190	32,846.25
Law Clerks	177.75	133.31	80	10,665.00
Susan Jacoby	4.15	3.11	125	389.06
TOTAL				$401,339.80

We calculate the attorney's fees to be awarded based on work conducted by PNN as described in the Supplemental Petition for Counsel Fees as follows:

Timekeeper	**Supplemental Petition Hours**	**25% Discount Applied**	**Rate**	**Total per Timekeeper**
Jeffrey Petrucelly	47.05	35.29	435	$15,350.06
Eliza Minsch	6.9	5.18	190	983.25
Law Clerk	37.9	28.43	80	2,274.00
TOTAL				$18,607.31

2. **Fees for Previous Counsel**

Complainant seeks $4,500 in reimbursement for fees paid to her previous attorney, Betsy Ehrenberg for 22.5 hours of work at $200 per hour for services provided from October 4, 2004 through July 11, 2005, including meeting with Complainant, reviewing the denial of her promotion, reviewing an arbitration decision and collective bargaining agreement, filing her MCAD complaint and rebuttal. As noted previously, we find the hourly rate charged to be reasonable. We shall, however, subtract 1.9 hours apparently spent on the collective bargaining process and not related to MCAD[7] as reflected on the bill dated February 16, 2005. We conclude that Complainant is entitled to be awarded $4,120 (20.6 hours x $200 per hour) for work performed by Attorney Ehrenberg.

[7] The itemized bill of Pyle, Rome, Lichten, and Ehrenberg was submitted as an exhibit to the Affidavit of Jeffrey Petrucelly. The bills deleted some, but not all charges, solely related to a separate grievance proceeding.

ORDER

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

(1) Respondents shall pay Complainant damages for lost wages and shall promote her to the position of Full Professor.[8]

(2) Respondents shall pay Complainant damages in the amount of $200,000.00 for emotional distress as set forth in the Hearing Officer's decision, 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 this order is reduced to a court judgment and post-judgment interest begins to accrue.

(3) Respondent shall pay to the Commonwealth of Massachusetts the sum of $10,000 in civil penalty.

(4) Respondent is directed to conduct an eight-hour training session, within ninety (90) days of the Commission's final decision with mandatory attendance by all members of its human resource staff, the Dean of the College of Arts and Sciences, the Provost, and the Chancellor. Subjects to be covered in the training shall include all aspects of employment discrimination law. The training will be conducted by the MCAD or a graduate of the MCAD's "Train the Trainer" course. Respondent must submit a draft training agenda to the MCAD in advance of the training and include notice of the scheduled training date and time. A Commission representative shall be permitted to

[8] This order recognizes that based on information provided by the parties that Respondent has paid Complainant's lost wages and promoted her to the position of full professor. Accordingly, it does not include interest nor does it specify the amount of damages previously awarded by the Hearing Officer

observe the training if requested. Following the training, Respondent is directed to submit to the Commission the names of attendees.

(5) Respondent shall pay Complainant attorney fees in the amount of $401, 339.80 and costs in the amount of $11,331.47 with interest thereon at the rate of 12% per annum from the date the petition 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.

(6) Respondent shall pay Complainant the sum of $4,120 for attorney's fees she paid to attorney Ehrenberg with interest thereon at the rate of 12% per annum from the date the petition 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.

(7) Respondent shall pay Complainant supplemental attorney fees in the amount of $18, 607.31 and costs in the amount of $87.90 with interest thereon at the rate of 12% per annum from the date the Supplemental petition 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.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may appeal the Commission's decision by filing a complaint seeking judicial review, together with a copy of the transcript of the proceedings. Such action must be filed within 30 days of receipt of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, § 6, and the 1996 Superior Court Standing Order on Judicial Review of Agency Actions. Failure to file a

petition in court within 30 days of receipt 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 13th day of May , 2014.

_____
Jamie Williamson
Chairman

_____
Sunila Thomas-George
Commissioner