

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION  
and JEAN DALY,

Complainants

v.

DOCKET NO. 05-BEM-01075

CODMAN & SHURTLEFF, INC.,

Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith Kaplan in favor of Complainant, Jean Daly. Following an evidentiary hearing, the Hearing Officer concluded that Respondent had violated G.L. c. 151B and was liable for discrimination on the basis of Complainant's disability which resulted in a constructive discharge. The Hearing Officer concluded that Respondent had failed to accommodate Complainant's handicap, coronary artery disease, by substantively addressing the issue of her burdensome workload. The Hearing Officer awarded Complainant back pay, as well as \$100,000 in damages for emotional distress.

Respondent has appealed to the Full Commission, asserting that the Hearing Officer erred as a matter of law in concluding that Complainant was disabled. Even if Complainant was disabled, Respondent argues that the substantial evidence fails to

support the Hearing Officer's conclusions that it had notice of Complainant's disability or that it failed to offer her a reasonable accommodation in the workplace. Respondent also challenges the finding of constructive discharge and the award of damages.

Complainant has also appealed to the Full Commission on the sole issue of whether the Hearing Officer erred in limiting her award of back pay to seventeen weeks, the period from Complainant's last day of work at Respondent and the date of her eligibility for receipt of Social Security Disability benefits.

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

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). 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 otherwise not in accordance with the law. See 804 CMR 1.23.

### Respondent's Petition for Review

Respondent challenges the Hearing Officer's determination that Complainant was disabled at any time during her employment with them, up to and including her final day of work. Respondent argues that Complainant experienced only one cardiac episode from 2000 to May of 2004, while working for them, which occurred in March of 2003, and manifested in chest pains and difficulty breathing. This resulted in her taking a three month medical leave of absence after which she returned to work with no restrictions. Respondent argues that Complainant's impairment is "temporary" and "episodic" and that she is not disabled within the meaning of c. 151B by reason of her heart condition. Respondent further argues that there was never a time when Complainant's activities were limited or restricted by her heart condition, or that she could not perform her duties because of her alleged disability.

Respondent takes a very narrow view of Complainant's employment and medical history and ignores the fact that Complainant was employed by affiliates or subsidiaries of the Johnson & Johnson "family" of companies, including Respondent, for over thirty-two years prior to her last day of work, and that she had a history of coronary artery disease and had taken several previous medical leaves of absence during this period.<sup>1</sup> Specifically, the Hearing Officer found that in December 1997, Complainant experienced chest pain and difficulty breathing, was subsequently hospitalized and was diagnosed with coronary artery disease and unstable angina, and was told she likely suffered a

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<sup>1</sup> Respondent makes much of the fact that it outsources its short and long-term disability processes and neither the HR Director or Complainant's supervisors had access to medical information about Complainant's impairment, including physician reports. However, the HR Director and Complainant's supervisor had actual knowledge of her impairment arising from Complainant's requests to reduce her workload for health reasons. This was sufficient to trigger a duty to engage in an interactive dialogue regarding the need for an accommodation.

minor heart attack.<sup>2</sup> Complainant took a two-month medical leave of absence from work due to her medical condition and received short term disability benefits. Complainant experienced a similar episode in 1998, and was again hospitalized, underwent angioplasty, again took medical leave and received short-term disability benefits. Her supervisor during those years was Vin Scribi, her same supervisor as in 2003. Upon her return to work from each of the prior leaves, she had advised Scribi that she needed a reduced workload and she clearly linked her medical condition and diagnosis to the need to have her workload adjusted. These earlier matters were appropriately considered on the issue of whether Respondent knew or should have known of Complainant's disability.

Vin Scribi continued to be Complainant's supervisor at Respondent in March 2003, when she underwent surgery for insertion of a stent in a blocked artery and took a three month leave of absence due to her medical condition. During her leave, she updated Scribi on her health and told him again that her workload was out of control and that she feared for her health. The incident resulting in the March 2003 leave was just the most recent manifestation of Complainant's chronic condition. But even if the March 2003 episode could be regarded as a single isolated incident, as Respondent asserts, this would still not have precluded a finding by the Hearing Officer that Complainant was disabled within the meaning of the statute. The Hearing Officer found that Complainant's condition of severe coronary artery disease, even though episodic, and which often manifested in chest pain and shortness of breath, substantially limited Complainant's ability to breathe, walk and work. The Commission "has long recognized that a 'heart condition' is a disability within the meaning of G.L. c. 151B." MCAD & German v, Building & Tech. Engrs., 25 MDLR 414 (2003) (citing Talbert Trading Co.,

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<sup>2</sup> According to Complainant's testimony, she was at work during this cardiac incident.

37 Mass. App. Ct. 56, 61 (1994); Bianchi v. Dutchess Chemical, Inc., 24 MDLR 168, 170 (2002); Cahillan v. Monsanto Corporation, 18 MDLR 73, 75 (1996); Miller v. Northeast Security, Inc., 17 MDLR 1067 (1995); Mortimer v. Atlas Distributing Co., Inc., 15 MDLR 1233, 1253 (1993). Moreover, “the Commission has recognized that chronic or episodic disorders that are substantially limiting may be handicaps.” Id.

Respondent claims that no one “ever demonstrated a belief that Daly’s physical activities were limited by her condition.” To the extent that Respondent seems to be arguing that it was without sufficient notice of Complainant’s condition, it is clear that the Hearing Officer did not credit this assertion. As stated above, Complainant’s supervisor, Scribi, was aware of her heart condition. She had advised him on several occasions that her work load was onerous, she could not tolerate the stress, and that she needed a reduction in her duties. The evidence further demonstrates that following her return to work in June 2003, Complainant met with Respondent’s Human Resources Director and advised her that she had suffered several heart attacks and feared she would have another heart attack and die if her workload was not lessened. Respondent states that Complainant’s statement that she had suffered several heart attacks was not true, however this does not negate the finding that she was disabled.

The Hearing Officer specifically found that although Complainant may have suffered only one likely heart attack, Complainant did not intentionally mislead her employer, her therapists or the Commission, because at the time she sincerely believed this. What matters for purposes of the Hearing Officer’s finding is that the HR director was aware of Complainant’s heart condition and the fact that Complainant was worried her condition would deteriorate given her current level of stress resulting from an

overwhelming workload. The link between Complainant's medical condition and her workload was unmistakable: indeed, the Hearing Officer rejected Respondent's assertion that Complainant's requests to HR did not place Respondent on notice of her handicap. Indeed, the Hearing Officer found incredulous, the HR director's testimony that she did not believe Complainant's medical condition was relevant to her ability to perform the duties of her position and that she had no understanding Complainant was seeking a reduction in her workload due to her medical condition. The Hearing Officer concluded that the HR director "did not hear, and was not responsive to, Complainant's entreaties."

Notably, this was not the only time Complainant indicated that her heart condition limited her ability to manage her extensive workload. At the beginning of March 2004, Complainant again met with HR, stating that she continued to be extremely stressed by her overwhelming workload and again stated she feared suffering from another heart attack and dying. Complainant's new supervisor, Bernard, was aware of Complainant's heart condition, as she had expressed similar sentiments to him in January 2004 while informing him she was physically and emotionally exhausted by her overwhelming workload, which she pressed him to reduce. Given these facts, Respondent's assertion that Complainant was not disabled and that it was without sufficient information regarding the effect of Complainant's condition upon her major life activities -- specifically working -- is unpersuasive. Respondent's argument on these points must be rejected.

Respondent next challenges the Hearing Officer's finding that it failed to engage in the interactive process and to take action to accommodate Complainant's disability. Respondent asserts that it engaged in an interactive process and took multiple actions to

accommodate Complainant which it set forth in its appeal. However, the Hearing Officer considered the testimony and evidence surrounding Respondent's asserted actions, and ultimately rejected Respondent's contention that these were substantive accommodations. She determined that Respondent's actions, whether viewed individually or collectively, failed to substantively address Complainant's job situation "in any meaningful way," and despite Complainant's repeated requests for assistance and accommodation, "there was little meaningful discussion" about how to achieve a reduction in workload. While Respondent asserts that it transferred "some of her responsibilities," by assigning them to Scribi in August of 2003, the evidence does not demonstrate that this was done to reduce Complainant's workload, because Complainant was simultaneously assigned other additional duties, which presumably negated any overall reduction in her workload. The Hearing officer found that the reassignment of duties was more likely the result of Scribi's transfer to a non-management position. Complainant viewed the additional duties from her new supervisor, Bernard, as "the straw that broke the camel's back." Complainant testified that she was "totally overwhelmed," and physically and emotionally exhausted.

Respondent points to the fact it hired an employee to work for Complainant to assist her. Complainant testified that part-time help was insufficient. The evidence shows that at a meeting in February 2004, Complainant proposed specific measures to Bernard that she believed would alleviate her workload, such as increasing Amaral's hours to full-time and hiring another part-time employee, but Bernard ignored these pleas.

Respondent asserts that it reached an agreement with Complainant to switch positions with another employee upon that employee's return from an overseas

assignment in July 2004. Yet the evidence demonstrates that while HR proposed and discussed this job switch with Complainant, her supervisor, Bernard, professed to know nothing of the plan when Complainant asked him about the switch at some point in mid-May. The lack of communication about the potential job switch and the fact that it never occurred, support the Hearing Officer's conclusion that the proposal was not a meaningful accommodation. Given such a lack of any substantive abatement of Complainant's workload, which caused her ultimately to leave her employment, the Hearing Officer's conclusion that Respondent failed to engage in the interactive process in any meaningful way is supported by the evidence.

Respondent also contends that the Hearing Officer abused her discretion by improperly substituting her own judgment about the nature and extent of Complainant's duties and disregarded the employer's vision of what duties the position entailed. Respondent argues that the Hearing Officer substituted her judgment regarding "the realities of Complainant's job" and disregarded Respondent's view of the job. This is an apparent reference to a finding of fact that discusses the revised job description Bernard gave Complainant upon return from her medical leave on May 20, 2004, ultimately the last day of her employment. Respondent asserts that this revision was an attempt to accommodate Complainant's disability. The Hearing Officer credited Complainant's testimony that the job description was an exercise in form over substance that merely restated her job duties in a shorter form and illogical manner. It still required her to perform work in all of the databases she previously worked in, and did not reduce her duties. The Hearing Officer found that "Bernard's proposed job description was a "cut and paste job that did not take into account the realities of Complainant's position and did

not substantively reduce her responsibilities.” Respondent’s argument that the Hearing Officer improperly substituted her own judgment is merely a criticism that she credited the testimony of Complainant over theirs. The Hearing Officer’s job is to evaluate the testimony and evidence, and to make assessments of witness credibility. That the Hearing Officer credited Complainant’s testimony over Respondent’s regarding the revised job description does not mean that she substituted her *own* judgment on the issue; it simply means that she found Complainant’s testimony about her own job duties and job description more persuasive. This was not an abuse of discretion.

In addition, Respondent appears to challenge the Hearing Officer’s conclusions about “the realities of Complainant’s job” on the grounds that she failed to consider Respondent’s directive that Complainant cease performing work for other Johnson & Johnson subsidiaries, namely DePuy Orthopedics, and cease responding to directives from people other than her direct supervisors. Respondent argues that Complainant was not employed by DePuy Orthopedics, and that its directive that she no longer support DePuy managers was a means of lessening her workload with a view toward accommodating her disability. Respondent argues that the Hearing Officer ignored Respondent’s evidence that Complainant flouted her supervisor’s authority and frustrated their attempts to lessen her workload by ignoring this directive and continuing to provide support to individuals at DePuy. However, the evidence demonstrates that Complainant’s duties included maintaining and administering the hardware and software database containing the entire transactional history for purchasing and accounts payable throughout Johnson & Johnson’s companies worldwide. In addition, Complainant was responsible for training all associates on this software system and for the security of the

system, and for working with buyers. She was also the project leader for Ariba, the new purchasing and accounts payable system. As such, she was responsible for communicating with individuals not only at Respondent, but at DePuy Orthopedics as well. The Hearing Officer specifically credited Complainant's testimony that her duties were "complex" and "multifaceted," and that during the transition to Ariba she was "required to have a great deal of interaction with corporate and IR to deal with glitches." The Hearing Officer also credited Complainant's testimony that her "multiple duties, and particularly those requiring her to interface with, and provide service to, the employees of other Johnson & Johnson subsidiaries" were described in a flow chart that Complainant prepared and presented to Bernard in order to demonstrate that work was unfairly distributed. In response to Bernard's directive not to deal with DePuy employees, Complainant explained that she could not say "no" to them because there was a great deal of overlap in their tasks which required them to work in a collaborative fashion. Similarly, Complainant explained to HR that DePuy employees expected her to provide support to them. The Hearing Officer concluded that Bernard and HR "did not understand the complexity of [Complainant's] job duties or her obligations to interface with, and assist, employees from the other Johnson & Johnson companies." This conclusion was reasonable and supported by credible testimony. It did not represent the Hearing Officer substituting her own judgment and it was not an abuse of discretion. Thus the Hearing Officer's conclusions regarding Respondent's failure to engage in an interactive process with Complainant to accommodate her disability should not be disturbed.

Respondent has appealed the Hearing Officer's finding of constructive discharge as an error of law. It argues that Complainant did not resign on May 20, 2004, and that she left work fully intending to return the following day. Respondent states that her intent to return and hopefully work out her situation proves conclusively that Complainant did not find her working conditions intolerable. This argument ignores the fact that Complainant left the workplace on her first day back from an extended leave, extremely anxious and upset, crying, nauseous and short of breath. At 2:00 a.m. the following morning she awoke with chest pain and had to be transported to the hospital, where she underwent cardiac catheterization. Viewed in context, the fact that Complainant determined that she could not return to such a stressful work environment where her cries for help had gone largely unheeded supports the Hearing Officer's finding of constructive discharge. The fact that Complainant suffered a cardiac incident within hours of leaving the workplace in a panic is also significant. Complainant testified that she could not return to work because she feared the stress of her workload going unaddressed would exacerbate her cardiac condition. The Hearing Officer credited the testimony that Complainant "justifiably feared that her health would be severely compromised if she continued working." Given her history of coronary artery disease and medical leaves the Hearing Officer deemed her concerns to be reasonable. The Hearing Officer also concluded that Complainant had exhausted all possible alternatives prior to leaving the job, citing the repeated requests to lessen her workload that went unheeded. She noted that Complainant had repeatedly sought assistance from the Human Resources department, only to be sent back to her supervisor who took no substantive action to relieve her of an overwhelmingly burdensome workload. She also credited

Complainant's testimony that Bernard's purported revision of her job description was essentially a sham, and that he professed ignorance regarding a proposed job switch that Complainant had arranged with HR. The Hearing Officer concluded that the cumulative effect of these events caused Complainant to feel that she "was being driven out," of the workplace and resulted in her constructive discharge. We agree with the Hearing Officer's conclusion that "the stress of Complainant's work environment and Respondent's failure to address her job situation in any meaningful way became so intolerable so as to compel her to leave her employment."

Respondent argues there is no basis for a finding of constructive discharge because Complainant never formally resigned from her employment. It cites the case of Mac's Shell Service, Inc. v. Shell Oil Products, Co., 130 S. Ct. 1251 (2010) for the proposition that a plaintiff must "sever a particular legal relationship in order to maintain a claim for constructive termination." Leaving aside the fact that Mac's Shell did not involve an employment situation but, a franchisor-franchisee relationship, the facts are that, in this case, Complainant did sever her employment relationship with Respondent by never returning to work after May 20, 2004. That this day was her last at Respondent's workplace is undisputed. Respondent also argues that Complainant continued to behave as an employee after May 20, 2004, because she received short-term disability benefits followed by long-term disability benefits in September of 2004. This argument is not persuasive since Respondent's HR director testified that when employees of Respondent commence long-term disability leave, they become "inactive" employees who are considered terminated, despite continuing to receive some benefits, such as medical

coverage and life insurance. This testimony supports a finding that both Complainant and Respondent considered Complainant's employment to be terminated at this point.

Respondent also appeals the Hearing Officer's award of back pay as being in error. Respondent argues that Complainant admitted at the public hearing that, after entering the hospital on May 21, 2004, she began a period of short-term disability leave, during which she continued to receive her full salary. (Tr. Vol. II, 44-45; Conditional Joint Stipulation, par. 1) Since Complainant received her full salary during this period, she should not have been awarded back pay for these three months, from May 21-Sept. 16, 2004. We concur with this assessment, since Complainant lost no wages during this time period, and the award for back pay should be rescinded.

Finally, Respondent contends that the Hearing Officer erred in awarding damages for emotional distress, asserting that the award was without substantial evidentiary basis, arbitrary and capricious. The Supreme Judicial Court has articulated standards for the Commission to consider when assessing damages for emotional distress in Stonehill College v. MCAD, 441 Mass. 549 (2004). The relevant factors include the nature, character, severity and length of the harm suffered, and the award should be "fair and reasonable and proportionate to the distress suffered." The Hearing Officer's award is based on credible testimony from Complainant and her husband that she sustained significant emotional harm as a result of Respondent's failure to address and accommodate her disability. The Hearing Officer credited Complainant's testimony that during her final year of employment she experienced extreme anxiety, depression, insomnia and fear that she would suffer a heart attack and maybe even die if her working conditions were not altered. Complainant also testified about how her daily life was

altered as a result of her emotional distress. Prior to May 2004, she regularly performed household chores and went on family camping trips, but thereafter ceased these activities and sat around the house being depressed and watching TV. The Hearing Officer credited testimony from Complainant's husband that she had been a happy, outgoing, fun-loving person prior to June of 2003, but that her personality changed during the next year, that she had no drive or motivation and became irritable because of the stress of her overwhelming workload. We find that the Hearing Officer's award of damages is consistent with the standards set forth in Stonehill, and that the award is commensurate with the emotional pain suffered by Complainant surrounding the fight to save her health and ultimate loss of her career. It is traditionally a function of the trier of fact to determine the degree of harm suffered and the size of this award does not so shock the conscience as to constitute an abuse of the fact-finder's discretion. See Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824, 825 (1997) We will not disturb the Hearing Officer's award as it does not constitute an abuse of discretion.

#### Complainant's Petition for Review

Complainant contends that the Hearing Officer erred in limiting her award of back pay damages to a period of seventeen weeks, the period between Complainant's last day of work at Respondent (May 20, 2004) and the date when she became eligible for Social Security Disability benefits (September 16, 2004). Complainant argues that she became totally disabled following May 20, 2004 as a result of her depression, and that because Respondent's conduct was a substantial cause of Complainant's inability to work, the Hearing Officer should not have cut off Complainant's back pay as of September 16,

2004. She argues that the Hearing Officer arbitrarily applied the retroactive date of Complainant's award of Social Security Disability benefits as the date to cut off her back pay. She states that because the Hearing Officer committed error in ascribing receipt of disability benefits as being solely for Complainant's cardiac condition without supporting evidence. Complainant is seeking back pay for a period of four years and forty-three weeks, from the date she left her employment up to the time of hearing. The Hearing Officer noted that the evidence in the case "suggests that Complainant's coronary artery disease had advanced to the point of total disability by September of 2004. According to Complainant's cardiologist, she had been permanently disabled since 2004 because of arterial blockages that cannot be repaired and because of ongoing episodes of chest pain and shortness of breath that occur with exertion or at rest. He testified that from a cardiological standpoint, Complainant's disability has permanently impaired her ability to work. Thus Complainant's assertion that there was "undisputed medical evidence" that she became "totally disabled due to her depression" is not accurate. Regardless of whether Complainant became disabled from working due to her cardiac condition or her depression, the fact is at some point she was deemed medically incapable of working. It was proper for the Hearing Officer to conclude that "[t]he medical evidence suggests that Complainant's coronary artery disease was progressing in a manner that would have prevented her from working at some point after her constructive discharge." Based on this evidence, and the advanced stage of Complainant's heart disease, the Hearing Officer declined to make an award of back pay based on speculation that Complainant might have been able to continue working had the circumstances been different. She stated that she was "unable to speculate as to how those circumstances might have differed, had her

disability been accommodated or if she would have been able to continue working for many years thereafter.” Accordingly, the Hearing Officer’s conclusion that an award of back pay after September 16, 2004 would be inappropriate given the particular circumstances of this case, is supported by the evidence and should not be disturbed.

Based on our discussion above, the entire award of back pay should be vacated.

We have carefully reviewed Respondent’s and Complainant’s Petitions and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our review, we affirm the Hearing Officer’s decision as to liability and damages for emotional distress and reverse the award for back pay.

### **COMPLAINANT’S PETITION FOR ATTORNEY FEES AND COSTS**

Having affirmed the Hearing Officer’s decision in favor of Complainant we conclude that Complainant has prevailed in this matter and is entitled to an award of reasonable attorney fees and costs. See M.G.L. c. 151B, § 5.

The determination of what constitutes a reasonable fee is one that the Commission approaches utilizing its discretion and its understanding of the litigation and of the time and resources required to litigate a claim of discrimination in the administrative forum. In reaching a determination of what constitutes a reasonable fee, the Commission has adopted the lodestar method for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). This method requires the Commission to undertake a two-step analysis. First, the Commission calculates the number of hours reasonably expended to litigate the claim and then multiplies that number by an hourly rate

considered to be reasonable. Second, the Commission examines the resulting figure, known as the “lodestar”, and adjusts it either upward or downward or makes no adjustment depending on various factors.

The Commission’s efforts to determine the number of hours reasonably expended involves more than simply adding up all hours expended by every individual working on the matter. The Commission carefully reviews the Complainant’s submission and does not merely accept the proffered number of hours as “reasonable.” See, e.g., Baird v. Bellotti, 616 F. Supp. 6 (D. Mass. 1984). Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours that are insufficiently documented. Grendel’s Den v. Larkin, 749 F.2d 945 (1st Cir. 1984); Brown v. City of Salem, 14 MDLR 1365 (1992). Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission considers contemporaneous time records maintained by counsel and reviews both the hours expended and tasks involved.

Complainant’s counsel has filed a petition seeking attorney fees in the amount of \$77,355.00 and costs in the amount of \$3,680.97. Respondent has filed an opposition thereto.

Respondent contends that Complainant is not entitled to fees or costs in this matter because her counsel did not submit contemporaneous records. In his affidavit, Complainant’s counsel stated that the invoice presented “was generated over the life of this case and consequently, once entries were made the original time records were destroyed.” Respondent interprets this statement to mean that the invoice was created

four and a half years after Complainant filed her charge with this Commission. We do not concur with this interpretation of counsel's statement. Rather, it seems apparent that the invoice was generated in stages over time and that it is cumulative with charges added as they accrued over the four and a half years it took to complete the matter. We have no reason to doubt that the invoice was not based on contemporaneous time records that existed at the time the invoice was created or when additions to it were made. Moreover the invoice is detailed as to the time expended and tasks performed on specific dates.

Having reviewed the records submitted and based on similar matters before the Commission, we conclude that the amount of time spent on preparation, litigation and appeal of this claim by Complainant is reasonable. The records do not reveal time spent on work that was duplicative, excessive, unproductive, or otherwise unnecessary to the prosecution of the claim. We further conclude that Complainant's attorney's hourly rate of \$250 per hour is well within the rates customarily charged by attorneys with comparable expertise in this area. We find that the costs requested by Complainant are adequately documented and reasonable.

We therefore award to Complainant attorney's fees in the amount of \$77,355.00 and costs in the amount of \$3,680.97.

## **ORDER**

For the reasons set forth above, we hereby affirm the findings of fact and conclusions of law of the Hearing Officer, except as to damages for back pay which we hereby rescind for the reasons discussed below. We hereby issue the following Order of the Full Commission:

- (1) Respondent shall pay Complainant damages in the amount of \$100,000 for emotional distress as set forth in the Hearing Officer's decision, with interest thereon at the rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
- (2) Respondent shall pay Complainant attorney's fees in the amount of \$77,355.00 and costs in the amount of \$3,680.97 with interest thereon at the rate of 12% per annum from the date the petition for fees was filed.
- (3) The Training Provisions set forth in the Decision of the Hearing Officer shall be incorporated herein.

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

SO ORDERED this 4<sup>th</sup> day of June, 2013.

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Julian Tynes  
Chairman

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Sunila Thomas-George  
Commissioner

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Jamie Williamson  
Commissioner