

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
VERONICA VARGAS,
Complainant

v.

DOCKET NO. 09-BEM-02707

SAYBOLT, LP,
Respondent

Appearances: Patrick D. Banfield, Esq. for Complainant
Ethel J. Johnson, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On October 7, 2009 Complainant, who is Hispanic, filed the instant claim of discrimination against her former employer, Respondent, Saybolt LP, alleging retaliatory termination of her employment on January 5, 2009, in violation of G.L.c. 151B, § 4(4), after she filed a complaint of race discrimination against Respondent in October of 2008. Complainant's earlier claim of race discrimination was dismissed by the Investigating Commissioner for lack of probable cause, and the dismissal was affirmed. Probable cause was found to credit the allegations of retaliatory discharge. Efforts at conciliation of this claim were unsuccessful and a hearing was held before the undersigned hearing officer on August 21 and 22, 2012. The parties submitted post-hearing briefs in November of 2012. Having reviewed the record in this matter

and the post-hearing submissions, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Veronica Vargas, is an Hispanic woman of Puerto Rican descent who was 26 years old at the time of the hearing in this matter. Complainant was employed by Respondent as an Administrative Assistant in its Chelsea MA facility from February 6, 2008 until January 9, 2009. Complainant has an Associate's degree from North Shore Community College which she earned in 2007.

2. Respondent, Saybolt LP, is a corporation with headquarters in Houston, Texas. Respondent provides testing and inspection services to oil and gas companies.

3. Complainant was interviewed and hired by Charles Killeen, who was the Location Manager of the Boston office at that time. Complainant's pay was \$14.42 per hour or \$2,500 per month. (Jt. Ex. 17; Tr. 46) During Complainant's tenure, the office was primarily staffed with a Location Manager and an Administrative Assistant. A Laboratory Manager also worked at the site but did not work in the office, and a Field Inspector was present in the office intermittently. The physical lay-out of the office was an open space with several work stations. (Tr. 47-50)

4. Complainant's duties as an Administrative Assistant included ordering office and laboratory supplies, answering phones, organizing files, and creating and sending invoices. (Tr. 46) Complainant had a good working relationship with Mr. Killeen and there is no evidence that her performance was deficient during the few short months that she worked under Mr. Killeen's supervision. (Tr. 51)

5. Mr. Killeen left Respondent's employ sometime in the Spring or summer of 2008. The position of Location Manager was vacant for approximately four months during which time the majority of administrative functions were handled out of the Linden, N.J. Office. (Tr. 410-411) Jeffrey Seeley succeeded Killeen as the Location Manager in Boston sometime in August of 2008 and became Complainant's direct supervisor.

6. Complainant received training related to the various software programs the company used for its contracts, invoices, and client data base. She attended a training session with other administrative assistants in New Jersey in May of 2008. (Tr. 53-54; Joint Ex. 58) Documentary evidence suggests that Respondent sent an employee to the Boston office for four days in April of 2008 to provide training to Complainant in Oracle and "SBS" software programs. (Joint Ex. 58) Complainant disputes that she was trained by this employee who was also relatively new to the company in April of 2008 and states that they both had received training in February of 2008 from another Saybolt employee. (Tr. 53) Complainant testified that she frequently sought assistance from another Administrative Assistant in the Philadelphia office with questions related to contract pricing. (Tr. 55)

7. Complainant attended a training session in Philadelphia in August or September of 2008. She testified that when she returned from that training, Mr. Seeley had begun his employment as the new Location Manager. (Tr. 56) Complainant testified that no one at Respondent had spoken to her about a new manager coming on board and Mr. Seeley was in the office when she returned from training. She introduced herself to him and asked him about his expectations of her and how he wanted things done, including the process for invoicing. (Tr. 57) Complainant testified that she received no instruction from Seeley and that he told her carry on as she had under the previous manager. She stated that Seeley became annoyed and frustrated

when she asked for assistance, and that she found him difficult to communicate with and his manner abrupt. (Tr. 58) I credit her testimony that Seeley was gruff, non-communicative and difficult to work with.

8. Seeley testified that he did not instruct Complainant in her job duties because he believed she had been trained and already knew what her job duties were. He testified that he eventually asked to proof read her communications with clients because her work was inaccurate and contained many errors. He testified that simple formatting requests often required extensive proof reading and multiple emails between him and Complainant before she would get it right. He constantly had to remind Complainant to use spell check and to ensure that the correct client names were used, and that he spent a substantial amount of time reviewing Complainant's work. (Tr. 166-171; Ex. C-23, R-25, R-27)

9. Complainant testified that on September 26, 2008, Seeley yelled at her, "Are you deaf?" after she failed to hear a message he relayed to her when she entered the office. The remark was made in the presence of a job applicant and the field inspector. (Tr. 60) Seeley testified that he asked Complainant, "Did you hear what I said?" when she did not respond to his informing her of a telephone call. The field inspector who overheard the exchange, later provided a statement to Complainant describing his recollection of the incident and stating that Seeley did yell at Complainant with words to the effect of "didn't you hear me," and describing his demeanor as "unprofessional." (Jt. Ex. 30) Complainant asserts that she later attempted to convey to Seeley that his outburst had offended her, and he responded in a manner that made her feel intimidated. Seeley did not recall any subsequent conversation with Complainant. (Tr. 127-128) I conclude that Seeley's behavior with Complainant was gruff and unprofessional and that he generally did not treat her kindly or professionally.

10. After this exchange on September 26, 2008, Complainant did not return to the office after her lunch break. She emailed Seeley from her home informing him that she would not return to work and would be on vacation until October 3, 2008. Complainant also stated in that email chain that they “need[ed] to find a way where we can work and get along together,” and she “apologize[d] for the misunderstanding” and “miscommunication.” (Jt. Ex. 56) She testified that this was an attempt to start with a clean slate and to encourage Seeley to be more civil. (Tr. 63) Complainant remained out of the office until October 3, 2008.

11. Complainant testified that when she returned to the office on October 3, 2008, Seeley had not reviewed any of the files she had left for him. When she asked Seeley if he intended to review the files, he was hostile to her inquiry. She alleges that Seeley walked by her desk and uttered the word “spic” under his breath, and that she was shocked by the comment but did not confront him. (Tr. 67-68) Seeley denied ever using the word “spic” in reference to Complainant. I do not credit Complainant’s allegation that Seeley used the word “spic,” in her presence to refer to her. She made no mention of this comment in her original complaint, it did not appear in her written chronology of events, and she did not mention this to anyone at Respondent until after she had filed a formal complainant. However, I do credit Complainant’s assertion that she overheard Seeley say to his wife in a telephone conversation words to the effect that he was “stressed because of that Spanish girl.” Complainant testified that Seeley referred to her in this manner on more than one occasion and that one time she told him, that’s not “the name on my birth certificate.” She stated the Seeley’s response was that if she did not like things she should resign. (Tr. 69-70) I credit Complainant’s testimony that Seeley used the word “Spanish” in referring to her and that she confronted him about this. Seeley admitted that

he likely spoke to his wife on the phone about Complainant and may have discussed her speaking Spanish in the office. (Tr. 131-132)

12. On October 14, 2008, Complainant sent an email to Suzanne Lang, Respondent's Human Resources Manager, asking for the Respondent's ethics hotline number. Lang provided the number and asked Complainant if she could be of assistance. Complainant stated that she was concerned about retaliation if she reported workplace problems, and Lang informed her that Respondent did not tolerate retaliation. (Jt. Ex. 44) On October 15, 2008 Lang and Complainant exchanged additional emails and spoke on the phone. Complainant did not report any derogatory comments by Seeley. Lang recalled that the telephone conversation with Complainant was generally about Seeley's poor communication with her and that Complainant did not describe any conduct that evidenced discrimination. She testified that Complainant's concerns were lack of communication with Seeley and a lack of clarity about her role and responsibilities. Lang stated that the conversation focused on interpersonal issues between Complainant and Seeley and Lang offered suggestions as to how they might work better together. (Tr. 299-301; Jt. Ex. 52) After the phone conversation, Complainant stated in an email to Lang she "hope[d] this [report] doesn't get me in trouble" and stated that she felt "unsafe and harassed." (Jt. Ex. 52)

13. On October 30, 2008, Complainant sent another email to Lang to report an incident where Seeley became upset with her for asking work-related questions and suggested she should resign. In this communication Complainant first raised the allegation that Seeley used the word "Spanish girl" to refer to her and expressed her belief that Seeley's conduct constituted discrimination and harassment. She also stated that she felt unsafe and uncomfortable being in the same office with Seeley. (Jt. Ex. 54, Tr. 290)

14. In response to Complainant's October 30 email, Lang contacted Seeley and asked if he had made the alleged racially derogatory statement to Complainant. According to Lang, Seeley denied making the statement but he expressed his frustration with having to repeat instructions to Complainant numerous times. Lang learned for the first time that all communications between Complainant and Seeley were taking place by email, despite the fact that they worked in close proximity in a small office. Lang was unsuccessful in attempting to schedule a teleconference with Complainant and Seeley to address the issues Complainant had raised. The first scheduled teleconference which was for October 31, 2008 did not occur because Complainant did not come to work, after previously agreeing to confer on that date. On the agreed upon date for the second conference, November 7, 2008, Complainant scheduled a vacation day and did not come to work. (Jt. Ex. 55; Ex. R-14; R-25)

15. On October 31, 2008, Complainant did not report to work but filed a charge of discrimination against Respondent and Seeley with this Commission. (Jt. Ex. 1) Complainant testified that she was stressed out by Seeley's conduct and wanted his comments and anger toward her to cease. (Tr. 81) Complainant did not state in her October 2008 MCAD Complaint that Seeley had used the work "spic" to refer to her and she did not cite this allegation in her notes describing the chronology of events that took place at work, a document that she had typed up on October 24, 2008. (Jt. Ex. 1; Jt. Ex. 3) I find it highly unlikely that if Seeley had called Complainant a "spic," she would not have documented this in her chronology of events or her MCAD complaint.

16. On Monday, November 10, 2008, Complainant emailed Lang about the on-going tension in the Boston office. She wrote that she could no longer come to work feeling uncomfortable, that there was too much tension in the office and that she just wanted to leave for

the day. She indicated that there was no communication or respect from Seeley and that his derogatory comments made her feel hurt and unsafe. Lang responded that Complainant needed to come to work and do her job and asked if by leaving, she meant that she was resigning. Complainant responded emphatically that she was not resigning but that she could not do her job with so much tension and lack of communication between her and Seeley. (Jt. Ex. 32; R-25)

17. Later on the evening of November 10, 2008, Complainant emailed Lang and Seeley from her home informing Lang that Seeley made a comment to her that day which she viewed as a threat for her having filed a complaint against him. She stated in this email that her lawyer advised her to report this behavior and reiterated that she was not resigning. She also expressed her understanding that if she were to be fired because of the complaint she filed against Respondent that might give rise to an additional claim for retaliation. (Jt. Ex. 43)

18. On the morning of November 11, 2008, Lang sent an email to John Barbarise in Human Resources asking him to email all information he had on Complainant, i.e. past warnings, chronology/documentation of ongoing training, and to forward the information to her ASAP. (Jt. Ex. 58) On that same morning, Lang sent an email to Seeley and Vargas advising them that Respondent's Human Resource and Law Departments were looking into the matter to determine the appropriate actions to be taken. (Jt. Ex. 31) Later on the morning of November 11th, Complainant was exchanging routine work emails with Seeley and claimed to have received an email from him in which he stated: "You just put yourself in a big mess with me no one will ever believe I called you a spic or a Spanish girl." Complainant testified that Seeley tried to recall the email which she had already received. (Jt. Ex. 20; Tr. 87-88) Respondent's IT Department investigation found the email in Complainant's email inbox, but not in Seeley's sent box. One explanation for this is that Seeley could have deleted the email shortly after sending it.

Seeley denied sending such an email to Complainant and stated that the phrase “big mess” was not a phrase he ever used but was one that Complainant had used previously. (Tr. 174-175; Jt. Ex. 19) On that day Complainant and Seeley exchanged several routine work related emails from 9:30 a.m. until 3:56 p.m. (Ex. R-6) Some ten minutes after she is alleged to have received the threatening email, Complainant sent Seeley a routine work related email asking him not to approve a purchase order that she had made an error on. (Id.) It is not credible that Complainant would have continued on with business as usual with Seeley after having just received such a threatening email from him. Complainant also alleged in an email to Lang that on that same day, Seeley threw a file on her desk and it ended up hitting her. She accused Seeley of assault and filed a criminal complaint against him with the Chelsea Police. (Jt. Ex. 22) The charge was subsequently dismissed.

19. On November 12, 2008 John Barbarise of Respondent’s Human Resource Department sent an email to Complainant regarding the planned meeting to discuss her issues with Seeley and to clarify the company’s work rules and expectations going forward. The email noted that the November 7th meeting did not occur because she was absent from work. The email advised Complainant that Respondent needed the work environment to improve and that she and Seeley needed to work together in a respectful, professional and courteous manner. Both were ordered to remain at home on full pay until further notice and were advised that Respondent’s General Counsel would be coming to Boston the following Thursday, November 20, 2008 to meet separately with each of them. (Jt. Ex. 27) On November 13, 2008, Seeley advised Lang and Barbarise that an unidentified female had called to advise him Complainant would not be coming to work on that day. (Jt. Ex. 28)

20. Complainant received a written warning dated November 14, 2008 from John Barbarise, admonishing her for failure to adhere to the behavioral standards set forth in company policies, and accusing her of being insubordinate and uncooperative with her manager and allowing persons not employed by Respondent to enter the facility. This warning did not mention Complainant's poor performance as alleged by Seeley, but primarily addressed the discord between Complainant and Seeley and the difficulty caused by their communication and personal problems while working in close proximity in a small facility. (Jt. Ex. 26)

21. On November 20, 2008, Respondent's in-house counsel, Mark Elvig visited the Chelsea facility to investigate Complainant's charges and the conflict between Complainant and Seeley. Elvig interviewed Complainant and Seeley separately about the events leading up to Complainant's charge of discrimination. Complainant testified that Elvig did not discuss substantive work performance issues but emphasized getting along and cooperating with Seeley. (Tr. 99) Complainant did not give Elvig a copy of the November 11, 2008 purported threatening email from Seeley, but she did re-iterate that Seeley had called her "spic." Elvig testified that he was shocked, because it was the first he'd heard of this allegation. (Tr. 366-367)

22. After November 20, 2008 Complainant had no further communication with Elvig and she could not recall any discussions with Lang during the month of December, 2008. Lang confirmed that Complainant did not contact her about any further discord between her and Seeley. However, the evidence suggests that Complainant had a very spotty attendance record in December of 2008 and that she was out of work or late or did not work a full day many times during that month. (Joint Ex. 9, p.13, Int. no. 26) She claimed that this was due in part to the stress and anxiety caused her by Seeley.

23. On December 22, 2008, Complainant sent an email seeking assistance from an administrative assistant in the Philadelphia office purportedly because Seeley would not assist her with the information she needed. Lang was copied on this email. (Jt. Ex. 24) No one from Respondent spoke to Complainant about this email. Both Lang and Elvig testified that they found this email to be disparaging in nature and a violation of Elvig's verbal admonition to Complainant not to "export the issue between her and Seeley."

24. Complainant's employment was terminated on January 9, 2009 by Barbarise, the Area Manager for the Boston office and Terry Bond, Respondent's Regional Manager for the U.S. Northeast. Lang testified that Complainant was terminated because Barbarise reported that things had not improved, that Complainant continued to have difficulty performing the basic functions of her job, and attendance issues that were effecting the operations of the business of the Boston office. (Tr. 317) Elvig testified that the decision to terminate Complainant's employment was based on the totality of the continuing problems as reported by Barbarise which included issues with accuracy, invoicing and attendance. (Tr. 394-398) He admitted that Seeley had more information about Complainant's work performance than anyone else and that Respondent relied on his input as to Complainant's performance and attendance. (Tr. 395-396) Bond testified that there were purported complaints from Administrative Assistants in other offices that Complainant was not learning or grasping the requirements of her job. (Tr. 413-414; Jt. Ex. 23) Complainant testified that the day of her termination was the first time anyone from Respondent had addressed specific performance and attendance problems with her. (Tr. 199) Seeley testified that he was not consulted about Complainant's termination, that he did not participate in the decision and that he was surprised when Barbarise and Bond showed up unannounced in Boston to terminate her. (Tr. 184) Complainant was not given any warnings

about poor performance or attendance problems prior to her termination. She was not provided with an assessment of her performance, a performance improvement plan, or a progress review, consistent with Respondent's Policies and Procedures governing Poor Work Performance. Ex. C-2) Complainant admitted that she took some sick time and vacation time in December of 2008 due to the death of her grandmother. (Ex. C-36)

25. According to Bond as evidenced by his notes of the termination, Complainant arrived to work at 9:55 a. m., 1 hour and 25 minutes late on the morning of her termination. When advised that she was being terminated she stated that it was no big deal, that she was going back to school anyway to be an LPN and that her father was paying for it. She also stated that she was smart and would get another job. She declined to sign a release for four weeks of severance pay stating that she had an attorney and said she would take the two weeks of severance instead. (Ex. R-12; Tr. 416-417)

26. Complainant testified that she felt depressed and isolated in the months following her termination. She had difficulty with her finances and sought help with rent payment from Catholic Charities. She did not start looking for other work until one month after her separation from Respondent and received unemployment for the period that she was out of work. On March 30, 2009 Complainant began working for North Shore Community Action Programs at a rate of \$13.10 per hour. She resigned from NSCAP on October 21, 2009 to take a job at Training Resources of America at a rate of \$14.00 per hour. On June 14, 2010, Complainant began working at Lemuel Shattuck Hospital at a rate of \$18.34 per hour. Her total income in 2009 was \$25,695.94. Complainant earned \$27,329.00 in 2010. (Jt. Ex. 18) Had she continued to work at Respondent her annual income would have been \$30,000. She seeks back pay for \$6,975.06 for the years 2009 and 2010.

III. CONCLUSIONS OF LAW

Complainant's allegations of discrimination based on national origin are not before me. The sole issue before me is whether Respondent retaliated against Complainant after she engaged in the protected activity of filing a charge of discrimination against the company. Complainant alleges that her termination in January of 2009 was retaliation for having filed a discrimination complaint at the MCAD in October of 2008.

A prima facie claim of retaliation has the following required elements: (1) Proof that the Complainant participated in activity protected by the statute; (2) that Complainant was subjected to an adverse employment action; (3) that Respondent was aware of the protected activity prior to taking the adverse action; and (4) a causal connection exists between Complainant's participation in the prior protected activity and the adverse employment action taken by the Respondent. *Mole v. University of Mass.* 442 Mass 582, 591-592 (2004); *See also Morris v. Boston Edison Company*, 924 F. Supp. 65, 68-69 (D. Mass. 1996); *Kelley v. Plymouth County Sheriff's Dept.* 22 MDLR 2008, 215 (2000).

Complainant engaged in protected activity when she advised Respondent's management that she believed that she was the target of discriminatory conduct and comments by her immediate supervisor, Jeffrey Seeley. She also engaged in such activity when she filed a complaint with this Commission alleging discrimination in the workplace based on her national origin. Complainant was subjected to adverse employment actions after she complained about Seeley's conduct towards her in the workplace. She was admonished that she needed to work co-operatively with Seeley and asked if she intended to resign her employment. Some two months after she filed her complaint of discrimination, and subsequent to Respondent

investigating her charges of discrimination, she was terminated from her employment. There is no evidence that Respondent ever discussed the results of its investigation with Complainant, and indeed she stated she had no further communication with the General Counsel Elvig after he interviewed her as part of his inquiry. It is also evident that subsequent to her filing a complaint of discrimination, she had no further telephone communication with Lang and all subsequent communication with the HR department was by email.

Complainant may prevail on a claim of retaliation , even if she does not succeed in proving her underlying claim of discrimination. *Psy-Ed Corp. et al. v. Klein, et al.*, 459 Mass. 697 (2011). Regardless of whether or not Seeley’s behavior toward Complainant was motivated by discriminatory animus, Complainant had a good faith belief that she was the victim of discrimination. Seeley was uncooperative, uncommunicative and hostile to her from the onset of his employment. She believed that Seeley’s hostile behavior towards her and his unwillingness to communicate with her regarding his expectations and her duties were related to her national origin. While I do not credit her assertion that Seeley used the word “spic” to address her, I do believe that he referred to her on occasion as that “Spanish girl” or complained about her speaking “Spanish” in the workplace and about bringing her Spanish-speaking friends into the workplace. I conclude that under the circumstances, Complainant had a good faith belief that her national origin was a factor in the way Seeley treated her.

A causal connection between the protected activity and the subsequent adverse action by an employer may be inferred where the close proximity of the two events allows a reasonable inference that they are related. *Mole, supra.* at 592. Complainant was terminated within a very short period of time after she complained of discrimination.

Once Complainant has established a *prima facie* case of retaliation, the employer must articulate a legitimate non-discriminatory reason for the adverse employment action. *Blare v. Huskey Injection Molding Systems Boston Inc.*, 419 Mass. 441, 442 (1995) If the employer presents a legitimate non-discriminatory reason for the adverse employment action, the burden is with Complainant to prove by a preponderance of the evidence, that the employer's stated reason was a pretext for retaliation. *Lipchitz v. Raytheon Co.*, 434 Mass. 493, 501 (2001)

Complainant was terminated ostensibly for ongoing poor performance and attendance issues. While there is evidence to support Respondent's assertion that Complainant had attendance problems in December of 2008 and that her performance merited some improvement, these issues existed prior to her complaints of discriminatory treatment by Seeley. The evidence also suggests that once Complainant raised the issue of discrimination, Respondent demonstrated little interest in assisting her to succeed in an environment that was extremely difficult and inhospitable. Instead it immediately began seeking and compiling information related to Complainant's performance and building a case for termination.

It is significant that Complainant worked alone in a facility with a supervisor who was outwardly hostile to her. There was no one in the Boston facility to assist her or to answer questions other than Seeley. She had no choice but to seek assistance from administrative employees at other facilities who did her job. There was no other employee on site to whom she could complain or from whom she could seek counsel. There is no evidence that Respondent made meaningful efforts to support Complainant once the difficulties with Seeley began. Contrary to its assertions, Respondent made little effort to assist Complainant and Seeley in working together more collaboratively. The offer to arrange long distance conference calls

between HR, Seeley and Complainant could not have offered much solace to Complainant who had to remain in the office alone with Seeley, before, during and after these calls.

Finally, Respondent failed to provide Complainant with a performance improvement plan and did not counsel or warn her that termination was imminent if she did not demonstrate improvement. Complainant admitted that some of her attendance problems were related to ongoing hostility with Seeley, the difficulty working with him, and the fact that the work environment continued to be uncomfortable and abusive for her. These facts create a strong inference that Complainant's termination was retaliatory in nature.

Complainant must ultimately demonstrate that the "employer's desire to retaliate against her was the determinative factor in its decision to terminate her employment. *Psy Ed Corp. v. Klein* 459 at 707; citing *Abramian v. President and Fellows of Harvard College*, 432 Mass. 107 (2000). I conclude that absent the complaint of discrimination, Respondent would have worked more closely and supportively with Complainant to ensure that her performance and attendance improved. Lang was very helpful to and solicitous of Complainant up until the time she raised the issue of discrimination. After the complaint, in lieu of providing a supportive presence for Complainant in the Boston facility, Respondent instead chose to have Seeley monitor and report her attendance throughout the month of December. I believe this was in anticipation of terminating her employment and ending the problem at the Boston facility, which was causing a long-distance hassle for the HR department in Houston and other off-site administrators.

Given the facts of this case, I conclude that Complainant's employment was terminated in retaliation for her having filed a claim of discrimination against Respondent and that her termination violated G. L. c 151B § 4(4).

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). The Commission may award monetary damages for, among other things, back pay and emotional distress suffered as a direct and probable consequence of the unlawful discrimination. The Commission is also authorized to issue cease and desist orders, award other affirmative, non-monetary relief, and assess civil penalties against a Respondent.

After her termination, Complainant made efforts to mitigate her damages and sought employment soon after she was terminated from Respondent. She secured employment within a few short months of her termination, albeit at a lower level of compensation. She received unemployment compensation for the period of time she was unemployed. In June of 2010, Complainant secured employment that paid her at a higher rate than she had earned at Respondent. Her back pay damages for 2009 and 2010 were calculated to be in the amount of \$6,975.06. I find that she is entitled to compensation for back pay in that amount.

Complainant has also made a claim for emotional distress damages arising from her unlawful retaliatory termination. The evidence with respect to this claim is scant. Complainant testified that she cried on the day she was terminated and felt depressed and isolated for a period of time. While I believe that the four months working with Seeley in an abusive environment was difficult for her, there has been no finding of discrimination with respect to those incidents, and I am constrained from awarding damages for a discriminatory or hostile work environment.

Moreover, I found credible the testimony of Bond regarding Complainant's demeanor on the day of her termination and do not believe that she was significantly distressed by the termination, but accepted it with a grain of salt and was prepared to move on. Complainant impressed me as an assertive, intelligent, young woman who took immediate steps to assert and vindicate her rights. She dealt head-on with her financial difficulties and sought assistance from Catholic Charities. Given these facts, I conclude that any emotional distress Complainant suffered as a result of her termination was not debilitating or long lasting. I conclude that she is entitled to an award of \$10,000 to compensate her for emotional distress resulting from her termination.

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, § 5, Respondent is hereby ordered to:

- (1) Cease and desist from all acts of retaliation;
- (2) Pay to Complainant the sum of \$6,975.06 for back pay damages;
- (3) Pay to Complainant the sum of \$10,000.00 in damages for emotional distress.

This decision represents the final Order of the Hearing Officer. Any party aggrieved by this Order may file an appeal to the Full Commission. To do so a party must file a notice of appeal of this decision to the Clerk of the Commission within ten 10 days of receipt and a Petition for Review within thirty (30) days of receipt of this Order. Complainant's attorney may file a Petition for Attorney's fees within in the prescribed time period.

So Ordered this 12th day of September, 2013.

Eugenia M. Guastaferrri
Hearing Officer