

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

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MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
ERIC GRZYCH,  
Complainants

v.

DOCKET NO. 08-SEM-00144

AMERICAN RECLAMATION CORP. &  
VINCENT IULIANO,  
Respondents

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**DECISION OF THE FULL COMMISSION**

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Complainant Eric Grzych on his complaint of being subjected to a racially hostile work environment. Following an evidentiary hearing, the Hearing Officer found Respondents American Reclamation Corp. (“AMREC”) and company president, Vincent Iuliano, liable for unlawful discrimination against Complainant, who is white, on the basis of race and color in violation of G.L. c. 151B, s. 4(1) because of his association with his fiancée, a black woman of Jamaican national origin.<sup>1</sup> The Hearing Officer awarded Complainant \$50,000 in damages for

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<sup>1</sup> Complainant’s complaint charged Respondents with discrimination on the basis of race and color, disability and retaliation. The Investigating Commissioner found probable cause to credit the allegations of the race, color and retaliation claims but dismissed the disability claim. The Commission certified the remaining claims to public hearing. The Hearing Officer dismissed the retaliation claim following the public hearing.

emotional distress and imposed a \$10,000 civil penalty on Respondents. Respondents were also ordered to cease and desist from further acts of discrimination based upon race and color.

Respondents have appealed the decision to the Full Commission.

### SUMMARY OF FACTS

A brief summary of the facts found by the Hearing Officer follows. Complainant was engaged to a Jamaican woman and had a son with her. He worked as a truck driver for the Respondent company and his relationship with his fiancée, a person of color, was common knowledge at his workplace. Complainant interacted frequently on a daily basis with the President of the company, Vincent Iuliano (“Iuliano”), who often made very offensive and abusive racist comments to him including racial epithets. Other employees corroborated that Iuliano made these comments on a frequent basis and that the atmosphere was uncomfortable. The Hearing Officer found that the comments were unwelcome, offended the Complainant, and were sufficiently severe and pervasive as to constitute racial harassment that created a hostile work environment for the Complainant. Although Complainant was terminated from his employment, the Hearing Officer found that this was due to poor work performance and not in retaliation for Complainant’s purported threats to challenge Iuliano’s racist comments. The Hearing Officer concluded that Complainant was targeted for racial harassment by Iuliano because of his relationship with a woman of color and that he had suffered emotional distress as result of being subjected to a hostile work environment. The Hearing Officer awarded Complainant \$50,000 in emotional distress damages.

### 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 Discrim., 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 Discrim., 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

Respondents raise two issues on appeal. First, the Respondents assert that the Hearing Officer erred as a matter of law in determining that Complainant had standing to file a claim for racial discrimination under M.G.L. c. 151B, s. 4(1) because of his association with his fiancée, a black woman, arguing that he is not member of the protected class at issue. Second, Respondents challenge the Hearing Officer's finding that Complainant's fiancée is a black woman of Jamaican national origin, arguing that Complainant's testimony concerning his fiancée's race and color is insufficient to support the finding. <sup>2</sup> We have carefully reviewed the

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<sup>2</sup> Complainant's fiancée did not testify at the public hearing.

Respondents' Petition and the record in this case and have weighed the 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 as discussed below.

There is long-standing precedent at the Commission holding that a Complainant has standing to bring a claim under G.L. c. 151B, s. 4(1) by virtue of that individual's association with a member of a class of persons protected by the statute. See Romano & Hussey v. Lowell Paper Box Co., 4 MDLR 1087 (1982) (holding Complainant had standing to allege religious discrimination because of her husband's religion); See also Hamer v. Cambridge School Dept., 21 M.D.L.R. 154, 156 (1999) (holding person associated with disabled person had standing to raise discrimination based on disability).

The Commission has also recognized the principle of associational discrimination in the context of housing where individuals related to, or residing with, persons of color have been denied housing by virtue of their association with an individual who is a racial minority. See Papa v. Pelosi and Paulo, 18 MDLR 174 (1996) ( finding of racial discrimination against a white woman upheld where property owners denied her housing because her son was black); Luna v. Lynch, 7 MDLR 1699, 1725 (1985) (finding Caucasian wife of black man from Puerto Rico had standing to assert a claim of racial discrimination for denial of housing by virtue of association with husband). However, standing to bring a claim of discrimination based on association is not limited to the housing context or to persons associated with members of certain protected classes (i.e. racial minorities) but not others. Such inconsistent outcomes would be antithetical to the broad remedial purpose of the statute and would provide a means to circumvent the statute's protections.

This premise was upheld by the Massachusetts Supreme Judicial Court (“SJC”) which adopted the Commission’s longstanding and consistent interpretation of G.L. c. 151B in the context of employment discrimination. Flagg v. Alimed, Inc. , 466 Mass. 23 (2013). “The term ‘associational discrimination’ refers to a claim that a plaintiff, although not a member of a protected class himself or herself, is the victim of discriminatory animus directed toward a third person who *is* a member of the protected class and with whom the plaintiff associates.” Id. at 27 [citations omitted] The SJC in Flagg reversed the Superior Court’s dismissal of plaintiff’s discrimination complaint where plaintiff alleged he had been terminated from his employment because of his wife’s very serious and expensive medical condition that rendered her totally disabled. Opining that G.L. c. 151B protects against employment discrimination based on association, the SJC recognized that the language of the statute is meant to be read broadly in light of its remedial purpose and that the “concept of associational discrimination also furthers the more general purposes of “a wide ranging law,” that seeks to remove “artificial, arbitrary, and unnecessary barriers to full participation in the workplace that are based on discrimination.” Id. at 30 [citations omitted]

The holding in Flagg is in line with ample Court precedent recognizing that Section 9 of G.L. c. 151B mandates liberal construction of the statute for the accomplishment of its purposes. See Psy-Ed Corp. , et al.v. Klein, et al., 459 Mass. 697 (2011) (reaffirming legislative intent that G.L. c. 151B be liberally construed to further its broad remedial purpose and adopting an expansive view of retaliation); Stonehill College v. Mass. Comm’n Against Discrim., 441 Mass. 549, 563-64 (2004) (reaffirming that broad liberal construction of the statute supports Commission’s authority to award compensatory damages and is consistent with the Commission’s overarching mission to eliminate unlawful discrimination).

The SJC in Flagg also noted that G.L. c. 151B grants standing to seek relief to *any* person claiming to be aggrieved by an unlawful practice. Id., *Citing Lopez v. Commonwealth*, 463 Mass. 696, 707 (2012). The SJC held that this statutory language along with similar language in a cognate provision of Title VII, “offers strong support for the conclusion that c. 151B’s protections against workplace discrimination were intended to cover all those adversely affected, whether or not they are the direct target of the proscribed discriminatory animus.” Flagg, supra.at 30-31. The SJC recognized that treating an employee who is closely associated with a disabled individual adversely because of hostility toward the disabled individual’s condition subjects the employee to the type of “prejudice, stereotypes, or unfounded fear” relating to disabled individuals that G.L. c.151B seeks to protect. Id. at 30 [citations omitted]. The statute protects even persons not in the protected class from ‘stereotypic assumptions, myths and fears,’ wrongly associated with members of the protected class or those with whom they associate. Id. at 31.

As to the specific case at hand, the protections of G.L. c.151B, s. 4(1) which prohibits discrimination in the workplace based on race and color, have been extended to proscribe racial harassment in the workplace. See Beldo v. UMass Boston, 20 MDLR 105, 111 (1998); Richards v. Bull H.N. Information Systems, Inc., 16 MDLR 1639, 1669 (1994). It is abundantly clear from the facts found by the Hearing Officer that Respondent Iuliano’s intent was to abuse, intimidate, humiliate and embarrass Complainant precisely because of his relationship with a woman of color.

In light of the ample precedent supporting the Hearing Officer’s conclusions, we decline to adopt Respondents’ restrictive view regarding the protections of G.L. c. 151B. There are no facts or circumstances in this case that compel us to diverge from long-standing precedent regarding associational discrimination. Consistent with the mission of the statute, an individual

who is discriminated against by virtue of a personal association with a member of a protected class has standing to bring a claim under G.L. c. 151B and is afforded the statute's protections and remedies. We therefore conclude that the Hearing Officer did not err as a matter of law by holding that Complainant had standing to bring a claim of racial discrimination by virtue of his association with his fiancée a black Jamaican woman, and we affirm her decision in this regard.

Respondents also challenge the Hearing Officer's finding that Complainant's fiancée "is a black woman of Jamaican national origin," as not based on substantial evidence because it was determined solely on Complainant's testimony. This issue was not raised at the Hearing and Respondents did not contest this fact. Nor did Respondents submit any evidence to the contrary. The challenge appears for the first time in Respondents' Petition for Review. The Hearing Officer made the factual finding that Complainant's fiancée is a black woman of Jamaican national origin based on Complainant's testimony at the hearing and testimony of other witnesses which she credited. She also credited testimony that the race of Complainant's fiancée and mother of his child was common knowledge in the workplace. Credible testimony can constitute substantial evidence. We defer to the credibility determinations of the Hearing Officer regarding the race of Complainant's fiancée, particularly where this fact was uncontested. The Hearing Officer observes the testimony and demeanor of witnesses and is in the best position to assess credibility. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). We see no reason to disturb the Hearing Officer's finding on this issue.

#### ATTORNEY'S FEE PETITION

Complainant's attorney has filed a Petition for Attorney's fees seeking \$8,550.00 for 28.5 hours of work at a rate of \$300 per hour in furtherance of Complainant's claim. The request is supported by detailed time records. No opposition to the Petition has been filed.

Complainant is entitled to an award of reasonable attorney's fees for the claims on which he prevailed. See M.G.L. c. 151B, §5. The determination of what constitutes a reasonable fee is within the Commission's discretion and includes such factors as the time and resources required to litigate a claim of discrimination in the administrative forum. In determining 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 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 which it deems reasonable. The Commission then examines the resulting figure, known as the "lodestar," and adjusts it either upward or downward or determines that no adjustment is warranted depending on various factors, including the complexity of the matter.

The Commission carefully reviews the Complainant's petition for fees and does not merely accept the number of hours submitted as "reasonable." See, e.g., Baird v. Belloti, 616 F. Supp. 6 (D. Mass. 1984). Compensation is not awarded for work that appears to be duplicative, unproductive, excessive or otherwise unnecessary to prosecution of the claim. Hours that are insufficiently documented may also be subtracted from the total. Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir.); Miles v. Samson, 675 F. 2d 5 (1st Cir. 1982); Brown v. City of Salem, 14 MDLR 1365 (1992). Only those hours deemed to be reasonably expended in furtherance of the outcome will be compensated. The Commission reviews contemporaneous time records maintained by counsel in light of the hours expended and the tasks involved.

Since Complainant did not prevail on his claim of retaliatory termination but only on his claim of a racially hostile work environment, we have the discretion to reduce the amount of fees that are compensable by some percentage for failure to prevail on all his claims.



Notwithstanding, we find the fee request in this instance to be entirely reasonable, comparatively modest and far below the norm for similar cases of this magnitude. We also conclude that because the theory of associational liability based on disability has been hotly contested and has been argued to be a novel issue of first impression, counsel might otherwise be entitled to a fee enhancement for taking the risk of prevailing on this claim. In lieu of granting an enhancement, we have determined that the fee sought is appropriate to the outcome. We also find the hourly rate charged by Complainant's counsel to be well within the range of reasonable for an attorney of his experience. We therefore grant the Petition for Fees in the amount of \$8,550.00.

### **ORDER**

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer in its entirety and issue the following Order:

(1) Respondents shall cease and desist from any further acts of discrimination on the basis of race and color.

(2) Respondents shall pay Complainant damages in the amount of \$50,000.00 for emotional distress, 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.

(3) Respondents shall pay Complainant attorney's fees in the amount of \$8,550.00, with interest thereon at the rate of 12% per annum from the date the petition for attorney's fees and costs was filed until such time as payment is made or this order is reduced to a court judgment and post-judgment interest begins to accrue.

(4) Respondents shall pay the Commonwealth a civil penalty in the amount of \$10,000.

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 Superior Court Standing Order 96-1. Failure to file a petition in court within thirty (30) days of 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 ORDERED this 30<sup>th</sup> day of January, 2015

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Jamie R. Williamson  
Chairwoman

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Sunila Thomas-George  
Commissioner

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Charlotte Golar Richie  
Commissioner