

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
NATHANIEL S. HEDVAT,  
Complainants

v.

DOCKET NO. 08-BEM-03044

JENNINGS ROAD MANAGEMENT CORP.,  
d/b/a THE HERB CHAMBERS COMPANIES  
AND HERB CHAMBERS 1172, INC., d/b/a  
HERB CHAMBERS BMW OF BOSTON,  
Respondents

Appearances: James T. Hargrove, Esq. and Nicholas Dominello, Esq. for Complainant  
Joshua M. Davis, Esq., Marshal D. Senterfitt, Esq. and Keerthi Sugumaran, Esq.  
for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 17, 2008, Complainant, Nathaniel Hedvat, filed a claim of discrimination against his former employer, Respondent Herb Chambers 1172, Inc. d/b/a Herb Chambers BMW of Boston and Jennings Road Management Corporation, alleging religious discrimination in employment in violation of G.L. c. 151B, §§ 4(1) and (1A). Specifically Complainant alleged that Respondent failed to accommodate his religious beliefs as an Orthodox Jew, subjected him to a hostile work environment based on his religion, and terminated his employment because of his requests for time off to observe the Sabbath and other religious holidays.

The Investigating Commissioner found probable cause to credit the allegations of the complaint and efforts at conciliation were unsuccessful. A public hearing was held before me on July 22-25, 2013, after which the parties submitted post-hearing briefs. Having reviewed the record in this matter and the post-hearing submissions of the parties, I make the following Findings of Fact and Conclusions of Law.

## II. FINDINGS OF FACT

1. Complainant, Nathaniel Hedvat was born in Tehran, Iran to a Jewish family. He and his mother and brother emigrated to the United States in 1986 when he was 10 years old after Iran became an Islamic republic. Complainant graduated from Boston University with a bachelor of science degree in 1998. (Tr. Vol. I, pp. 20-21,23)

2. Complainant began his employment as a Sales Consultant with Respondent Herb Chambers 1172, Inc., d/b/a Herb Chambers BMW of Boston, (Dealership) in January 1999, shortly after his graduation from college. (Joint Ex. 6) He testified that at the time he was not religiously observant and “religion was not important to [him] in any way, shape or form.” (Tr. Vol. I, p. 28, 32; 47) Complainant did not discuss and was not asked about his religion when he was hired by Respondent. (Tr. Vol. I, p. 31)

3. In approximately November of 2001, Complainant began dating another employee of the Dealership, Marcy Harriss. (now Harriss- Hedvat) The two dated for two to three years prior to considering marriage. (Tr. Vol. I, 42) From 2001 to 2004 they lived together as a couple in an apartment at the Devonshire in downtown Boston.

4. From 1999 to April of 2003, Complainant performed well as a Sales Consultant earning various recognition and awards, both from the Dealership and from BMW North America. (Tr. Vol., I, pp. 33- 36) In April of 2003, Complainant received a promotion to the position of Sales Manager of the Dealership and became responsible for helping to oversee the new car sales department under the supervision of the General Sales Manager and the General Manager. (Tr. Vol. I, pp. 36-39) He continued to earn various recognition and awards, both from the Dealership and BMW North America. (Id. pp. 40-41)

5. In 2004 Complainant purchased a home in an orthodox Jewish community in Newton, MA, next door to his brother's home. His brother was an observant orthodox Jew whose wife was the granddaughter of the rabbi who had established that community. Complainant's brother advised him that he and Harriss could no longer live together and that she would have to convert to Judaism if they were to be married. Complainant testified that his brother's admonition informed his decision that Harriss should commence conversion to Judaism and in 2004, Harriss decided to begin the process of converting to Orthodox Judaism. (Tr. Vol. I, pp. 43-45)

6. Complainant testified that he gradually began to adopt religious tenets as part of his everyday life, but he did not speak to any specific religious practices to which he adhered. During the initial phase of Harriss' conversion, Complainant was curious about the conversion process, and in late 2004 and early 2005 when Harriss was required to attend Saturday services at a synagogue he decided to accompany her to services to accommodate her and "to see what she was going to do." (Tr. Vol. I, p. 47) In late 2004, Harriss came to the Dealership and she and Complainant met with the General Manger Melissa Steffy, who is Herb Chamber's niece. Harriss informed Steffy of her conversion and requested that Steffy give Complainant time off

on Saturday mornings to attend synagogue with her. (Tr. Vol. I, pp. 45-48; Vol. III, pp.360-361)  
Steffy freely agreed that Complainant could have the requested time off. (Id.)

7. By mid-2005, it became apparent that Harriss' conversion would be a lengthy process, requiring her to attend Hebrew and Torah classes on some weekday evenings in addition to Saturday morning services. (Tr. Vol. 1, p. 48) Complainant began to join her at these classes and also started taking more time off to observe religious holidays. (Id. 47-48) Steffy agreed to give Complainant time off every time he requested it and never denied him any requested religious accommodation. Complainant gave Steffy a Jewish calendar which she kept in her office to note the various holidays Complainant planned to take off from work. (Tr. Vol. I, pp. 85, 134-135, 138)

8. Complainant routinely took parts of Saturdays off to attend temple services. He would come to work first thing on Saturday to attend the weekly sales meeting, then go to temple and return to work after services. (Tr. Vol. III, p. 361) Complainant asserted that at on one occasion sometime in 2005, he was not allowed to attend Saturday services because there was a big sale going on and Steffy commented to him that he should "thank [his] lucky stars" that he was present on that Saturday, because Herb Chambers had stopped by. (Tr. Vol. I, pp. 57-58) He also testified that on another occasion when he returned to the Dealership from synagogue late on a Saturday afternoon, Steffy was answering phones at the reception area and commented to him that she didn't know how much more of this she could deal with. He presumed she was referring to his absences from the Dealership and he ceased taking part of Saturdays off for a few months. (Tr. Vol. I, pp. 58-59)

9. By all accounts, Complainant and Steffy had a very good working relationship and were friends. Complainant testified that he loved working with Melissa Steffy, had a very “hand to hand” and “person to person” relationship with her, and loved working at the dealership. He testified, “Melissa was like a big sister to me. We were like family.” (Tr. Vol. I, p. 63, 67; Vol. III, p. 381) Despite Complainant’s belief that Steffy was frustrated by his absences, in May of 2005, she promoted Complainant to the position of General Sales Manager responsible for overseeing the entire sales function of the Dealership under her supervision. (Tr. Vol. I, p. 50) From May of 2005 to approximately the spring of 2007, Complainant performed his job as General Sales Manager well, and between 2006 and early 2007 he earned several performance based travel awards. (Tr. Vol. I, pp. 53-54)

10. After Complainant’s promotion to General Sales Manager in mid-2005, and thereafter, the new car Sales Manager was Paul McDaniels and the used car manager was Greg Keshishyan. (Tr. Vol. V, pp. 367-368) Complainant, McDaniels and Keshishyan referred to themselves as the “Dream Team,” because of their combined success and that of the dealership. (Id.) As General Sales Manager, Complainant received a higher percentage of the profits which reflected the performance of the Dealership. (Tr. Vol. I, p. 52) Complainant’s gross compensation in 2006 and 2007 was \$206,695 and \$227,745 respectively. (Joint Ex. 6)

11. Complainant did not inform Steffy or anyone else at the Dealership that he was a fully observant Orthodox Jew who followed all the tenets of orthodoxy, including not working on Saturdays. He worked on most Saturdays and never requested all of Saturday off. Steffy testified that another employee of the dealership who was manager of the service department was an observant Orthodox Jew who took every Saturday off. (Tr. Vol. I, p. 56) Complainant occasionally observed some tenets of orthodoxy and at other times did not. (Tr. Vol. III, pp.

380-381) He and Harriss went on an award trip he had won that conflicted with a religious holiday, he drove on Saturdays, including to temple, and he grew a beard once in 2006 for Passover, but not in other years. (Tr. Vol. III, pp. 380-381;436-439; Tr. Vol. I, p. 56)

Complainant testified that he became more involved with the Jewish community where he lived in Newton in 2007 after a sponsoring rabbi advised him that he needed to imbed himself in the Jewish community if Harriss' conversion was to come to fruition. As a result, in 2007 he began to observe the Sabbath more religiously, but he did not consider himself an Orthodox Jew until after his termination from the Dealership. (Tr. Vol. I, pp. 55-57; 97-98) He testified that Steffy's attitude toward him changed as he began asking for more Saturdays off, but as an example of this, referenced the incident discussed above that occurred in 2005, some two years earlier. (Tr. Vol. I, p. 57) However, he further admitted that there was never a time when he asked to take a Saturday off for a religious observance that his request was denied. (Tr. Vol. I, p. 85) Steffy testified that she never denied Complainant time off for religious observances and never doubted the sincerity of Complainant's religious beliefs. (Tr. Vol. III, pp. 396-397) I credit her testimony.

12. In the spring of 2007, Complainant began expressing dissatisfaction with his income to Steffy and did so on multiple occasions. She also overheard him complaining about his compensation to McDaniels and Keshishyan, both of whom reported directly to him. (Tr. Vol. I, p. 59, Vol. III, pp. 374-375) During the same time period, in April of 2007, the Dealership changed its employee 401(k) contribution plan which had been at 50%, decreasing the Dealership's percentage match of employee contributions. (Tr. Vol. III, 371-373) Complainant was unhappy with this change and complained not only to Steffy, but also to his direct subordinates, McDaniels and Keshishyan. (Id. p. 372; Vol. IV, p. 11) During the Spring of

2007, contemporaneous with Complainant's dissatisfaction with his compensation and the Dealership's decreased 401(k) match, Steffy observed a notable decline in Complainant's performance and stated that his attitude and enthusiasm for the job seemed to have waned. (Tr. Vol. II 373-374) I credit her testimony.

13. In response to Complainant's repeated requests for increased compensation, In July of 2007, Steffy arranged to meet with Complainant and Jim Xaros, her boss and the Vice President of the corporation, to discuss Complainant's compensation. (Tr. Vol. I, 60-61; Vol. III, 375-376) During that meeting , Xaros explained to Complainant that he was one of the highest paid General Sales Managers in the Herb Chambers network of Dealerships and that he could not increase Complainant's compensation. ( Tr. Vol. I, p. 62; Tr. Vol. III, pp. 375-376) Xaros explained to Complainant that because he earned a percentage of sales, the only way he could earn more money was for the Dealership to sell more cars, or for him to seek a General Manager position at another Herb Chambers Dealership. (Id.) Complainant chose not to seek a General Manager position, but instead made a decision to increase the sales force at the BMW Dealership. (Tr. Vol. I, pp.63-64)

14. During the second half of 2007, Complainant's attitude and performance continued to Decline and he abdicated his leadership role. Steffi testified that Complainant became more of an inventory manager than a General Sales Manager and that McDaniels began to take on many of Complainant's responsibilities. She stated that Complainant continued to be frustrated over money, and that he had also asked Herb Chambers if he could attend a General Manager's Meeting and Chambers had refused because Complainant was not a GM. (Tr. Vol. III, pp. 401-403) According to Steffy, while the changes in Complainant's attitude did not happen overnight, it gradually became very difficult to communicate with him. He would just stare at her mutely

when she asked him a question, would not answer telephone calls and was unhelpful to the salespeople. She witnessed sales people lining up at McDaniels' desk for help with structuring and consummating deals and McDaniels assuming the role of coach because Complainant was not being helpful. (Tr. Vol. III, p. 376-378) Steffy also described one incident which she referred to as "bizarre behavior," wherein Complainant cleaned out all the contents of his desk and removed all his personal effects, left the Dealership with the contents of his desk and did not show up for work the next morning. When she asked him about this, he responded with a bad attitude and an answer that was essentially non-responsive that he was merely cleaning his desk. (Tr. Vol. III, pp. 408-411) I credit Steffy's testimony about the changes in Complainant's attitude and performance, which was corroborated by McDaniels and Hadi Eslami.

15. Eslami, a Client Advisor (sales person) at the Dealership testified that he had a good relationship with Complainant and considered him a colleague and friend. (Tr. Vol. II, pp. 182-183) However, toward the end of Complainant's employment he found him less eager to help and stated he was unavailable on a number of occasions when Eslami needed his help with disgruntled customers or other issues requiring a manager's attention. He specifically recalled two Thursdays, which were Steffy's day off, when Complainant was in charge of the Dealership but was unavailable or unwilling to assist him. He testified that he had started going to McDaniels for assistance in closing deals because it was easier and more efficient. (Tr. Vol. II, pp. 192-195) I credit this testimony.

16. McDaniels reported to Complainant and testified that he and Complainant worked well together and had a strong professional relationship characterized by mutual respect. He also noted the decline in Complainant's performance in the latter half of 2007 which he characterized as a change in "attitude and engagement." He stated that the morale among the Client Advisors



who are the sales force was low, because they perceived that Complainant was not willing to go to bat for them and they began to ask if everything was okay with him. Some of the sales people began talking about seeking employment elsewhere because they were so dissatisfied with the performance of the management team, specifically, Complainant. McDaniels told Steffy that he was also considering seeking other employment. (Tr. Vol. IV, pp. 8- 10) Steffy believed that losing McDaniels would be a “colossal problem” for the Dealership, since he had essentially assumed more of a the leadership role and taken on many of Complainant’s General Sales Manager duties during the latter part of 2007 and early 2008. (Tr. Vol. III, 389-390)

17. Following the July 2007 meeting with Steffy and Xaros regarding his compensation, Complainant continued to voice his frustration about money to Steffy on numerous occasions. He expressed dissatisfaction with his compensation, particularly his unhappiness with the Dealership’s reduction in 401(k) contributions, to McDaniels on multiple occasions in 2007 and early 2008. (Tr. Vol. III, p. 378; Vol. IV, p. 11-12)

18. During December of 2007 through the beginning of 2008, Complainant continued to demonstrate a poor attitude, lack of enthusiasm for his job and was largely unresponsive to other Dealership employees. Steffy stated that she had difficulty communicating with Complainant with whom she had had a great relationship for years and she was uncertain if he was having problems at home. She and others would ask him questions and he would not respond, he was not helpful to sales people, and abandoned his leadership role. (Tr. Vol. III, p. 381, 385, 388) McDaniels corroborated Steffy’s testimony that there was a vacuum in leadership and that in her absence, no one was dealing with customer complaints or resolving problems. (Tr. Vol. IV, pp. 9-10)

19. The process of Harriss' conversion to Judaism which had begun in late 2004 was still not yet complete in 2008. The process ended up taking five years and she and Complainant did not wed until 2010. Harriss testified that she frequently discussed how long her conversion was taking with Steffy when she stopped by the dealership. She stated that Steffy became increasingly hostile toward the conversion process as time went on, but also stated that Steffy was always friendly to her and did not deny Complainant time off on Saturdays. (Tr. Vol. II, pp. 271-273, 275) Sometime in early 2008, Steffy had a conversation with Complainant wherein she stated, she didn't know which would take longer -- Harriss' conversion or her own house renovation. (Tr. Vol. I, pp. 70, 85) Steffy testified that Harriss had anticipated her conversion would take only a few months and that Harriss voiced frustration about how long her conversion was taking. They often also discussed how long Steffy's condo renovation project was taking. (Tr. Vol. III, pp. 364-366; Tr. Vol. II, 280-281) Steffy claimed not to be frustrated by Harriss' lengthy conversion process, but stated Complainant and Harriss clearly were because they could not live together and had purchased two houses and then had to rent a condo because the rabbi objected to the neighborhood Harriss was living in because she could not walk to temple. (Tr. Vol. III, pp. 364-365; 399-400) I credit Steffy's version of her conversations with Harriss over the testimony of Harriss, and do not believe that Steffy was hostile to Harriss.

20. Complainant also testified about a comment Steffy and McDaniels made regarding wishing they were "Muish," which he believed was a reference to the number of religious holidays taken by the Dealership's Muslim and Jewish employees. (Tr. Vol. I, pp. 66-67) Steffy admitted making this comment. She testified that Complainant never approached her to complain about any harassment or jokes related to his religion or his becoming more observant. Complainant never indicated to Steffy that he was offended by her or anyone else's comments.

(Tr. Vol. III, pp. 435-436; 440) He testified that he did not say anything about this comment because he did not want to jeopardize his relationship with the Steffy and others. (Tr. Vol. I, p. 67) I do not credit this testimony. Given the nature of his relationship with Steffy, I believe Complainant understood the comment to be light-hearted and not offensive. Complainant also testified that in 2006 someone changed the screensaver on his computer to a ham with a bone and then in November of December of that year to a Menorah. (Tr. Vol. I, p. 69) He believed the latter was a reference to his being absent from the office for religious reasons but did not name who was responsible for this and he did not complain about it to Steffy. He also claimed Steffy ridiculed him for growing a beard during a Passover season, asking if he wanted to look like a rabbi, but Steffy testified this exchange was light-hearted and she found the beard to be objectionable, not because of its religious significance, because it was unkempt and looked unprofessional. (Tr. Vol. III, pp. 437-438) I credit her testimony.

21. Complainant's poor attitude and continued failure to engage fully in his job during the early part of 2008, led Steffy to conclude that he was not properly fulfilling his duties as General Sales Manager. (Tr. Vol. III, 385-387) He continued to be disengaged in his role as General Sales Manager, appeared unenthusiastic, and she felt he was no longer happy in his job. She nonetheless continued to write encouraging notes on his pay checks in January of 2008 as it was her practice to do this with all employees as a means to give feedback and help motivate their performance. (Tr. Vol. III, pp. 382-383)

22. Upon Steffy's return from a vacation in early 2008, the Dealership's highest performing Sales Consultant approached her to report that the morale of the sales staff at the Dealership was very low and that unless changes were made, some employees might leave. (Tr. Vol. III, 385-387) She understood his admonition to be related to Complainant's poor leadership and lack of

engagement, including his refusal or assist sales people with client problems and other issues requiring a manager's attention. (Tr. Vol. III, p. 388) During that same time period, another employee approached Steffy to report that Complainant was so disrespectful to her he made her cry. These complaints coincided with McDaniels warning that he was considering leaving the Dealership. (Tr. Vol. III, pp. 388-390)

23. After several days of contemplating the problems with Complainant and the impact on her management team and the morale of the Dealership, Steffy made the decision to terminate Complainant's employment. She called Complainant to her office on February 15, 2008 and advised him of her decision. (Tr. Vol. I, 93; Vol. III, 391) On a termination form dated February 19, 2008, Steffy noted the reason for Complainant's termination was "Job Performance." She testified that she wrote this because Complainant was "not getting the job done." (Tr. Vol. III, p. 392-393) On a personal level, Steffy felt very bad about terminating Complainant's employment because she "liked and cared about" Complainant "tremendously." (Tr. Vol. III, p.392) I credit her testimony since the two were friends and had been close for a long time. Despite her personal feelings, Steffy stated she had an obligation to Herb [Chambers] and to run the Dealership and felt she made the right business decision and that it was necessary to restore the work environment, ensure she had the best team and prevent the loss of very good talented people. (Id.) She stated that the atmosphere at the Dealership improved dramatically immediately following Complainant's termination. (Tr. Vol. III, p. 391)

24. On February 14, 2008, the Dealership offered McDaniels the position of General Sales Manager. Steffy informed Herb Chambers that she wanted to promote McDaniels to the position following Complainant's termination and Chambers met with McDaniels to inform him.

McDaniels was unaware of his impending promotion before that meeting and Chambers did not discuss Complainant during that meeting. (Tr. Vol. III, p. 427; Vol. IV, p. 12, 21-22)

25. Complainant testified that following his termination he made some inquiries within the industry but there is no evidence that he formally applied for any sales positions within the automobile industry. He admitted in answers to interrogatories that he made no effort to obtain employment and stated that he had no documents reflecting his efforts to seek and find alternative employment. (Jt. Ex. 3; Tr. Vol. I, pp. 117-120) I did not find Complainant's conflicting positions regarding his job search to be credible. Complainant testified that he has worked full time as a consultant at a used car dealership called Lux Auto since approximately 2009, but earned no income in that position prior to 2011, when he earned \$24,000, and in 2012 when he earned \$26,000. (Tr. Vol., I p. 100) He also testified that he made a capital contribution to the business when it was starting up. (Tr. Vol. I, pp. 140-141)

### III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 151B, §4(1) makes it an unlawful practice for an employer to discharge an individual or to discriminate against such individual in compensation or in the terms, conditions or privileges of employment on account of such individuals religious creed. Section 4(1A) of c. 151B provides for religious accommodation in employment and states that it is an unlawful practice "for an employer to impose upon an individual as a condition of obtaining or retaining employment any terms or condition, compliance with which would require such individual to violate, or forego the practice of his creed or religion as required by that creed or religion including..." the observance of "a Sabbath or holy day and the employer shall make reasonable accommodation to the religious

needs of such individual.” Complainant alleges that as he became a more observant Orthodox Jew he was both subjected to disparate treatment on account of his religion denied the necessary accommodations to allow him to observe the tenets of his religion.

To prevail on his claim that the Dealership failed to accommodate his request for religious accommodation, Complainant must prove that he possessed a sincerely held religious belief that required him to follow or refrain from, a certain practice during his employment at the Dealership. Initially, the employee bears the burden of proving that the employer required him to violate a religious practice compelled by his sincerely held belief, as a condition of employment. *Massachusetts Bay Transit Authority v. Mass. Comm’n Against Discrimination*, 450 Mass. 327, 335 (2008) citing, *New York & Mass. Motor Serv., Inc. v. Massachusetts Comm’n Against Discrimination*, 401 Mass. 566 (1988) In order to establish a claim for failure to accommodate Complainant must also first establish that he had a sincerely held religious belief. *Brown v. F.L. Roberts & Co., Inc.*, 452 Mass. 674, 676 (2008)

Respondent asserts that Complainant did not present any evidence of a sincerely held religious belief that required him to observe tenets of his religion or to be absent from work. Complainant testified that for most of his life he was not a religiously observant Jew and did not attend temple or observe the Sabbath or religious holy days. He was not particularly attentive to the tenets of his religion, and claimed he did not consider himself an Orthodox Jew until after his termination from Respondent. He and his fiancée lived together as a couple for some time prior to his purchasing a home in Newton in an Orthodox community at the suggestion of his brother. His initial request for time off was for reason of Harriss’ conversion, not his own religious observance or belief. Complainant’s articulation of the

reasons why he needed time off from work suggested that the obligations related to his fiancée's conversion were not so much dictated by his sincerely held beliefs, as by the obligations imposed upon him by others, as a precondition of her successful conversion. Despite Complainant's testimony at hearing that working during the Sabbath is an absolute prohibition under Orthodoxy, he frequently worked voluntarily on Saturdays, never asked to take all Saturdays (or all of the day on Saturdays) off. His strict adherence to the tenets of the faith, was inconsistent at best. While he did not testify specifically, that his increased participation in religious practices was connected to an evolution of his own faith or beliefs, Complainant did testify that he became more religious and observant of the tenets of his faith as time went on and he became more engaged in his community. While there appears to be some basis for challenging the sincerity of Complainant's beliefs, I conclude that with respect to the subjective issue of one's devotion to a faith or creed, Complainant has made a prima facie showing. More importantly, Steffy testified credibly that she did not question the sincerity of Complainant's religious beliefs when he sought an accommodation.

Assuming that Complainant successfully articulated to Respondent that his religious beliefs required him to refrain from working on certain days (or parts of those days) set aside for religious observance, there is no evidence that Respondent ever denied him an accommodation with respect to time away from work. The Dealership never refused one of his requests for accommodation and Steffy freely allowed him to take all the time off that he requested without any objection. While there may have been times when Complainant worked on Saturdays rather than attend services, there is no evidence that he was compelled to do so or that he did not do so voluntarily. There is also no evidence to suggest he would have been subjected to any adverse employment action had he chosen not work on those

days. Instead, the evidence suggests that Complainant granted his requests without objection and supported his fiancée's conversion process. Steffy claims that she made a casual inquiry in one of many conversations with Harriss regarding the protracted conversion process but that this was not unusual given the length of time the conversion was taking. Even if Steffy had expressed frustration at how long the conversion was taking, given that the process took five years, I do not find this to be probative of religious bias. Steffy did not require Complainant to cease taking time off or face adverse job consequences. Given these circumstances, I conclude that Respondent did not deny Complainant's requests for religious accommodation. Nor does the evidence support a conclusion that Complainant's job was in jeopardy for his taking time off to observe the Sabbath or religious holidays or because he was becoming more devout. I conclude that Respondent terminated his employment some four years after he began seeking a religious accommodation for reasons wholly unrelated to his religious beliefs or the requests for time off, as discussed below.

In order to establish a prima facie case that his termination from the Dealership was on account of his religion/ requests to be accommodated with time off, Complainant must demonstrate that he is (1) is a member of a protected class; (2) that he was performing his job at an acceptable level; (3) he suffered an employment action; and (4) his employer sought to fill his position with someone not of his protected class. *Abramian v. President and Fellows of Harvard College*, 432 Mass. 107, 116 (2000). There is no dispute that elements one, three and four of the prima facie case have been satisfied in this case. However the required prima facie showing with respect to the issue of acceptable performance is not an onerous one. Complainant asserts that he was performing his job at a satisfactory level as evidenced by the fact that sales were at a high level and the Dealership continued to be very successful. He



also noted that Steffy wrote notes about his good performance on his pay checks up to the time of his termination. I conclude that Complainant has made a prima facie showing.

Once Complainant establishes a prima facie case, the Respondent must articulate a lawful reason or reasons for the adverse employment decision and produce some credible evidence to show that the reason or reasons advanced were the real reasons. *Abramian* at 116-117 quoting *Blare v. Huskey Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-445( 1995) Respondent notes that it promoted Complainant to General Sales Manager in 2005, after he began requesting a religious accommodation in the form of time off. His sales team continued to perform at a very high level and he remained motivated and enthusiastic for the next two or so years, despite his need to be absent from the Dealership on a more frequent basis. However, Respondent asserts that beginning in 2007 Complainant began to express displeasure with his compensation and repeatedly complained to Steffy and his subordinates, McDaniels and Keshishyan.

In response to his complaints, Steffy arranged a meeting with the Vice President of the corporation to discuss Complainant's compensation and the options discussed were for him to seek a General Manager position at another of the Corporation's dealerships or to increase sales at the BMW Dealership. Respondent asserts that Complainant's performance began to decline in the latter part of 2007 and early 2008 and that this manifested primarily in his abdication of a leadership role and his disengagement from the duties of General Sales Manager, which included assisting sales people with structuring and closing deals, and with handling disgruntled customers. Steffy testified that several employees complained to her about Complainant's poor attitude, unwillingness to help, and general lack of enthusiasm for the job. Some employees, including McDaniels, even discussed moving on from the

Dealership if steps were not taken to improve the situation. Steffy also perceived that Complainant was disengaged from her, as manifested by his non-responsive attitude and other behavior that she described as “bizarre.” Steffy relied on her management team and particularly Complainant to run the Dealership when she was absent. Ultimately, Complainant’s poor attitude and failure to act as a leader in supporting the sales force caused great frustration among sales associates and managers, resulting in low morale and an environment Steffy described as a “toxic.”

Steffy attributed Complainant’s decreasing initiative and lack of attention to and enthusiasm for the job to his dissatisfaction with his compensation and his frustration with events in his personal life, including the financial burden of maintaining more than one residence. Given that Chambers had also refused Complainant’s request to attend a General Manager’s meeting, I draw the inference that Complainant was also frustrated at being excluded from a higher level of management decision making within the company and the fact that he was foreclosed from becoming the General Manager of the BMW Dealership due to Steffy’s relationship to Chambers. I found the testimony of Steffy and others who testified about Complainant’s declining performance to be credible and convincing and conclude that Respondent met its burden to articulate a lawful reason for Complainant’s termination.

If Respondent succeeds in producing credible evidence at the second stage it rebuts the presumption of discrimination created by the establishment of a prima facie case, and the burden shifts back to Complainant to prove “by a preponderance of the evidence that Respondent’s facially proper reasons given for its actions...were not the real reasons, *Wheelock, supra.* at 139, but that Respondent acted with discriminatory intent, motive or state of mind. *Lipchitz v. Raytheon*, 434 Mass. 493, 504 (2001). Complainant claims that the

articulated reasons are a pretext and that his termination resulted from Steffy's frustration with his more frequent absences which coincided with his increased participation in the Orthodox community where he resided and his observing the Sabbath more religiously. However, he offered no evidence of actions or comments by Steffy or any others that suggested there was discriminatory animus towards him during that time. Aside from Complainant's and Harriss' testimony that Steffy was hostile to them, which I did not find credible, there is no evidence of pretext. The undisputed evidence is that Complainant performed well at the Dealership from 1999 through the Spring of 2007, but his attitude and engagement with Steffy and other employees turned starkly negative beginning in the Spring of 2007. He was unable to rebut the testimony of a number of Respondent's witnesses about the negative changes in his approach to the job and his leadership role. The sole other witness that Complainant called to support his claims also confirmed that his attitude and willingness to support the sales staff declined during the final stages of his employment.

The only evidence offered by Complainant to suggest evidence of animus against him because of his religion were a few comments and an incident that occurred long before his termination. They included Steffy making a joke about wishing she were "Muish," supposedly a reference to the number of religious days off taken by Muslim and Jewish employees, and her comments about a scruffy beard Complainant once grew during one Passover. Given the nature of Steffy's relationship to Complainant, I do not believe that these comments were indicative of discriminatory animus on her part and I do not find them to be evidence of pretext with respect to his termination. Lastly, Complainant asserts that some two years before his termination, someone altered the screen saver on his computer to a picture of a ham bone and later a menorah. Complainant viewed this as evidence of

discrimination against him because of his religion but did not know who was responsible and did not complain to Steffy or anyone else about it. There is no proof that this incident involved anyone in management at the Dealership. There was also no evidence that other employees at the Dealership conspired in any way to effect Complainant's termination. This and the fact that the incident is so remote in time from his termination lead me to conclude that it is not evidence of pretext. I also conclude that any claim of hostile environment based on these comments or incidents are time-barred as they occurred years before his termination, and were infrequent, isolated and minor. Moreover, Complainant was in a very high level management position with the hierarchy of the Dealership which suggests he could have addressed these issues without any repercussion to him. These incidents do not support a claim that his work environment was "pervaded by harassment or abuse" that resulted in "intimidation, humiliation;" nor is there evidence that the incidents created a "barrier to his full participation" in the workplace. *College-Town, Div. of Interco, Inc. v. Massachusetts Comm'n Against Discrimination*, 400 Mass. 156, 162 (1987)

Ultimately, Complainant failed to prove by a preponderance of the evidence that Respondent acted with "discriminatory intent motive or state of mind" or that his religion was the determinative cause of his termination. *Lipchitz*, 434 Mass. at 502-504. I conclude that Steffy terminated Complainant's employment because she believed that he was no longer engaged in his job, was failing to perform the duties expected and required of a General Sales Manager, and had ceased to be an inspirational leader to the sales team. It was evident to her from her own observations and the complaints of others that Complainant's detachment and unwillingness to assist his team was threatening the morale and stability of the Dealership. I believe that she did not make the decision to terminate Complainant's

employment lightly and did not act out of any untoward or unlawful animus related to Complainant's religion or his requests for religious accommodations. Given all of the above, I conclude that Respondent did not violate G.L. c. 151B.

IV. ORDER

This case is hereby 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 receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 16<sup>th</sup> day of June, 2014.

Eugenia M. Guastaferrri  
Hearing Officer