COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and TIA[1],

Complainants

Docket Nos. 14 BEM 00559
15 BEM 01486

v.

HERB CHAMBERS 1186, INC.,

Respondent

Appearances: Justin Murphy, Esq. For Complainant Tia
Joshua Davis and Matthew Horvitz, Esqs. For Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 11, 2014, Complainant Tia filed charges of discrimination against Herb Chambers Honda based on creed, sex, sexual harassment, and retaliation. The complaint alleges that after she was hired by Respondent on February 7, 2014, she was mocked as a Christian, co-workers commented on her body, an employee leaned his body over hers while using her phone, her supervisor made an obscene comment, and she was fired on March 10, 2014 after wearing jeans to work. On May 13, 2014, Complainant sought to amend her complaint to allege that after her termination she was told that Respondent would no longer continue to service her vehicle because of her pending MCAD charge. On June 12, 2015, Complainant filed another complaint against Herb Chambers Honda alleging additional retaliation based on being ordered to leave Respondent's premises.

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[1] Complainant uses the appellation "Tia" as both her first and last names.

Probable cause findings were issued on the charges of sexual harassment and retaliation but not on religious creed and sex.

A public hearing was held on April 22 and 23, 2019. The following witnesses testified at the hearing: Complainant, Steven Roach, Robert Hall, Dewayne Holman, Errol Gaudette, and Susan Tarquini. The parties submitted twenty (20) joint exhibits. Respondent submitted one additional exhibit marked as Respondent's Exhibit 1.

Based on all the credible evidence that I find to be relevant to the issues in dispute and based on the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant commenced working for Respondent Herb Chambers 1186, a Honda dealership, on February 7, 2014. Joint Exhibit 13. Prior to commencing work with Respondent, Complainant purchased or leased one or more Honda vehicles from the dealership. Complainant was hired after repeatedly inquiring about employment opportunities with Respondent.
2. According to Respondent's then-General Manager Errol Gaudette, Complainant was paid $400 or $500 per week plus commissions and worked, on average, twenty-nine hours per week. Id. Her gross pay for the approximately one month that Complainant worked for the dealership was $1,807.50. Joint Exhibit 17.
3. Complainant was assigned to Respondent's Business Development Center (BDC). Employees of the BDC call and/or email prospective customers in order to drum up business. BDC employees are given scripts at the outset of their employment to assist them in making customer calls.

4. Respondent Herb Chambers 1186 Inc., a/k/a Herb Chambers Honda of Boston, is a Honda dealership located in Boston, MA. At the time that Complainant filed her charge of discrimination, the dealership was located at 1186 Commonwealth Avenue in Boston. In 2019, the dealership moved to 720 Morrissey Blvd. in Boston. The dealership, which has in excess of six employees, is operated by Herb Chambers Companies, located at 259 McGrath Highway in Somerville, MA.
5. Complainant alleges that she was instructed to make cold calls to individuals identified in files which were stolen from another dealership. There is no corroborating support for this assertion, which I do not credit.
6. Complainant testified that her female co-workers commented on her body and her buttocks, asked to see her "twerk," and said that she looked very sexy in her clothes. There is no corroborating support for these assertions, which I do not credit.
7. On February 20, 2014, Complainant informed Herb Chambers Honda Sales Manager Jeffrey Ford, her supervisor, that she felt she was being mistreated by co-workers. She stated that people were "coming at her" and/or "disrespecting her." Ford investigated Complainant's concerns but determined that they were without basis. Joint Exhibit 6.
8. Complainant submitted a doctor's note dated February 21, 2014 which advised her to stay out of work from February 21 to February 27, 2014 for "medical reasons." Joint Exhibit 14. Complainant testified that the medical reasons pertained to insomnia and headaches.
9. Notwithstanding the doctor's note, Complainant, on February 22, 2014, came to work and approached Respondent's Service Director Susan Tarquini to complain about the following: 1) receiving an invitation to go to a strip club after work; 2) hearing

profanity-laced conversations at work; 3) seeing co-workers wear inappropriate clothing, 4) being the subject of gossip about a personal relationship she was allegedly having with sales representative Steve Roach; 5) being instructed to use a customer list "stolen" from a competitor in order to generate cold calls; 6) being touched by co-worker Dewayne Holman when he reached over her to use her phone; and 7) experiencing stress at work. Joint Exhibit 7. After informing Tarquini of her concerns, Complainant was allowed to leave for the day, without loss of pay. Tarquini notified Respondent's Comptroller Stacy Bugg and General Manager Errol Gaudette about Complainant's concerns. Joint Exhibit 7.

10. Service Director Tarquini made handwritten notes about her February 22, 2014 conversation with Complainant as soon as their meeting ended. Id. According to Tarquini, Complainant did not accuse Dewayne Holman of touching her breast. Complainant testified at the public hearing that Holman leaned over her desk, reached over her, and pushed on her breast in order to access her phone, but this testimony differs from Complainant's prior description of the incident. It was not until after Complainant filed her MCAD complaint that she first asserted that Holman touched her breast.

11. Finance manager Dewayne Holman worked for Herb Chambers Honda from 2012 to 2018. He acknowledged that on one occasion he answered the phone on Complainant's desk in order to assist her with a customer call. However, according to Holman, he did not touch Complainant while answering her phone. Holman explained that he took the call because he was good at encouraging potential clients to come into the showroom. I credit Holman's testimony.

12. Two days after complaining to Tarquini about work conditions, Complainant spoke to General Manager Gaudette about profanity in the workplace, being invited to a strip club after work, and having her personal space invaded during a phone call. Joint Exhibit 11. In an effort to respond to Complainant's concerns, Gaudette offered her a private work space.

13. Complainant obtained a second doctor's note on March 4, 2014 which states that she was seen by Dr. Andrea Kronman, MD, on that date and that she could return to work on March 10, 2014 if her symptoms improved. Joint Exhibit 15. Dr. Kronman's assessment plan from the March 4th visit includes the following: "Pt explanations are frequently contradictory/inconsistent." Joint Exhibit 12 at p. 311.

14. Despite receiving a note excusing her from work until Monday, March 10, 2014, Complainant went to work on Friday, March 7, 2014. On that day, Complainant wore blue jeans containing large holes in the thigh areas of both legs with strings stretching across the holes. Joint Exhibits 8 & 9.

15. Complainant testified that March 7, 2014 was a snowy "very bad" day and that General Manager Gaudette asked her to cover for absent employees because he was short-staffed. According to Complainant, Gaudette offered to pay her time and a half and said she could wear casual attire as an exception to the normal dress code. I do not credit these assertions because March 7, 2014 was a clear day with no precipitation, as was the previous day. In arriving at this finding, I take judicial notice of internet weather reports for the days in question.

16. General Manager Gaudette testified convincingly that employees are expected to wear regular work attire in all weather and denied that he told Complainant she could wear

casual clothes to work on March 7, 2014. Gaudette's testimony is corroborated by Herb Chambers Honda Service Consultant Robert Hall who testified that jeans are not worn by employees during their normal work hours because such clothing violates the Company's "Personal Appearance" policy. The policy states that employees are expected to present a "neat, clean and professional appearance at all times." Joint Exhibit 4, p. 33. According to Hall, Complainant's attire was flamboyant and "out there" rather than consistent with what other people wore to work. Day 1 at 1:16. The testimony of Gaudette and Hall is more credible than that of former employee Steven Roach who said that Complainant generally wore business suits or "church wear" to work and that other employees in her department dressed in jeans and gym clothes. Day 1 at 44:57.

17. Service Consultant Hall and Service Director Susan Tarquini testified convincingly that Complainant was driven home on March 7, 2014 in order to change her clothes. Day 1 at 1:01. Tarquini arranged for an employee to drive Complainant home so that she could put on different clothing and report back to work in order to finish her shift.

18. At the end of the day on March 7, 2014, Sales Manager Jeffrey Ford and Service Director Susan Tarquini met with Complainant to give her a written warning for reporting to work on March 7, 2014 in blue jeans with large holes in the thigh areas. Joint Exhibit 8. Complainant denied that she had received a prior verbal warning for wearing blue jeans to work, but her personnel record indicates that she did. Joint Exhibit 9.

19. Complainant refused to sign the written warning. In response to receiving the warning, Complainant accused Herb Chambers Sales Manager Ford of smoking pot on company

time and smelling of alcohol, accused Ford of allowing other employees to dress in a provocative manner, claimed that she never received a copy of the employee handbook, claimed that she was not properly trained, and asserted that Ford, on one occasion, said in front of the BDC team, "I love pussy." Joint Exhibit 8. I do not credit that Ford uttered the alleged "pussy" comment because the accusation appears to have been made to deflect blame away from Complainant and is not corroborated by anyone other than former Herb Chambers Honda employee Steven Roach. Roach was terminated from the dealership in October 2015 for insubordination. He testified in an unpersuasive manner about several matters including the type of clothing worn at the dealership by female co-workers.

20. On Monday, March 10, 2014, Complainant came to work an hour late. Joint Exhibit 11. General Manager Gaudette testified that he terminated Complainant that day for insubordination based on her dress code violation the previous Friday and because Complainant said that she had worn jeans on purpose to prove that she was the victim of discrimination. Joint Exhibits 10 & 11. Gaudette said that Complainant's inappropriate dress was "the last straw" after missing numerous days of work, being consistently late during the prior few weeks, causing problems at the dealership, behaving in a hostile way towards co-workers, and being unsuccessful in getting potential customers to make appointments with the dealership. Gaudette testified that Complainant's employment only lasted twenty-eight (28) days of which she was absent on ten (10) occasions. At the public hearing, Complainant denied telling General Manager Gaudette that she wore jeans on purpose as an act of insubordination and

maintained that she wasn't sure what "insubordination" meant. I do not find these assertions to be credible.

21. Complainant filed a complaint with the MCAD on March 11, 2014 charging Respondent with discrimination based on creed, sex, sexual harassment, and retaliation.

22. After filing a discrimination complaint with the MCAD, Complainant wrote to the MCAD on March 13, 2014 to report that she called Respondent on the previous day at around 7:09 a.m. to arrange to have her vehicle serviced, was initially told that Respondent would not do business with her because of her pending litigation, but that when she called back at 9:22 a.m. on the same day, Service Director Tarquini said that she could bring in her vehicle for service that afternoon or the next. According to Tarquini, Complainant continues to have her vehicle serviced at Respondent's dealership even though there are numerous other Honda dealerships in the area.

23. Complainant filed another MCAD complaint on June 12, 2015 charging an additional act of retaliation. She claims that she went to the dealership on June 6, 2015 to inquire about having her vehicle washed, the tire pressure checked, and her car upgraded but that she was escorted out of the building because of her pending litigation against the dealership. At the public hearing Complainant said that she was removed because then-Honda Manager Ian Miller characterized her presence as "trespassing." According to her deposition testimony, however, Miller reversed himself as soon as she called her attorney, tried to apologize, and asked her to come back into the dealership. Compare Day 1 at 2:02.32 with Deposition at p. 319. Complainant's deposition testimony is supported by Service Consultant Robert Hall who escorted Complainant out of the building but testified that she was not refused service then or at any other time. Day 1

at 1:05. Hall gave Complainant access to his personal cell phone number in order to provide her with preferential customer service.

24. Company records indicate that Complainant had her vehicle serviced by Respondent on forty-six (46) occasions between her termination and the public hearing even though she could have taken her vehicle to another Honda dealership in the area if she chose to do so. Joint Exhibit 16.

25. After being fired by Respondent, Complainant held a number of jobs for brief periods at: 1) "Van Pool" from June to October/November 2016 before being fired; 2) James Bus Transportation Co. for approximately one and a half months before being fired; 3) Best Buy Geek Squad for one and a half months before being terminated; 4) an Amazon warehouse which she left due to a broken wrist; 5) a MBTA bus driving job for a month before being terminated for insubordination; 6) JSE Transportation Co. in Waltham for a month and a half before being fired for having her eyes closed while behind the wheel; and 7) Ocean Honda for several weeks before being terminated for using a company gas card to fill up her personal vehicle. Day 2 at 00-23.00. Complainant filed an MCAD charge against "Van Pool" for race discrimination and retaliation which was deemed to lack probable cause. She filed an EEOC charge against James Bus Transportation Co. for sexual harassment which the EEOC declined to pursue.

26. Prior to the events at issue, Complainant filed a complaint with the state Board of Registration of Physician Assistants in late 2011/early 2012 in which she claimed that a Physician Assistant employed by Harvard Vanguard made inappropriate, sexually-suggestive comments to her and showed her an iPhone picture of his erect penis.

Respondent's Exhibit 1. A formal adjudicatory hearing was held on June 2013 after which the Board dismissed the complaint with prejudice on May 14, 2015 based on findings of its Administrative Hearings Counsel who determined that the allegations were fabricated, "demonstrably false," "unreliable," and "inconsistent." Respondent's Exhibit 1, pp. 2 & 46. These descriptions of Complainant's allegations in another forum entirely comport with my assessment of her allegations in this matter and her credibility.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

M.G.L. c. 151B, sec. 4, paragraphs 1 and 16A prohibit sexual harassment in the workplace. See Ramsdell v. Western Bus Lines,, Inc., 415 Mass. 673, 676-77 (1993). 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 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. M.G. L. c. 151B, sec. 1, para. 18. Chapter 151B is not a clean language statute and the use of swear words, on occasion, is not relevant to sexual harassment.

In order to establish a "hostile work environment" sexual harassment claim, Complainant must prove by credible evidence 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 or pervasive as to

alter the conditions of employment and create an abusive work environment; and (5) the employer knew or should have known of the harassment and failed to take prompt and effective remedial action. See College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987); Parent v. Spectro Coating Corp., 22 MDLR 221 (2000); MCAD Sexual Harassment in the Workplace Guidelines, II. C., 24 MDLR (2002).

Sexual harassment must be objectively and subjectively offensive. See Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677-78 (1993). The objective standard means that the evidence of sexual harassment must be considered from the perspective of a reasonable person in the plaintiff's position. Id. at 678. The subjective standard of sexual harassment means that an employee must personally experience the behavior to be unwelcome. See MCAD Sexual Harassment in the Workplace Guidelines, II. C. 3, 24 MDLR (2002); Ramsdell v.Western Bus Lines, Inc., 415 Mass. at 678-679; Couture v. Central Oil Co.,12 MDLR 1401, 1421 (1990) (characterizing subjective component to sexual harassment as ... "in the eye of the beholder").

The credible evidence in the record fails to support Complainant's allegations that that co-workers commented on her body and her buttocks, asked to see her "twerk," and said that she looked very sexy in her clothes. Complainant testified to these matters at the public hearing but failed to mention them five years earlier when she objected to the conduct of her co-workers in vague and non-sexual terms. The graphic details which Complainant added at the public hearing in order to bolster her complaint were not convincing.

Back in 2014 when the matters at issue allegedly occurred, Complainant found fault with people swearing at work, gossiping, wearing revealing clothing, smoking pot,

and having alcohol-smelling breath, but she did not claim to be the victim of sexual harassment. Complainant, for the most part, made vague allegations of people "coming at her" and "disrespecting her." One exception was the charge that Sales Manager Jeffrey Ford exclaimed in front of the BDC team, "I love pussy" -- a remark that Steven Roach also claims to have heard.

Having considered the allegation carefully, I do not believe that the remark was uttered by Sales Manager Ford. I arrive at this conclusion based on my perception that Complainant and Mr. Roach generally lacked credibility at the public hearing. Mr. Roach was not an impartial witness given that he was terminated by Respondent for insubordination. The fact that he and Complainant subsequently worked together at Ocean Honda suggests the possibility that their testimony may have been coordinated in an attempt to undermine Respondent's position. Aside from Complainant and Mr. Roach, no one else testified that they heard the alleged comment.

Even if Sales Manager Ford made the remark attributed to him, there is no evidence that it was directed at Complainant or uttered on more than one occasion. A single remark of this nature, while undeniably obscene, is insufficient to create an intimidating, hostile, or sexually-offensive work environment. See Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (anti-discrimination laws are not civility codes and only prohibit behavior that is so objectively offensive as to alter work conditions); Scionti Eurest Dining Services, 23 MDLR 234, 240 (2001) (citations omitted) (a single verbal comment, without more, rarely meets the standard for a hostile work environment).

Turning to the allegation that Complainant was invited by co-workers to attend a strip club, such an invitation, if it indeed occurred, likewise fails to support a claim of sexual harassment. The invitation did not involve a work-related activity. Complainant was free to -- and did -- reject the offer.

The final matter pertaining to Complainant's sexual harassment claim concerns an alleged incident during which co-worker Dewayne Holman intercepted a phone call at Complainant's desk. In 2014, when Complainant first mentioned the incident to Service Director Susan Tarquini, Complainant did not assert that Holman touched her breast, either intentionally or accidentally. I credit Tarquini's contemporaneous notes about the incident which document Complainant's report that Holman came into contact with her *back* as he reached to take a work-related phone call and that their bodies touched in an unspecific manner. From that description, Complainant's charge metastasized into an MCAD complaint that Holman leaned on top of her to take a phone call and was "on top of [her]." At the public hearing, the charge expanded into a claim that Holman groped her breast. Holman, for his part, testified in a believable manner that he did not touch Complainant while answering her phone. He explained that he took the call in order to encourage a potential client to visit the showroom. Complainant's testimony at the public hearing about the alleged breast-groping incident is an unpersuasive elaboration on an accusation that originally had no sexual component.

My assessment that Complainant lacks credibility in regard to the Holman incident is reinforced, as well, by her unconvincing testimony in regard to other matters. For instance, Complainant maintained that she wore jeans to work on March 7, 2014 due to inclement weather. However, Complainant's assertion that March 7, 2014 was a "snowy,

very bad day" is contradicted by internet descriptions of March 7th as a fair day with no precipitation. Complainant also made the implausible assertion that she didn't understand the meaning of the term "insubordination" in relation to the accusation that she intentionally wore tattered jeans to work in violation of Respondent's dress code.

Complainant's credibility is further undermined by findings in a 2013 adjudicatory hearing before the state Board of Registration of Physician Assistants. The Administrative Hearings Counsel in that case determined that Complainant's charges about sexually harassing conduct allegedly directed at her during a medical appointment were fabricated, demonstrably false, unreliable, and inconsistent. Complainant's physician, Dr. Kronman, likewise describes information provided by Complainant during medical visits as "frequently contradictory/inconsistent." These matters, as well as Complainant's public hearing behavior marked by excitable utterances and non-responsive answers to questions, detract from Complainant's credibility in this case.

Based on the foregoing, I conclude that Complainant did not experience conditions at the Herb Chambers dealership in 2014 that were sufficiently severe or pervasive to alter the conditions of employment and create an abusive work environment. There is ample basis upon which to discredit Complainant's version of the events at issue. Even if co-workers made plans to attend a strip club after work, used profanity, smoked pot, engaged in office gossip, and wore clothing that was tight or revealing, such conduct is insufficient to establish a case of sexual harassment directed at Complainant. See Swyear v. Fare Foods Corp., No. 18-2108 (7th Cir. 2018) (vulgar nicknames, discussions of sexual activities, inappropriate dress by female employees, and being touched the back

and arm by a co-worker are insufficient to create a severely or pervasively hostile work environment).

B. Retaliation

Chapter 151B, sec. 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000), *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995).

To prove a prima facie case of retaliation, Complainant must demonstrate that she: (1) engaged in a protected activity; (2) Respondent was aware that she had engaged in protected activity; (3) Respondent subjected her to an adverse employment action; and (4) a causal connection existed between the protected activity and the adverse action. See Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000). While proximity in time is a factor, "... the mere fact that one event followed another is not sufficient to make out a causal link." MacCormack v. Boston Edison Co., 423 Mass. 652 n.11 (1996) *citing* Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996). Respondent's knowledge of a discrimination claim followed by subsequent adverse action against Complainant does not, by itself, establish causation, but it may be a significant factor in establishing a causal relationship.

Protected activity may consist of internal complaints as well as formal charges of discrimination but regardless of the type of complaint, the charges must constitute a reasonable and good faith belief that unlawful discrimination has occurred. See Guazzaloca v. C.F.Motorfreight, 25 MDLR 200 (2003) *citing* Trent v. Valley Electric Assn. Inc., 41 F3d 524, 526 (9th Cir. 1994); Santiaago v. Trel Lloyd and Lupi's Industries, 66 F. Supp.2d 282 (1999); Kelley v. Plymouth County Sheriffs Department, 22 MDLR 208 (2000). A claim of discrimination need not prevail in order to give rise to a viable retaliation complaint, but it cannot constitute a fabricated charge of harassment. See Guazzaloca, 25 MDLR at 201.

Protected activity arguably took place in this case on February 22, February 24, and March 7, 2014 when Complainant objected to the following conduct. On February 22, 2014, Complainant reported to Service Director Tarquini that co-workers invited her to a strip club after work, wore inappropriate clothing, gossiped about her and a co-worker, and that a male employee reached over her to use her phone. Two days later, Complainant spoke to General Manager Errol Gaudette about some of the same issues. On March 7th, Complainant added accusations that Sales Manager Ford smoked pot on company time, smelled of alcohol at work and allegedly said on one occasion in front of the BDC team, "I love pussy." For the purposes of making out a prima facie case, these matters fulfill the requirement of protected activity.

Complainant claims that after engaging in the protected activity described above, she was subjected to the adverse action by Respondent. First, Complainant was terminated on March 10, 2014; second, she was refused car service for several hours on March 12, 2014; third, she maintains that she was thrown out of the dealership on June

6, 2015 by Honda Manager Ian Miller when she inquired about a trade-in and sought to have her car washed and its tire pressure checked.

The charge that Complainant was briefly denied service for several hours on March 11, 2014 is too insignificant to give rise to a claim of retaliation. Given Complainant's history with Respondent resulting in her termination and the fact that she was likely viewed as fabricating allegations against the dealership, it is understandable that Respondent might have been leery of conducting further business transactions with her. Notwithstanding, Respondent very shortly made the decision not to deny Complainant service. A two-hour delay in service is too trivial to constitute adverse action. See MacCormack v. Boston Edison Co., 423 Mass. 652, 663 (1996) (no adverse employment action where Complainant was given a change in work assignments but no alteration in salary, job grade, or other objective terms or conditions of employment); Handy v. North End Community Health Center, Inc., 26 MDLR 323, 332 (refusal to allow a nursing assistant to bring her children to work on one occasion not sufficient to establish an adverse employment action). Respondent's Service Director Susan Tarquini reversed the decision to deny Complainant service on the same morning Complainant sought assistance. Between that moment and the present, Complainant has had her vehicle serviced by Respondent on numerous occasions and is given preferential treatment as a customer.

The remaining allegations of adverse action consist of Complainant's termination on March 10, 2014 and of being escorted off Respondent's property more than a year later, on June 6, 2015. Giving Complainant the benefit of the doubt in regard

to these matters, they arguably constitute adverse actions which, if credited, could be causally-related to protected activity.

Once a prima facie case is established, the burden shifts to the Respondent at the second stage of proof to articulate a legitimate, nondiscriminatory reason for its action supported by credible evidence. See Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If Respondent succeeds in offering such a reason, the burden then shifts back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justification is not the real reason, but a pretext for discrimination. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001). Complainant may carry this burden of persuasion with circumstantial evidence that convinces the fact finder that the proffered explanation is not true and that Respondent is covering up a discriminatory motive which is the determinative cause of the adverse employment action. See id. Even if the trier of fact finds that the reason for the adverse employment action is untrue, the fact finder is not required to find discrimination in the absence of the requisite intent. See id.; Abramian v. President and Fellows of Harvard College, 432 Mass. at 117-118.

At stage two, Respondent offers the following as legitimate, nondiscriminatory reasons for firing Complainant: she missed numerous days of work, was frequently late for work; behaved in a hostile way towards co-workers, was unsuccessful in getting potential customers to make appointments with the dealership and, as the "final straw," wore tattered blue jeans to work on March 7, 2014. Then-Service Manager Errol Gaudette testified credibly that he made the decision to fire Complainant after she

purposefully violated the dealership's dress code on March 7th. These are legitimate reasons for Complainant's dismissal that are devoid of retaliatory animus.

Respondent likewise refutes the claim of retaliation in regard to the events of June 6, 2015 by credibly establishing that Complainant was taken out of the dealership by Honda Service Consultant Robert Hall in order to complete her transaction, and not as part of a plot to deny her service. Although there is some contradictory evidence, it is dispelled by the fact that between Complainant's termination in 2014 and the present, Complainant has received service from Respondent's dealership on forty-six (46) occasions. Complainant uses Hall's personal cell phone number in order to receive preferential treatment. These are not circumstances that support a claim of retaliatory animus.

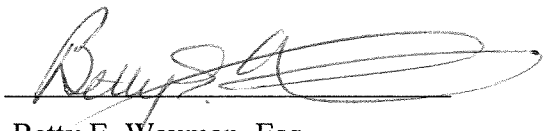
Since Respondent has provided a legitimate, non-retaliatory explanation of its actions, the burden then shifts back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that Respondent's justifications are not the real reasons but a pretext for retaliation. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001); Wynn and Wynn, P.C. v. MCAD, 431 Mass. 655, 666 (2000). Complainant has failed to provide evidence to refute Respondent's proffered explanations and defenses. There is, in short, no credible evidence that Respondent is covering up a retaliatory rationale which motivated its adverse employment action or subsequent interactions with Complainant. Id.

IV. 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, sec. 5, the case is

dismissed. This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of

So ordered this 16th day of July, 2019.



Betty E. Waxman, Esq.,
Hearing Officer