

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
KAMAU WEAVER,
Complainants

v.

DOCKET NO. 07-BEM-01201

WINDY CITY PIZZA,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty E. Waxman in favor of Respondent Windy City Pizza. Complainant Kamau Weaver filed a Complaint with the Commission alleging that Respondent discriminated against him on the basis of race by subjecting him to a racially hostile work environment when his supervisor used racial epithets at work. The Complaint also alleged retaliatory termination for his complaints about the alleged racial harassment, all in violation of M.G.L. c. 151B, sec. 4(1) and (4). The Investigating Commissioner found probable cause to proceed on the claim of race discrimination, but not on the claim of retaliation. Following an evidentiary hearing on December 3, 2010, the Hearing Officer dismissed the Complaint. Complainant has filed a Petition for Full Commission Review, challenging the decision below.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 *et. seq.*) and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, §5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding..." Katz v. Massachusetts Comm'n Against Discrimination, 365 Mass. 357, 365 (1974); G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. Massachusetts Comm'n Against Discrimination, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.23.

BASIS OF THE APPEAL

The Hearing Officer determined that Respondent terminated Complainant for confronting his supervisor in an argumentative manner and screaming at the supervisor in front of customers. The Hearing Officer also found that Complainant, not his supervisor, was the person who used racial epithets in the workplace, as well as in his rap music, which he distributed to his co-workers. The Hearing Officer determined that Complainant's charge that he was subjected to a

racially hostile work environment was not substantiated by the credible evidence presented at the public hearing. She further determined that Respondent's reasons for terminating Complainant were legitimate, job-related, and not related to his race. She credited Respondent's assertion that Complainant was terminated for creating a scene and arguing with his supervisor in the presence of customers.

Complainant raises two issues on appeal. First, Complainant argues that the Hearing Officer erred as a matter of law in dismissing the complaint because the owner of Windy City Pizza, Muzo Bayturk, allegedly admitted for the first time at the hearing that the main reason for firing Complainant was because he complained, in the presence of customers, of being called a "nigger," by his supervisor. Complainant asserts that this proves he was subjected to racial harassment and that his supervisor called him a "nigger." We do not concur with this assertion. Even if Bayturk admitted firing Complainant for making allegations in front of customers that he was called the "n-word" by his supervisor, this is not tantamount to an admission that Complainant was in fact called racial epithets by his supervisor. Instead, it would demonstrate that the employer found Complainant using the "n-word" in a heated argument in the presence of customers to be inappropriate.

The Hearing Officer credited Respondent's testimony that the reason for terminating Complainant's employment was because Complainant argued with his supervisor and screamed in the presence of customers. It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. We defer to these determinations of the Hearing Officer so long as there is evidence in the record to support them. The Hearing Officer hears the testimony of witnesses and observes their demeanor first hand and is in the best position to assess credibility. Quinn v. Response Electric Services, Inc., 27 MDLR 42

(2005). There is no evidence that would lead us to disturb the findings of the Hearing Officer.

Second, Complainant asserts that the Hearing Officer committed an error of law by excluding his Post-Hearing Brief from the record and asks the Full Commission to consider the brief as evidence and include it as part of the record. The Hearing Officer noted in her decision that: "Neither side submitted post-hearing briefs." (Decision of Hearing Officer, p. 2.) It appears, however, that Complainant submitted a post-hearing brief on March 25, 2011. We acknowledge that this was an oversight by the Hearing Officer, but it does not constitute an error of law which requires us to overturn her decision. The filing of post-hearing briefs is discretionary; they do not constitute evidence or the record for the public hearing.¹ Nonetheless, we have reviewed and considered Complainant's Post-Hearing Brief, which is primarily a recitation of facts that Complainant would like the Hearing Officer to find based upon Complainant's testimony, together with legal argument based on those purported facts. We find nothing in the Post-Hearing Brief that would cause us to disturb the Hearing Officer's credibility findings or conclusions of law. Having weighed Complainant's objections to the decision in accordance with the standard of review summarized above, we find no material errors of fact or law and conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Officer. Her decision is hereby affirmed.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of service of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Standing Order on Judicial Review of Agency Actions. Failure to file a petition in court within thirty (30) days of

¹ See 804 CMR 1.21(15) & (9)

service of this order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED² this 10th day of January, 2017



Jamie R. Williamson
Chairwoman



Charlotte Golar Richie
Commissioner

² Commissioner Sunila Thomas George was the Investigating Commissioner in this matter, so did not take part in the Full Commission decision. See, 804 CMR 1.23