

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

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MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
JAMES WHITE,  
Complainants

v.

DOCKET NO. 12-BPR-00908

COSMOPOLITAN REAL ESTATE, INC.  
Respondent

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**DECISION OF THE FULL COMMISSION**

This matter comes before us following a decision of Hearing Officer Eugenia M. Guastaferrri in favor of Complainant James White. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was liable for discriminatory conduct in violation of M.G.L. Chapter 151B § 4 (¶10). Complainant was awarded \$200 in damages for emotional distress. Complainant appealed to the Full Commission. For the reasons stated below, we affirm the Hearing Officer’s decision.

**STANDARD OF REVIEW**

The responsibilities of the Full Commission are outlined by statute, the Commission’s Rules of Procedure (804 CMR 1.00 *et. seq.*), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, § 5. The Hearing Officer’s findings of fact must be supported by substantial evidence, which is defined as “....such evidence as a reasonable mind might accept as adequate to support a finding....” Katz v. 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). Fact finding determinations are within the sole province of the Hearing Officer who is in the best position to judge the credibility of witnesses. See Guinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); MCAD and Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). The role of the Full Commission is to determine whether the decision under appeal was based on an error of 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.

### **BASIS OF THE APPEAL**

Complainant has appealed the decision on the grounds that the Hearing Officer's finding of fact were not supported by substantial evidence and challenges the credibility determinations made by the Hearing Officer.

The Complainant argues that the Hearing Officer's determinations of credibility in regards to the testimony of Complainant, Robin Ray and Kelly Cataldo were in error. It has long been established that a Hearing Officer is in the best position to credit or not credit witnesses and weigh the significance of evidence presented at the hearing. Ramsdell v. W. Massachusetts Bus Lines, Inc., 415 Mass. 673, 676 (1993) (recognizing that credibility is an issue for the hearing officer and not for the reviewing court, and that the fact-finder's determination had substantial support in the evidence). Where there is conflicting evidence, the Hearing Officer is charged with the responsibility of weighing the conflicting evidence and credibility of witnesses to make

determinations and findings of fact as they are in the best position to make these determinations. School Committee of Chicopee, 361 Mass. at 354. In the case at hand, the Hearing Officer found that the Complainant was not an “entirely forthcoming witness” and that his testimony was “evasive and unpersuasive.” Complainant’s disagreement with the Hearing Officer’s determinations does not mean that the Hearing Officer ignored contradictory evidence or that her determinations were faulty. Ramsdell v. W. Massachusetts Bus Lines, Inc., 415 Mass. 673, 676 (1993) (review requires deferral to administrative agency’s fact-finding role, including its credibility determinations).

Furthermore, the Complainant implies<sup>1</sup> in his appeal that he should have been awarded higher damages because he became homeless and incurred expenses from his homelessness such as rental fees for a mail box and a storage unit; however, the Hearing Officer does not dispute Complainant’s claims that he was homeless. The Hearing Officer found that there was no causal connection between the unlawful act of discrimination and the loss of Complainant’s Section 8 certificate or his homelessness. In discrimination cases, the MCAD may award damages to a Complainant resulting from the discriminatory action. However, these damages must have been caused by the discriminatory act. See, Stonehill College v. MCAD, 441 Mass. 549 (2004). If a series of events occur between the discriminatory conduct and the harm alleged, a determination must be made whether those intervening events were a superseding cause of the harm. See Kent v. Com., 437 Mass. 312, 321 (2002). The Hearing Officer found that the actions of Respondent’s agent were not the proximate cause of Complainant’s loss of his Section 8 subsidy as there was a series of events that were the superseding cause of this harm. This finding was supported by evidence that Complainant found subsequent housing, he lived in that housing for

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<sup>1</sup> The Complainant never actually asserts in his appeal that he should be awarded increased damages or what the damages that he incurred should have been.

six months, he left that residence on his own volition, and he was unable to find suitable housing thereafter. The Hearing Officer found that these actions taken by the Complainant were the proximate cause of his homelessness. She also found that there was scant evidence that Complainant suffered much distress at all.

We have carefully reviewed Complainant's grounds for appeal and the record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law with respect to the Hearing Officer's findings and conclusions of law. We find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them. With regard to Complainant's challenges to the Hearing Officer's determinations of credibility, we reiterate that it is well established that the Commission defers to these determinations, which are the sole province of the fact finder. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005).

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision.

### **ORDER**

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer in its entirety and issue the following Order:

- (1) Respondent shall pay to Complainant the sum of \$200.00 for emotional distress damages with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post judgment interest begins to accrue.

(2) Respondent shall continue to monitor the actions of its agents to ensure that they cease and desist from any actions that deny or discourage Section 8 or other subsidy holders from applying for and being considered for rental housing.

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 contest the Commission's decision by filing a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of service of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Standing Order on Judicial Review of Agency Actions, Superior Court Standing Order 96-1. Failure to file a petition in court within thirty (30) days of service of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED<sup>2</sup> this first day of July, 2019



Monserrate Quiñones  
Commissioner



Neldy Jean-Francois  
Commissioner

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<sup>2</sup> Chairwoman Sunila Thomas George was the Investigating Commissioner in this matter, so did not take part in the Full Commission Decision. See 804 CMR 1.23(1)(c).