

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD and PETER SLIPP,  
Complainants

v.

Docket No. 08 BEM 02448

CITY OF LAWRENCE and  
FRANK BONET,  
Respondents

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For Complainant Peter Slipp: Timothy L. Belcher, Esq.  
For Respondents: James Bucking, Esq. and Scott C. Merrill, Esq.

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 22, 2008, Peter T. Slipp (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) against Respondents City of Lawrence, Mayor Michael J. Sullivan, and City Attorney Charles Boddy.

Complainant alleged that he was subjected to discrimination on the basis of gender and age stemming from his layoff as a staff attorney in the City Attorney’s Office. On March 13, 2009, the Investigating Commissioner granted Complainant’s Motion to Amend the Charge of Discrimination to add an additional Respondent -- Lawrence Personnel Director Frank Bonet.

On August 28, 2009, the Commission issued a Probable Cause Finding as to the age and gender discrimination charges against the City of Lawrence and Lawrence Personnel Director Frank Bonet but found Lack of Probable Cause in regard to Mayor

Michael Sullivan and City Attorney Charles Boddy. The Commission certified the case for public hearing on October 6, 2010.

A public hearing was conducted on June 27 and 30, 2011. The following individuals testified at the public hearing: Complainant Peter Slipp, City Attorney Charles Boddy, Mayor Michael Sullivan, Myles E. Burke, and Respondent Frank Bonet. The parties submitted nineteen (19) joint exhibits and Complainant submitted two (2) additional exhibits.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. Complainant Peter Slipp is an attorney who lives and works in Methuen, Massachusetts. He graduated from Suffolk University Law School in 1974.
2. Respondent Personnel Director Frank Bonet has worked for the City of Lawrence since 1999 and has been the Personnel Director since 2004.
3. In May of 1999, Complainant was appointed as a part-time Assistant City Attorney by the Lawrence City Council based on a recommendation of then-City Attorney Carol McGravey. At hire, Complainant filled the position of Third Assistant City Attorney. Transcript I at 28. The position was created to bring foreclosure actions in Land Court against delinquent taxpayers. Id.
4. Complainant testified that his schedule as an Assistant City Attorney consisted of working at Lawrence City Hall on Monday, Tuesday and Wednesday mornings, going to Land Court on Thursday mornings, and working on City cases at his private law office on Friday mornings. Transcript I at 30.

5. Complainant was promoted to First Assistant City Attorney in early 2001. Transcript I at 31. In that capacity he managed the City's litigation caseload. Complainant maintained a twenty-hour a week schedule as a City employee. Id. at 32-32.
6. In November of 2001, Mayor Michael Sullivan took office and held the mayoral position until January of 2010. Transcript I at 125.
7. City Attorney McGravey left the City's employ in January of 2003. Transcript I at 36. Complainant became the Acting City Attorney. Transcript I at 37. He functioned in that capacity from January to September of 2003. Id.
8. Complainant applied for the position of City Attorney. He had the support of Mayor Sullivan who described the quality and quantity of Complainant's work in the role of Acting City Attorney as "good." Transcript I at 126-129, 143.
9. Four candidates were selected for interviews, including Complainant and the successful candidate, Charles Boddy.
10. The City Council voted to appoint Charles Boddy to the position of City Attorney in September of 2003. Joint Exhibit 10. Complainant described himself as "somewhat disappointed" but also "somewhat relieved" not to have received the position. Transcript I at 42. Complainant was present when the City Council voted on the candidates for the position but left the Council chambers after Boddy's selection was announced. Complainant testified that he did not congratulate Boddy before leaving the Council chambers because Boddy and his wife "were having a special moment." Transcript I at 44. Complainant testified in a contradictory manner about whether he subsequently congratulated Boddy,

stating at one point in the public hearing that he did so and at another that he did not. Transcript I at 44; II at 318-319. Boddy asserted that Complainant never congratulated him on his appointment as City Attorney. Transcript II at 169. I credit Boddy's testimony.

11. Prior to being selected as City Attorney, Charles Boddy had been the Land Use Planner for the City of Lawrence. He testified that he was encouraged to apply for the position of City Attorney by several City Councilors. Transcript II at 165.
12. After being appointed to the position of City Attorney, Boddy spent a period of time transitioning from his Land Use Planning job into the City Attorney's Office. According to Boddy, he told Complainant that he could keep the higher salary of Acting City Attorney until Complainant indicated that he was able to "adjust to the lower salary again." Transcript II at 170, 216. Boddy testified that this went on for a period of weeks, that Complainant never indicated he was ready to relinquish the higher salary, and that "at some point" Boddy unilaterally arranged to assume the higher salary. Transcript II at 171. Complainant testified that he has no recollection of Boddy giving him the option of retaining the higher salary for a period of time, that Boddy did not begin to work in the City Attorney's Office during normal work hours for some weeks following his appointment, and that Boddy took away Complainant's Acting City Attorney salary within two or three weeks of the City Council vote. Transcript II at 215, 317-318. I find Complainant's testimony in this regard to be more credible than Boddy's.
13. After Boddy's appointment, there were four attorneys in the City Attorney's Office: City Attorney Boddy; Complainant as the First Assistant; Jim Bowers as

the Second Assistant; and Ann Randazzo as the Third Assistant.<sup>1</sup> Id. at 45.

Bowers handled collective bargaining issues, including Police Department personnel matters, and Randazzo handled civil litigation on behalf of the City. Id. at 46.

14. Employees in the City Attorney's Office were hostile towards Boddy's appointment because they wanted things to remain the same. Transcript I at 47. Boddy testified that on the night of his selection by the City Council, paralegal Susan D'Agati said that everyone in the City Attorney's Office opposed his appointment and supported Complainant. Transcript II at 168.
15. According to Mayor Sullivan, the relationship between Complainant and Boddy was a "bit confrontational" after Boddy was appointed as City Attorney. Transcript I at 139-140.
16. At the start of his employment, Boddy circulated a memo asking the legal staff to give him suggestions for how the office could be improved. No one responded to the memo. Joint Exhibit 17. Eventually, Complainant responded with some suggestions. Joint Exhibit 18; Transcript I at 49-50.
17. Boddy testified that "early on" in his tenure as City Attorney, he told Respondent Frank Bonet, Personnel Director for the City of Lawrence, that Complainant exhibited hostility, was not "supportive," and was "not around." Transcript II at 195.
18. Complainant testified that it was "no secret there were some things that weren't right between himself and Boddy." Id. at 64. Complainant claimed that Boddy

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<sup>1</sup> It was not clear from the evidence what significance, if any, attached to first, second and third assistant city attorney designations in terms of status and salary.

- stopped speaking to him for a period of several years. Id. at 50-52. In or around September of 2004, Complainant asked Respondent Bonet to address Boddy's alleged hostility, but Bonet declined to become involved. Transcript I at 59-60.
19. Following Boddy's appointment as City Attorney, Complainant reverted to working on Land Court cases. Complainant testified that he worked at City Hall on Mondays through Wednesdays for four hours each morning, went to Land Court on Thursdays, and worked on City of Lawrence cases at his private law office on Friday mornings. Transcript I at 54-55. Complainant asserted that Boddy never criticized his work schedule or said he wasn't working enough hours, but Boddy testified that Complainant only came to work one or two days a week for a couple of hours each day during that period. Transcript II at 55, 74, 171-174, 233. Boddy claimed that at some point between 2004 and 2006, he told Complainant that it was necessary to be accountable for his hours because people were "talking." Transcript II at 185, 233.
20. Complainant testified that on one occasion, he passed Boddy in the corridor of City Hall, said hello, did not receive a response, and asked Boddy, "Are you ever going to speak to me?" According to Complainant, Boddy responded by saying, "I'll speak to you when you stop sending me nasty memos." Transcript I at 60. I credit that this, or a similar interaction, occurred.
21. On January 23, 2006, Complainant substituted for City Attorney Boddy at a meeting in the Mayor's Office, during which a written opinion was requested about an employment issue. Transcript I at 62; Joint Exhibit 11. Complainant emailed Boddy about the assignment and stated that Boddy should be the person

- to provide the written opinion. Joint Exhibit 11. Boddy responded by emailing Complainant and instructing him to “please prepare the opinion for my review and signature” along with a summary of the subject matter of the meeting. Id. Complainant responded in a January 30, 2006 email which characterized Boddy’s instruction as “demeaning” and stated that “you seem to have [sic] agenda with me ... [and] I certainly have [sic] agenda with you.” Id. Complainant suggested his private law office in Methuen as a location where he and Boddy could meet to discuss the matter. Id. Complainant claims that he suggested his private law office because it was a “comfortable atmosphere” without distractions where they could try to resolve their difficulties. Transcript I at 53, 65. Boddy declined to meet at Complainant’s private law office. Transcript II at 183-184, 226.
22. Boddy testified that on one occasion he assigned a case to Complainant and received the file back with a “post-it” note from Complainant that said, “You better see me before you assign me any work.” Transcript II at 172. Boddy testified that he felt that Complainant’s message conveyed “hostility.” Id. & Transcript II at 223. Boddy described another incident in which he responded to a telephone call about a case that was on Complainant’s desk and made an entry in the file, after which Complainant asked him not to remove files from his desk. Transcript II at 177.
23. On direct examination, Complainant characterized his relationship with Boddy as strained for “a little less than two years,” but on cross-examination, Complainant admitted that their relationship was strained for three years. Transcript I at 101, 104, 106.

24. In April of 2006, Complainant asked for Boddy's assistance in securing a salary increase. Joint Exhibit 13. Boddy agreed to support the request. Transcript I at 68, 108-109. After Boddy agreed to support the requested salary increase, Complainant's relationship with City Attorney Boddy improved. Transcript I at 71. Complainant described 2007 as a "good year" in terms of their relationship. Transcript I at 73.
25. City Attorney Boddy denied that he and Complainant had a "good" relationship in 2007 but stated it was "better" than it had been previously. Transcript II at 187, 189-190, 202. According to Boddy, Complainant still wasn't doing "all that he could do." Transcript II at 238.
26. Respondent Frank Bonet, Personnel Director of the City of Lawrence, testified that the City experienced a budget crisis in 2007 and that in November or December of 2007, layoffs were contemplated by the City. Bonet met with department heads to identify individuals for layoff. Transcript II at 252.
27. The attorneys in the City Attorney's Office were not subject to a collective bargaining agreement and their employment status was not governed by seniority. Transcript II at 255. According to Mayor Sullivan, performance was an appropriate consideration in determining layoffs in the City Attorney's Office. Transcript I at 136-137.
28. During the layoff planning process, Personnel Director Bonet met with City Attorney Boddy to solicit his input about which members of his legal staff should be laid off. Boddy refused to identify any of his staff attorneys for layoff. Transcript II at 205. After Boddy refused, the Personnel Director made the



decision to lay off Complainant. Transcript II at 253-257, 314. Respondent Bonet testified that, “I just picked the person that was having some issues in the Department.” Id. at 257. Bonet testified that Boddy had previously told him that Complainant “hated” him and that Complainant’s hours were unreliable. Id. at 260-262, 282. Respondent Bonet asserted at the public hearing that he selected Complainant for layoff in order to “eliminate one of the problems that was occurring in the ... the City.” Transcript II at 301.<sup>2</sup> According to Bonet’s credible testimony, he was never informed that the tensions between Complainant and Boddy had dissipated or gotten better. Id. at 261-262, 283-284, 316-317.

29. Respondent Bonet testified credibly that he was not aware of Boddy having issues with the three other lawyers on his legal staff. One of them, Assistant City Attorney Jim Bowers, handled police matters. His salary came out of the Police Department budget so the elimination of his position would not have reduced the City Attorney’s budget. Transcript II at 262, 315-316. The other two attorneys were Rick D’Agostino, who worked full-time, and Ann Randazzo (DOB: 1951), who worked part-time.

30. On the day before the layoffs were implemented, City Attorney Boddy was called into Personnel Director Bonet’s office. Bonet handed Boddy two letters: one for paralegal Carla Ryan (a female in her 30s) and one for Complainant. Transcript I at 113-114; II at 206.

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<sup>2</sup> In his deposition, Respondent Bonet initially stated that the decision to lay off Complainant was solely budgetary but thereafter acknowledged that he selected Complainant both for budgetary reasons and for performance reasons. Transcript II at 303. At the public hearing, Respondent Bonet elaborated on his deposition response by stating that the *position* occupied by Complainant was selected for budgetary reasons but that *Complainant himself* was selected because of the issues he had with his manager. Transcript II at 304.

31. City Attorney Boddy hand-delivered the layoff letter to Complainant on December 18, 2007. Transcript I at 77; II at 208. According to Boddy, Complainant appeared surprised by the letter. Pursuant to City policy, Complainant had to clear out his desk, turn in his keys and equipment, and leave immediately. Id.
32. Complainant packed up his personal items and attempted to speak with Respondent Bonet. Complainant was not able to speak with Bonet at that time because numerous laid off employees were attempting to do so.
33. In the days following his layoff, Complainant attempted several times to contact Bonet by phone and by fax. Joint Exhibit 5; Transcript II at 264. Bonet avoided speaking to Complainant in conformance with his practice of not communicating with individuals once they were laid off. Transcript II at 265. Complainant prepared written notes in anticipation of speaking with Bonet. Joint Exhibit 6, p. 2; Transcript I at 117.
34. On December 19, 2007, Bonet, at the request of the Mayor, returned Complainant's calls. Complainant asked why he had been selected for layoff rather than Assistant City Attorney Ann Randazzo, who had less seniority. According to Complainant, Bonet responded, "affirmative action" and added that he had consulted with other personnel directors who advised him to "keep the woman attorney." Transcript I at 84. Complainant wrote the words "affirmative action" on the notes he had prepared prior to the conversation. Id. I credit that Bonet may have uttered the words "affirmative action," but I do not credit that Bonet used the words in the manner described by Complainant or that Bonet said

that he was advised to “keep the woman attorney.”

35. According to Respondent Bonet, when asked by Complainant why he was laid off rather than Assistant City attorney Ann Randazzo, Bonet replied that it was for budgetary reasons and that seniority didn’t play a role in the decision. Transcript II at 266. Bonet testified that Complainant then stated that he was laid off because of his age, to which Bonet responded, “I can defend that affirmative action.” Transcript I at 266, 308. I do not credit that Bonet responded in precisely this manner, but I do credit that he alluded to “affirmative action.”

36. The Lawrence City Council made clear publicly and privately that it wanted a diverse pool of candidates for City jobs and sought a more diverse workforce. Transcript II at 268-269. According to Mayor Sullivan, achieving a diverse workforce was one of the City’s hiring goals. *Id.* at 133. Mayor Sullivan was quoted in a local newspaper as stating that the City of Lawrence was making “steady progress” in achieving a balanced workforce. *Id.* at 135.

37. According to Complainant, at the time of his layoff he earned \$45,000.00 from the City of Lawrence and received sick leave, vacation leave, and partially-subsidized health insurance from the City. Transcript I at 87. Complainant planned to retire from the City in 2013.

### III. CONCLUSIONS OF LAW

#### Disparate Treatment

In order to prevail on a charge of discrimination in employment based on sex (i.e., gender) or age (forty or over) under M.G.L. c. 151B, sections 4(1) and 4 (1B), Complainant must establish a prima facie case by direct evidence or by circumstantial

evidence. See Wynn & Wynn P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655 (2000). Direct evidence is evidence that, “if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias was present in the workplace.” Wynn & Wynn, 431 Mass. at 667 *citing* Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991). Not every remark constitutes direct evidence of discrimination. Some insignificant statements may be characterized as stray remarks which do not go to the heart of the matter alleged to be discriminatory. See Wynn & Wynn, 431 Mass. 655, 667 (2000) *quoting* Johansen v. NCT Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991) (defining direct evidence as “strong evidence” that “if believed, results in an inescapable, or at least highly probable inference that a forbidden bias was present in the workplace”).

In a direct evidence case, a mixed-motive analysis is employed. See Wynn & Wynn, 431 Mass. at 666. Under a mixed-motive analysis, Complainant must first offer direct evidence that an impermissible reason played a motivating part in the employment decision. Id. at 670. If Complainant offers such evidence, the burden of persuasion shifts to Respondents to show that they would have acted in the same manner even without the illegitimate motive. Id.

There is credible evidence that Mayor Sullivan stated publicly and privately that he sought to achieve a diverse workforce within the City of Lawrence through the recruitment and hiring process. There is also credible evidence that Respondent Bonet mentioned “affirmative action” in a discussion with Complainant about why he was laid off rather than Ann Randazzo. However, I do not believe that an experienced Personnel Director like Frank Bonet would have told a laid-off male employee that a younger

female employee was being retained because of “affirmative action” or that other personnel directors advised him to “keep the woman attorney.” It is more likely that Complainant accused Bonet of applying an allegedly discriminatory criterion, i.e., affirmative action, in retaining the female attorney and that in response to such an accusation, Bonet said that he could defend against that type of affirmative action claim.

Even if Respondent Bonet did mention diversity and/or affirmative action in explaining to Complainant why he was targeted for layoff, such a remark was likely made only to deflect scrutiny from the real reason -- that Complainant was a problem employee who did not get along with his supervisor. The evidence indicates that the City sought to retain the smoothest functioning workforce and in doing so, let Complainant go. Bonet’s words were designed to bring closure to an adversarial conversation with Complainant rather than to reveal the City’s true motivations in executing a downsizing plan. Such a strategy is consistent with Bonet’s testimony that once he made the decision to terminate an individual, he endeavored to have little or no communication with that person. For these reasons, I do not deem Bonet’s words, regardless of the precise manner in which they referenced affirmative action, to constitute a “highly probable inference” of age or gender bias. Wynn & Wynn, 431 Mass. at 667 *citing* Johansen, 30 Mass. App. Ct. at 300.

In the absence of direct evidence of forbidden bias, Complainant may attempt to establish a prima facie case of employment discrimination on the basis of indirect evidence which shows that Complainant: (1) is a member of a protected class; (2) was performing his position in a satisfactory manner; (3) suffered an adverse employment action; and (4) was treated differently from similarly-situated, qualified person(s) not of

his protected class(es). See Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000) (elements of *prima facie* case vary depending on facts); Knight v. Avon Products, 438 Mass. 413, 420, n. 4 (2003) (Complainant must show she was denied a condition or privilege of employment granted to someone at least five years younger or present other evidence that the disparate treatment occurred under circumstances that would raise a reasonable inference of unlawful age discrimination).

The credible evidence indicates that Complainant was a generally satisfactory male employee who was targeted for layoff in lieu of younger female attorney. Although City Attorney Charles Boddy testified that Complainant could have worked harder and could have assumed additional litigation responsibilities, Boddy nevertheless characterized Complainant as effective at handling Land Court cases. Boddy declined to identify Complainant as a candidate for layoff when asked to select the attorney he could most afford to lose. These factors support Complainant's contention that he performed his job in a satisfactory manner yet was subject to an adverse employment action that did not befall his younger female colleague. Thus, Complainant succeeds in establishing a *prima facie* case under the inferential method of establishing employment discrimination.

Once Complainant has established a *prima facie* case of discrimination, the burden of production shifts to Respondents to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason or reasons for its action. See Abramian, 432 Mass. 116-117; Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). If Respondents do so, Complainant, at stage three, must show by a preponderance of evidence that Respondent's articulated reason was not the real one but a cover-up for a discriminatory

motive. See Knight v. Avon Products, 438 Mass. 413, 420, n. 4 (2003); Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001). Complainant retains the ultimate burden of proving that Respondents' adverse actions were the result of discriminatory animus. See id.; Abramian, 432 Mass. at 117.

At stage two, Respondents articulated and produced credible evidence that the relationship between Complainant and his supervisor Charles Boddy was strained for three years. Even after their relationship improved, it was only "better" not "good" with Boddy still believing that Complainant wasn't doing "all that he could do." Personnel Director Frank Bonet was aware of the issues between Complainant and City Attorney Boddy, had not heard that the issues had dissipated or improved, and selected Complainant for layoff in order to eliminate a personnel problem caused by Complainant's presence in the City Attorney's Office. I reject Complainant's assertion at stage three that Bonet's alleged reason for laying off Complainant was a cover-up in order to retain a younger, female attorney.

#### IV. ORDER

For the aforementioned reasons, the complaint 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 receipt of this Order.

So ordered this 26<sup>th</sup> day of September, 2011.

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Betty E. Waxman, Esq.  
Hearing Officer

