

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
CAROL A. POLIWCAZAK,

Complainants,

v.

DOCKET NO. 05-SPA-01155

MITCH'S MARINA AND CAMPGROUND,
MERVIL BROUSSARD, MELVIN BROUSSARD &
MICHAEL BROUSSARD

Respondents

Appearances: John B. Flemming, Esq., for Complainant
Patrick J. Melnik, Esq., for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On May 19, 2005, Complainant, Carol Poliwczak, filed a Complaint alleging that Respondents, Mitch's Marina and Campground, et al., discriminated against her on the basis of handicap and retaliated against her in a place of public accommodation in violation of G.L. c. 272 § 98. Complainant suffered a stroke in 2003 that left her with certain physical limitations, including minimal use of her right hand, difficulty walking without the use of a cane, and lack of stability while walking, especially on stairs or uneven surfaces. Complainant alleged specifically that on or about June 12, 2004, Respondents informed her husband that they could no longer park their vehicle in the spot at Mitch's Marina where they

had parked for twenty-four years and asked Mr. Poliwczak to move his vehicle to a parking lot that was further removed from the Poliwczaks' campsite. Mr. Poliwczak informed Respondents that because of his wife's handicap, they needed to park in their current spot so that his wife could safely access their campsite. Respondents denied the allegations of discrimination.

The Investigating Commissioner found probable cause to credit the allegations of the Complaint and conciliation efforts were unsuccessful. The matter was certified for public hearing and a hearing was held before the undersigned Hearing Officer on January 3, 2008.¹ Both parties submitted post-hearing briefs. Following the public hearing, Complainant moved to formally amend the Complaint to include Mervil, Melvin and Michael Broussard as party Respondents. At the hearing, Mervil testified that his mother, Melba Broussard, owns Mitch's Marina and Campground and that the three Broussard brothers are in charge of the Marina's day-to-day operations. Through testimony at the hearing it became evident that Mitch's Marina and Campground is merely a business name and that the marina and campground are not a separate legal entity, but are operated as a cooperative family enterprise. Based on the information adduced at the hearing, as outlined below in the findings of fact, I grant Complainant's Motion to Amend the Complaint to include Mervil, Melvin and Michael Broussard as party Respondents. These individuals were aware of the allegations in the complaint, including allegations of their direct personal involvement, and they participated at the public hearing. Having reviewed the parties' submissions and the record of the proceedings, I make the following findings of fact and conclusions of law.

¹ At the time of the Hearing and until February of 2010, the undersigned served as a Commissioner of the MCAD and was the Hearing Officer in this matter. By way of special designation by the current Chairman of the MCAD, the undersigned retained authority to issue this Hearing Officer decision.

II. FINDINGS OF FACT

1. Complainant, Carol Poliwczak, and her husband, John Poliwczak, reside in Agawam, Massachusetts. (Tr. 11)
2. Respondent Mitch's Marina and Campground is a marina and campsite open to the public and located on the Connecticut River in Hadley, Massachusetts. Melba Broussard is the owner of Mitch's Marina and Campground, but the business is operated as a cooperative family enterprise with Ms. Broussard's sons, Mervil, Melvin and Michael Broussard, in charge of daily operations. (Tr. 104)
3. Respondents accept and solicit the patronage of the general public for use of their campsites, boat ramp, public gas dock, snack bar and seasonal floating slips for campers to dock their boats. (Tr. 104-05)
4. There are approximately 100 parking spaces for cars on the facility grounds. Patrons may also park on a discontinued public road above the campsites called Mitch's Way. (Tr. 112)
5. There are four (4) handicapped parking spaces on the premises. Two spaces are located in the field above the north-side camping site. A third space is located near the snack bar and the fourth space is located in the guest field near the entrance to the Marina. (Tr. 119, 202-03)
6. During the 2005 and 2006 seasons, Michael and Mervil Broussard rented canoes and kayaks to the general public under a separately run business named, "Go Float Yourself." The kayaks and canoes were located at the bottom of the boat ramp. (Tr. 105, 147)
7. Prior to 2004, Complainant and her husband had rented a campsite and boat slip at Mitch's Marina and Campground for approximately twenty-four years. (Tr. 11)
8. Complainant testified that she and her husband would go camping at Mitch's campsite every

weekend during the summer season, from Memorial Day through approximately October 15, and sometimes during the week as well. I credit her testimony. (Tr. 11-12)

9. Complainant testified that prior to 2004, she and her husband always parked their vehicle in the parking area adjacent to the bottom of the boat ramp and parallel to the Connecticut River. Complainant's campsite was the second or third campsite in from the boat ramp and the walk from where Complainant parked her car to her campsite is essentially flat. I credit her testimony. (Tr. 19)

10. In April of 2003, Complainant suffered a stroke, leaving her with minimal use of her right hand, difficulty walking without the assistance of a cane, and problems with stability, especially while walking on uneven surfaces or climbing stairs. She also requires a railing on her left side when climbing any stairway. Complainant also suffers from multiple sclerosis for which she takes daily medication. (Tr. 25-26, 38, 67-69).

11. Following her stroke and rehabilitation, Complainant took a driver training course and was able to get her driver's license renewed. (Tr. 69).

12. Respondents were aware that Complainant had suffered a stroke and was disabled as a result.

13. In 2004, Complainant signed a contract for the season for use of the facility campgrounds at Mitch's and a slip for her boat. Respondent also provided Complainant with rules and regulations relating to both the camping and boating areas for the 2004 camping season. (Tr. 12-13).

14. The 2003 and 2004 Rules and Regulations relating to the campground at Mitch's Marina included a provision that the campers keep the area in front of their campsites open to allow access for emergency vehicles. (Ex. C-1, C-2).

15. Complainant testified that on or about June 14, 2004, her husband was on his way to the

men's room at the campgrounds when he saw Melvin Broussard at the snack bar collecting parking money at the entrance to the campground. Melvin Broussard told Mr. Poliwczak that he could no longer park his car in the spot where he had been parking for many years and that he would have to move his car to the parking lot. Mr. Poliwczak responded that he was not going to move his car. About an hour later, Melvin, Michael, and Mervil Broussard came to Complainant's campsite with a Hadley police officer. Complainant and her husband were visiting a neighbor's camper at the time, but they returned to Complainant's camper to talk to the Broussard brothers and the police officer. The police officer told Complainant, her husband and their friend, who had also parked in the same area, that they would have to move their vehicles or he would have them towed. Mr. Poliwczak asked why, but he was not given a reason. Mr. Poliwczak told the police officer in the presence of the Broussard brothers that Complainant could not walk to and from the parking lot, but the officer told him that he would have to move his vehicle because the Broussards wanted it moved. I credit her testimony. (Tr. 27-30).

16. Mr. Poliwczak testified that as he was walking towards his truck to move it, Michael Broussard was following him and saying to Poliwczak words to the effect of "you're out of there," to which Poliwczak replied, "you know some day my people may be speaking to your people." (Tr. 75).
17. Mr. Poliwczak then moved his truck from the area near the bottom of the boat ramp and the Poliwczaks were thereafter no longer allowed to park in that area. (Tr. 27-30).
18. While Mr. Poliwczak and his friend were the only patrons asked to move their vehicles from the boat ramp area on that day, the four to five other vehicles regularly parked in that area were no longer permitted to park there after 2004. Of the other campground patrons who

usually parked in that area, only Complainant was disabled. (Tr. 33, 56).

19. Melvin Broussard testified that he and his brothers made the decision not to allow any patrons to park on, or adjacent to, the boat ramp following an incident at the Marina where a woman was injured near the water and an ambulance had to park above the ramp and carry a stretcher down the ramp to reach the woman. After that incident, the Marina's insurance agent advised the Broussards that they should keep the area near the bottom of the ramp open for emergency vehicles and to prevent possible injuries to children who frequently ran around in that area. Melvin Broussard testified that he did not discuss with the insurance agent the possibility of keeping one designated handicap parking space available near the bottom of the ramp to accommodate a disabled patron. Melvin also testified that there would have been no problem with access for emergency vehicles if only one car were allowed to park parallel to the river near the bottom of the ramp. I credit his testimony. (Tr. 126-127, 148, 155-56).
20. The Marina's insurance agent, George Ross, testified that the insurance company requires a thorough inspection of the Marina each year. During the annual inspection in June of 2004, the inspector advised the Marina to put up "no parking" signs on the ramp to allow emergency vehicles access to the docks. Mr. Ross testified that he never discussed with Respondents the possibility of maintaining one parking spot next to the bottom of the ramp for a disabled patron. I credit his testimony. (Tr. 191-92, 194)
21. Melvin Broussard and the Hadley police officer both testified that on the day of the altercation when Respondent confronted Complainant and her husband about moving their car, he offered to build a ramp or install a gate and build stairs between the road above Complainant's campsite where there was space to park some forty feet from her campsite.

Mr. Poliwczak told him not to bother because Complainant would not be using them.

Melvin Broussard testified that Respondents installed a gate and stairs anyway, according to their own standards. Melvin Broussard also offered to allow Complainant's husband to drive her to her campsite, to drop her off, and then return to the field or to the road above their campsite to park. He also offered to drive Complainant down the ramp to her campsite anytime she wanted. I credit his testimony. (Tr. 92, 112, 133).

22. Mervil Broussard testified that on the day of the June incident, Mr. Poliwczak was very upset that he had to move his vehicle because he was afraid that someone would steal his tools from his truck if he parked on Mitch's Way, above the campsite. I credit his testimony. (Tr. 200).

23. Melvin Broussard testified that Mr. Poliwczak had given the Broussards a hard time in prior years and that Mr. Poliwczak frequently tried to tell them how to run their business, including where to put a handicapped spot for his wife. I credit his testimony. (Tr. 116, 124-25, 141, 143).

24. Complainant testified that during the 2004 season, she was unable to go to the campsite unassisted because she couldn't safely walk to her campsite without help. Mr. Poliwczak would drop her off at the bottom of the ramp and then go back up and park the car in the field parking lot. On occasion, Complainant would drive herself to her campsite, have her neighbors help her to unload the car and then her neighbor would drive her car up to the field to park it. (Tr. 31, 34).

25. Melvin Broussard testified that he and his brothers visited three other marinas in the area to survey where they placed their handicapped parking spaces and all three marinas had designated a spot closest to the boat ramp. None of these had handicapped spots on the boat

ramps, but they provided handicapped parking elsewhere on the marina grounds. (Tr. 111, 201). He viewed Respondent's policy as consistent with other marinas in the area.

26. Melvin Broussard testified that Mitch's Marina had designated a handicapped parking space in 2002 as part of a settlement of a lawsuit brought by another patron, Robert Ostrowski. Mr. Ostrowski had wanted a parking space at the bottom of the boat ramp, where Complainants regularly parked and Melvin Broussard informed him that he would instead designate a handicapped space up by the road. Broussard also informed Mr. Ostrowski he would not be invited back to the Marina because of his attitude. (Tr. 108-09, 121).

27. Mitch's Marina established and posted an accommodation policy in or about 2003 as part of the Ostrowski settlement. The policy read: "Mitch's Marina is prepared to provide accommodations for any disabled or handicapped individuals. Mitch's Marina has a handicapped access sani-can in place and has a handicapped parking spot available marked in the field across from the ramp. If these accommodations are not sufficient, and additional accommodations are necessary, please contact Melvin or Mervil to discuss any additional needs that you have. Mitch's Marina believes that everyone should be able to enjoy boating and camping despite any physical infirmaries (sic) or limitations and will provide whatever accommodations Mitch's Marina can reasonably make available." (R-4).

28. Complainant testified that she never parked in any of the four designated handicapped spots because she would have had to walk down the boat ramp to reach her campsite and she did not feel that she could do that safely. I credit her testimony. (Tr. 39).

29. Two other patrons of the Marina, Deborah Spillane and Richard Nelson, testified that Respondents have always made accommodations for them at the Marina. Ms. Spillane testified that Respondents assisted and made accommodations for her disabled daughter who

has Rhett's syndrome, and Mr. Nelson testified that Respondents always helped him to get in and out of his boat because he has difficulty doing so because of a disability. Both patrons were boaters at the Marina and neither used the campsite. (Tr. 158-170).

30. Complainant's husband testified that Complainant never used the gate or stairs that Respondents installed because there were no railings, the terrain was steep and the stairs were uneven. Complainant also testified that she did not use the gate area to access her campsite because she was concerned about falling. I credit their testimony. (Tr. 34, 79).
31. Mervil Broussard testified that between Complainant's campsite and the road above, there is a change in elevation of about ten feet over a distance of forty feet. (Tr. 214).
32. Complainant testified that if she had to use the bathroom, her husband would accompany her to a handicapped sani-can that was located at the base of the boat ramp. (Tr. 50).
33. Complainant testified that she always received campground renewal information from Respondents in January, but that she did not receive renewal documents in the mail for 2005. Complainant called Melba Broussard to ask why she had not received a contract and Melvin came to the phone telling her that he and his brothers had taken a vote and decided that having Complainant's husband at the Marina would hurt business so they resolved not to extend a renewal contract to the Poliwczaks. I credit her testimony. (Tr. 41-42.)
34. Melvin testified that when he spoke to Complainant on the phone about not renewing her contract for 2005, she started to cry because the Marina was the only place for her to enjoy recreation when her husband was at work. Melvin testified that he told Complainant she could visit her friends and he wouldn't charge her a guest fee, but that he and his brothers had decided that Mr. Poliwczak and his trailer were no longer welcome at the campground. I credit his testimony. (Tr. 142).

35. Thereafter, Complainant and her husband were not permitted to rent either a campsite or a boat slip at Mitch's Marina. Complainant testified that in 2005 she and her husband sold their camper because they were not using it anymore. I credit her testimony. (Tr. 42-43.)
36. Complainant testified that after she was unable to access her campsite without assistance in 2004, she grew depressed because she couldn't visit her campsite alone. She testified that when Respondent refused to renew Complainant's contract for 2005, she was down and depressed, missed her friends at the campground and the enjoyment of being there almost every weekend of the camping season. She testified that her friends at the campground were like family to her. I credit her testimony. (Tr. 40, 43-44).
37. Complainant's husband testified that he and his wife had rented a campsite and boat slip at the Marina for twenty-four years because "it doesn't get any better." He testified that they enjoyed the sunsets, good times and being with their friends at the Marina. Camping was so important to them that even their family and friends knew not to schedule any parties or weddings during the summer because their time at the Marina was so special to them. (Tr. 66).

III. CONCLUSIONS OF LAW

A. Handicap Discrimination

Massachusetts General Laws c. 272, § 98 prohibits any distinction, discrimination, or restriction relative to the admission of any person to a place of public accommodation based on handicap. That section further establishes the right to full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, resort or amusement. Mitch's Marina and Campsite is a place of public accommodation as it is a facility in the business of offering campsites and boat slips for lease to the public, which include access to a

snack bar, boat ramp and gas dock. Indeed, Chapter 272, § 92A includes campgrounds and resorts as places of public accommodation. Chapter 151B, § 5 authorizes the Commission to investigate and adjudicate complaints of violations of the public accommodations law. Ekhatov v. Stop & Shop Supermarket Co., 24 MDLR 147, 149 (2002).

The Commission employs the method of proof used in employment discrimination cases to analyze claims of discrimination brought under G.L. c. 272 § 98. See Wheelock v. MCAD, 371 Mass. 130, 134-136 (1976); Lipchitz v. Raytheon Company, 434 Mass. 493, 495 (2001); Reese v. May Dept. Store, 24 MDLR 395, 399 (2002). To establish a prima facie case of discrimination in a place of public accommodation, Complainant must demonstrate that she was: (1) a member of a protected class; (2) denied access, restricted, or treated differently from others not in her protected class, and (3) in a place of public accommodation. Reese v. May Dept. Store, 24 MDLR 395 (2002); Bachner v. Charletons's Lounge and Restaurant, 9 MDLR 1268 (1984).

The evidence supports a finding that Complainant is a handicapped individual within the meaning of G.L. c. 272, § 98. Complainant is disabled as a result of a stroke that she suffered in April 2003, leaving her with minimal use of her right hand, difficulty walking without the assistance of a cane and problems with stability, especially while walking on uneven surfaces or while climbing stairs. She also suffers from multiple sclerosis for which she takes daily medication.

Complainant alleges that in June of 2004, Respondents refused to continue to grant her a parking spot near the bottom of the boat ramp, where she and her husband had parked for many years, as an accommodation to her medical condition and to ensure that she had a safe and accessible route to her camper. I conclude that Complainant has established that Respondents significantly restricted her access to and use of the campsite, thereby denying her equal access to

the privileges and facilities that Respondent made available to non-disabled patrons. There is no dispute that Respondents asked Complainant and her husband to move their vehicle from the spot near the bottom of the boat ramp to a parking spot elsewhere on the premises and informed them that they would be prohibited from parking near the bottom of the ramp in the future. Complainant testified that she was unable to go to the Marina by herself in 2004 because she needed help to get to her camper, unload her belongings, and park her car. I conclude that as a result of Respondents' actions, Complainant was denied the right to the full and equal accommodations, advantages, facilities and privileges at Mitch's Marina and Campground that the public accommodation statute prescribes.

Once Complainant has established a prima facie case of discrimination, Respondent must articulate and produce credible evidence to support a legitimate, non-discriminatory reason for its actions. Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). Melvin and Mervil Broussard testified that they decided to eliminate the parking spaces adjacent to the boat ramp in June of 2004 following an inspection by, and on the advice of, their insurance carrier to keep the area free of cars in order to ensure that emergency vehicles had access to the boat ramp and to ensure the safety of pedestrians, primarily children, in the area. This followed an incident where a patron had been injured near the water and an emergency vehicle was unable to access the boat ramp and a stretcher had to be carried down and back. Other than this incident, Respondents produced no evidence that designating one handicap parking spot for Complainant near the bottom of the boat ramp would interfere with the safe operation of the boat ramp or place any undue hardship or burden on their business. Instead, Melvin Broussard testified that emergency vehicles would have no problem accessing the boat ramp area if only one car was allowed to park parallel to the river near the bottom of the ramp. George Ross, the Marina's insurance

agent, testified that he never discussed with Respondents the possibility of maintaining one handicapped parking spot near the bottom of the ramp to ensure an accessible route to a patron's campsite, something that Respondents could have certainly explored with him if they were genuinely concerned about safety at the Marina. Thus, it appears that Respondents could have accommodated Complainant's need by designating a handicapped parking space for her near the boat ramp without compromising the safety of other patrons or interfering with access for emergency vehicles, and they did not produce sufficient credible evidence that doing so would have been unreasonable or would have interfered with the operation of their business.

Respondents denied that Complainant was deprived of access to her campsite and offered testimony at the hearing about several accommodations they offered Complainant, including building a ramp or installing a gate and building stairs between the road above Complainant's campsite where there was space to park and Complainant's campsite, allowing Complainant's husband to drive her to her campsite and then return to the field or to the road above their campsite to park the car, and offering to drive Complainant down the ramp to her campsite anytime she wanted.

While the accommodations Respondent offered appear at first blush to be reasonable, Complainant was unable to use the gate or stairs above her campsite because she could not walk with any stability on uneven ground or use stairs without a railing. For this reason she was unable to use any of the four handicapped spots on the premises because they did not afford a safe, traversable, and accessible route to her camper. Complainant asserted that having to rely on her husband, neighbors, or Respondents to drive her to her campsite, effectively restricted her access and right to use the marina and her campsite. I agree.

Respondents testified that they had a public accommodation policy in place in June 2004

when they decided to prohibit parking near the bottom of the boat ramp and that stated they would have provided whatever accommodations to Complainant they could reasonably make. Despite the Marina's accommodation policy, Respondents unwillingness to discuss or consider any further accommodations beyond what they initially offered that would have allowed Complainant equal, unrestricted access to her campsite, was a violation of G.L. c. 272 § 98.

It is also apparent from the testimony of the parties that Respondents and Mr. Poliwczak did not get along and that Respondents were upset at Mr. Poliwczak "trying to tell them how to run their business." A sour relationship, however, does not obviate Respondents' duty to ensure Complainant's equal access to the facilities with an accommodation if necessary. I conclude that Respondents' failure to provide a workable accommodation in this instance was a violation of G.L. c.272 § 98. The accommodation Complainant sought was reasonable and Respondents' refusal to maintain a parking spot near the bottom of the boat ramp to afford Complainant an accessible route to her camper constituted discrimination on the basis of handicap.²

B. Retaliation

Complainant also alleges that Respondents retaliated against her by deciding not to renew her contract for 2005, thus prohibiting her from leasing a campsite and boat slip at the Marina. A claim of retaliation is a separate and independent cause of action. The Commission has held that Massachusetts General Laws c. 272, § 92A prohibits retaliation for protected activity in a place of public accommodation. MCAD and DiIorio v. Willowbend Country Club, Inc., 06-BEM-10392, 06-BEM-02651 (2009); Lumley v. Flynn, 80-BPA-0006 (1984). Complainant requested

²Accessible routes are regulated by 521 CMR 20, which provides in pertinent part, "An accessible route shall provide a continuous unobstructed path connecting accessible spaces and elements inside and outside a facility. Accessible routes may include but are not limited to walks, halls, corridors, aisles, skywalks, and tunnels. Accessible routes may not include stairs, steps, or escalators, even if the stairs and steps are required to be accessible under 521 CMR."

that Respondents allow her to maintain a parking spot near the boat ramp as an accommodation so that she could access her campsite safely. Such request is protected activity triggering the non-retaliation provision of the statute. Respondents were aware of Complainant's disabilities stemming from her stroke and the need to provide Complainant with a reasonable accommodation, yet they voted to not renew her contract for 2005, purportedly because they decided that having Complainant's husband at the Marina would "hurt business." Indeed, Mr. Poliwczak initially raised the issue with Respondents of keeping the parking space at the bottom of the ramp because his wife could not otherwise access their campsite safely.

The temporal evidence establishes the inference of a retaliatory motive on the part of Respondents to deny both Complainant and her husband a contract for their campsite because her husband had spoken out against Respondents' decision to prohibit them from parking near the bottom of the ramp as a reasonable accommodation. This inference is bolstered by the Respondents' prior refusal to renew the Ostrowskis' contract in retaliation for their pursuit of a remedy in their handicap accommodation lawsuit.

Respondents' failure to renew Complainant and her husband's campsite contract had the affect of banning Complainant and her husband from the Marina and interfering with their social life and the network of friendships that they had established over the course of twenty-four years. As a result of Respondents' actions, the Poliwczaks were forced to sell their camper, which had provided them years of enjoyment, and they stopped camping, an activity they enjoyed every weekend in the season. Respondents exacted a lifestyle change on Complainant and her husband which caused Complainant to grow depressed and restricted her ability to partake in a recreational activity that she had previously enjoyed. I conclude that Respondents' decision to prohibit Complainant and her husband from renewing their contract for a campsite at

Respondent's campground constitutes unlawful retaliation. See MCAD and DiIorio v. Willowbend Country Club, Inc., 06-BEM-01392, 06-BEM-02651 (2009) (finding retaliation where manager of country club discouraged Complainants' presence on country club grounds following her termination).

IV. REMEDY

A. Emotional Distress

Pursuant to G.L. c. 151B, § 5, the Commission is authorized to grant remedies in order to make the Complainant whole. This includes an award of damages to Complainant for emotional distress suffered as a direct and probable consequence of Respondents' unlawful treatment of her. Bournewood Hospital v. MCAD, 371 Mass. 303, 316-317 (1976). An award of emotional distress rests on substantial evidence with its factual basis clear on the record. Some factors that should be considered include: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time Complainant has suffered and reasonably expects to suffer; and (4) whether Complainant has attempted to mitigate the harm. Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Complainant must also show a causal connection between Respondents' unlawful actions and her emotional distress. Id. at 576.

I am persuaded that Complainant suffered emotional distress as a result of Respondents' unlawful conduct based on her credible testimony. Complainant testified that she grew depressed as a result of Respondents' refusal to allow her to keep a parking spot near her campsite because she was no longer able to access her campsite by herself or without assistance from her neighbors, which was a significant inconvenience and a loss of independence for her. When Respondents refused to renew Complainant's contract in 2005, she and her husband were forced to sell their camper and discontinue what had been their traditional summertime

recreation for twenty-four years. Complainant testified that she was very depressed because she missed her friends at the campground as well as the enjoyment of being there most weekends during the camping season. Complainant testified that her friends at the campground were like family to her because they had been camping there for twenty-four years, making the impact of the loss even more significant.

Complainant's husband also testified about how much he and his wife enjoyed their time at the Marina saying: "it doesn't get any better." He testified that he and Complainant enjoyed sunsets, good times and friends at the Marina and that even their family knew not to schedule anything during summer weekends because their summer weekends at the Marina were so important to them. I find that Respondents not only deprived Complainant and her husband of recreational pleasure and good times they had enjoyed at the Marina for over two decades, but that they exacted a lasting lifestyle change on the Poliwczaks, all of which caused Complainant significant emotional distress. Based on the evidence and Respondents' unlawful actions, I find that Complainant is entitled to an award of emotional distress damages in the amount of \$15,000.00.

B. Civil Penalty

G.L. c. 151B, § 5 states, in part, "if, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against the respondent: a) in an amount not to exceed \$10,000.00 if the respondent has not been adjudged to have committed any prior discriminatory practice...." Because I have found that Respondents engaged in unlawful discrimination and deliberate retaliation, I conclude that a civil penalty in the amount of \$5,000.00 is warranted.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, I conclude that

Respondent violated G.L. c. 272 and order that Respondents:

1. Immediately cease and desist from engaging in unlawful discrimination on the basis of handicap;
2. Immediately cease and desist from engaging in retaliation;
3. Take the necessary steps to ensure that their accommodation policy is posted in clear and visible spots at the Marina and that patrons are aware of this policy;
4. Offer to renew the Complainant and her husband's contract on the same terms and conditions as offered to other campers and boaters;
5. Pay to Complainant the sum of \$15,000.00 in damages for emotional distress 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. Payment shall be made within 60 days of receipt of this order.
6. Pay to the Commonwealth a civil penalty in the amount of \$5,000.00.

This constitutes the final order of the Hearing Officer. Any party aggrieved by this Order may file a Notice of Appeal to the Full Commission within ten days of receipt of this Order and a Petition for Review to the Full Commission within thirty days of receipt thereof.

SO ORDERED this 16th day of August, 2011.

Martin S. Ebel
Hearing Officer