THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. &
AMANDA LAPETE,
Complainants

v. DOCKET NO. 10-SEM-02769

COUNTRY BANK
FOR SAVINGS,
Respondent

Appearances:
Michael O. Shea, Esq. for Amanda LaPete
Tani E. Sapirstein, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 21, 2010, Amanda LaPete filed a complaint with this Commission charging Respondent with unlawful termination on the basis of her disability (post-partum depression) and gender (pregnancy-related) in violation of M.G.L.c.151B, sec. 4(16). The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on September 13, 2016 in the Commission's Springfield office. After careful consideration of the entire record before me and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant, Amanda LaPete, resides in Ware, Massachusetts with her husband and two children.

2. Respondent Country Bank for Savings is located at Main Street in Ware, Massachusetts. Respondent employs approximately 75 people.

3. Complainant was hired as a loan coordinator for Respondent in September 2002. Her duties included insuring that the conditions set by the underwriter for loans were met, scheduling closings, preparing all relevant documents, and disbursing funds. In addition to her usual functions, Complainant occasionally performed teller work in order to pick up extra hours. Respondent employed two other loan coordinators who could perform Complainant's job. Complainant testified that she enjoyed her job and performed it well.

4. Barbara Granlund was employed by Respondent for 23 years until her retirement in 2015. At all times relevant to this matter she was Respondent's compensation and benefits officer and oversaw payroll, benefits and requests for leave.

5. Deborah Ann Stephenson was employed by Respondent from 2005 from 2013. She was Respondent's Senior Vice President of Human Resources and Retail Banking from 2007 to 2013.

6. In March 2009, Complainant notified her supervisor that she was pregnant and was due October 4, 2009. In August, Complainant scheduled a C-Section for September 30, 2009. She informed Granlund, who approved her for a 12-week leave under the FMLA ending November 30th.

7. On Tuesday, September 8, 2009, while at work, Complainant's water broke. She informed a supervisor of her condition and was transported to the hospital by ambulance, calling

her department supervisor while en route to report her status. Complainant delivered a baby boy by emergency C-Section the same day.

8. Complainant remained in the hospital from September 8 through September 12, 2009. During this time she was worried about her premature baby's potential health issues and could not stop crying. I credit her testimony.

9. When Complainant returned home from the hospital with her newborn, she had difficulty concentrating, was unable to perform her usual household tasks and had insomnia. She engaged in a pattern of alternately binge eating and fasting, she showered infrequently and would sit on the couch crying for long periods of time. (Testimony of Complainant) Complainant, who also had another young child at home, appeared distraught and cried as she testified about her post-partum symptoms and her struggle to care for her children. I credit her testimony.

10. Complainant stated that in late October 2009, when she felt unable to decorate her home for Halloween, her favorite holiday, she realized her mood was not improving and she needed help. I credit her testimony. Complainant then scheduled a visit with her primary care physician, who diagnosed her with post-partum depression, prescribed the anti-depressant Zoloft and referred her to therapist Jessica Burgess Wise, whom she began to see in November 2009.

11. Complainant notified Respondent in October that she would not be able to return to her job on November 30, 2009, when her leave was scheduled to end. She spoke to Stephenson, who advised Complainant to send her the appropriate paperwork from her physician and therapist.

12. Jessica Burgess Wise holds an M.S. in clinical mental health counseling. She saw Complainant on a weekly basis for 12 sessions from November 24, 2009 to January 10, 2010,

when Complainant's insurance coverage for counseling sessions was exhausted. Wise testified credibly that the primary focus of therapy was Complainant's return to work.

13. During her second session with Complainant on December 1, 2009, Wise diagnosed Complainant with major post-partum depression and anxiety. Wise testified that Complainant's cognitive functions, memory and concentration were moderately functionally impaired and her prognosis was good. As of December 10, 2009, Wise could not determine the duration of Complainant's condition and she could not predict an end date to her depression and anxiety. (Testimony of Wise; Jt. Exh. 7)

14. On December 11, 2009, Complainant received a letter from Stephenson stating that because her latest doctor's note stated she would be out indefinitely, if she was not able to return to work by December 21, 2009, with or without an accommodation, her employment would be terminated as of that date. (Jt. Ex. 2)

15. When she received the letter, Complainant felt panicked, scared, and nervous. She called her mother, a paralegal, for advice. Her mother referred her to Attorney David Officer. At her December 17, 2009 session with Wise, Complainant told Wise about Stephenson's letter. (Testimony of Complainant; Testimony of Wise) Wise testified that while she did not believe Complainant was ready to return to work as of that date, had Complainant articulated that she felt able to return Wise would have encouraged her to do so. Wise stated that the goal of treatment was to return Complainant to work at her own pace.

16. Complainant testified that she called Stephenson on December 17 or 18, 2009 to say that she was improving and should be back to work by mid-January, 2010 and Stephenson said she would look into it. I credit her testimony. Stephenson testified that she did not recall having

any contact with Complainant following a December 17, 2009 letter from Complainant's attorney. I do not credit her testimony.

17. On December 17, 2009, Attorney Officer wrote a letter to Stephenson asking for an extension of Complainant's leave as an accommodation to her post- partum depression. The letter stated in part: "On behalf of Ms. Lapete, I suggest that she keep her weekly appointments with Ms. Wise and her January appointment with [her primary care physician]. Ms. Lapete will discuss a return to work date with Ms. Wise and will advise Country Bank for Savings whether Ms. Wise can determinate a return to work date. If a return to work date cannot be determined, Ms. Lapete will continue to see Ms. Wise and will report to Country Bank for Savings in two weeks. The return to work date will be determined by Ms. Wise and/or [Complainant's primary care physician]." (Jt. Ex. 3)

18. On December 22, 2009, Attorney Saperstein wrote a letter to Officer on behalf of Respondent, explaining that Complainant was being terminated because she had not returned to work by December 21 and had not provided Respondent with a definite return to work date. (Jt. Ex. 4) On December 31, 2009, Complainant received a letter from Granlund, dated December 29, 2009,[1] stating that her employment had been terminated (Jt. Ex. 5; Testimony of Complainant)

19. After her termination, Complainant saw Wise on January 7 and 14, 2010. On January 14, 2010, Complainant told Wise that she was angry and hurt and felt like a failure because of her termination. She had never before been terminated from a job. (Testimony of Wise; Testimony of Complainant; Jt. Exh. 7) On January 21, 2010, Wise noted that Complainant had formed negative beliefs about herself triggered by termination of her employment. On January 28, 2010, Complainant's condition had improved to "mild depression." (Testimony of

[1] Complainant saw Wise on December 29, 2009, two days before receiving the termination letter. (Jt. Exh. 7)

Wise; Testimony of Complainant; Jt. Exh. 7)

20. Anthony LaPete, Complainant's husband, testified that after the birth of their son in 2009, Complainant became withdrawn, was not acting like herself and struggled to perform daily household tasks. He testified that by mid-December 2009, Complainant's mood had improved somewhat and they had arranged for day care for their son in anticipation of Complainant's return to full-time work. He stated that after her employment was terminated, Complainant became withdrawn again, was miserable and more depressed than she had been in the previous months. He noted that she was unable keep up with household chores for several months. After her termination they fell behind on all their bills and went into debt. I credit his testimony.

21. Granlund testified that Complainant was granted a total of 17 weeks leave, despite the expiration of her FMLA leave on November 30, 2009. Granlund stated that Wise's written statement on December 10, 2009, in support of Complainant's FMLA leave, indicated that Complainant had post-partum depression beginning September 10, 2009, with no anticipated return to work date. Respondent, therefore, had no idea how much leave time Complainant was seeking. Granlund testified that she had never spoken to Complainant about her taking additional leave and did not know whether anyone else at Respondent had done so. She testified that, had Complainant provided a definite return to work date, Respondent would have considered extending Complainant's leave. She denied that Complainant asked for any accommodation or additional leave. I do not credit her testimony in this regard. I believe that Granlund knew Complainant had contacted Stephenson regarding an extension of her leave. Granlund was unaware of any problems Respondent had covering Complainant's position when she was on leave.

22. Granlund stated that although she read Attorney Officer's letter, she did not think it articulated a request for an accommodation, nor did she consider it an attempt to engage in dialogue about accommodation. After conferring with Stephenson, Granlund wrote the termination letter. She did not recall that anyone at Respondent responded to Officer's letter.

23. Stephenson testified that she trained Respondent's supervisors to refer employees requesting accommodations to HR and that HR would engage in a dialogue with employees.

24. Stephenson testified that Respondent provided ergonomic assistance to employees with carpal tunnel syndrome, a common problem, and moved the workspace of a visually impaired employee and installed an anti-glare device on her computer screen. According to Stephenson, another employee was granted time off for treatment of substance abuse, and yet another employee took an extended leave after contracting a life-threatening infection. (Testimony of Granlund; Testimony of Stephenson)

25. Respondent offered evidence that it had accommodated other women who were pregnant and needed additional leave time beyond the statutory maternity leave and FMLA provisions. (Testimony of Granlund)

26. Granlund testified that the above cited employees had all provided Respondent with a definitive return to work date. Granlund did not recall anyone who was on leave for more than 17 weeks who did not provide a definite return to work date. Two employees who could not provide definite return to work dates were terminated.

27. Complainant testified that when she read the termination letter, she felt like she had been kicked in the stomach. The termination hit her hard and she described feeling traumatized and hurt by the termination despite having told Respondent that her health was improving and that she anticipated returning to work within a few weeks. She was doing everything in her

power to get better and go back to work but it wasn't good enough. She felt that despite working hard to recover and improving, things "went backwards." She was upset and sick to her stomach and lay awake worrying how she would find a job and pay the bills and wondered how her employer could have done this to her. She testified that after her termination, the state of her mental health worsened. She testified that the feelings of hurt and trauma continued for six months and as of the time of hearing she continued to feel bad when recalling the termination and is nervous and fearful about running into someone from Respondent when running errands in her hometown. I credit her testimony.

28. Complainant testified that following her termination, she immediately started looking for work because she needed an income to pay their bills. She searched for jobs on Craig's list and other websites and in newspapers; she interviewed for a loan secretary position at a law firm; she corresponded by email with a potential employer; and she applied for a dispatch position with a vanpool. She also contacted her former employers Pro Audio and Muzak. In 2010, Complainant worked as a substitute teacher. She was rehired by Muzak in September 2011 and worked there until her lay off in 2014 when she became a part-time school bus driver for First Student. Complainant was happy with the bus driver position because the income was good and she did not incur daycare costs because she was able to take her son with her on the job. In April 2016, Complainant was hired as a project coordinator for OnSite Media, at a salary of $42,000.00 per year.

29. In 2009 Complainant earned $31,715.40 at Respondent.

30. In 2010, Complainant received unemployment compensation of $22,100.00 and wages of $90 from the town of Ware for total income of $22,190.00. Had she not been terminated by Respondent, and assuming she had returned to work in mid-January 2010,

Complainant would have earned $30,495.58 for 50 weeks of work in 2010. Complainant's lost wages for 2010 total $ 8,305.58 ($30,495.00-$22,190.00)

31. In 2011 Complainant received unemployment compensation of $15,048.00 and $12,685.50 in wages from Muzak for a total income of $27,823.50. Had she not been terminated by Respondent, she would have earned at least $31,715.40 in 2011. Thus Complainant's lost wages for 2011 total $3,891.99. ($31,715.40 -27,823.50) Her lost wages for these two years total $12,197.57 ($8,305.58 + $3,891.99)

32. In 2012, Complainant earned $41,007.50 at Muzak, likely more than she would have earned had she remained working for Respondent.

III. CONCLUSIONS OF LAW

Complainant alleges that Respondent unlawfully failed to reasonably accommodate her disability (post-partum depression) by refusing to grant a short extension of her medical leave and instead terminated her employment when she was unable to return to work by December 21, 2009, some three weeks beyond the November 30th expiration of her FMLA leave. In order to establish a prima facie case of disability discrimination for failure to provide a reasonable accommodation, Complainant must show: (1) that she is a "handicapped person within the meaning of the statute;" (2) that she is a "qualified handicapped person" capable of performing the essential functions of her job; (3) that she needed a reasonable accommodation to perform her job; (4) that Respondent was aware of her handicap and the need for a reasonable accommodation; (5) that Respondent was, or through reasonable investigation could have become, aware of a means to reasonably accommodate her handicap and; (6) that Respondent failed to provide Complainant the reasonable accommodation. Hall v. Laidlaw Transit, Inc., 25

MDLR 207, 213-214, aff'd, 26 MDLR 216 (2004); See Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination on the Basis of Handicap, at s. IX (A) (3) 20 MDLR Supplement (1998)

M.G.L. c. 151B§1(17) defines a handicapped person as one who has a physical or mental impairment, a record of such impairment, or is regarded as having an impairment, which substantially limits one or more of the individual's major life activities. In order to establish that she is a qualified handicapped person, Complainant must prove that she is capable of performing the essential functions of her job, with or without a reasonable accommodation. I conclude that Complainant has established that she is a handicapped person within the meaning of the law. Complainant suffered from post-partum depression that substantially limited a number of major life activities, including working, concentrating, performing household tasks, sleeping and eating. Complainant underwent therapy for her symptoms, was diagnosed with post-partum depression, and was prescribed an anti-depressant. Her mental health was sufficiently impaired that she sought a further leave of absence from her job beyond the initial expiration of her FMLA leave which was November 30, 2009, advising Respondent in October that she would be unable to return at that time. On December 17, 2009, Complainant's attorney wrote a letter to Respondent seeking a further brief extension of Complainant's leave indicating that she would continue to attend therapy and inform Respondent within a short period of time after her January therapy appointment if it was determined that she was unable to return to work. Complainant testified credibly that she informed Respondent that she intended to return to work by mid-January.

Once Complainant has identified her disability and requested an accommodation from her employer, it is incumbent on the employer to engage in an interactive dialogue with

Complainant and to determine if the accommodation sought is reasonable. Massachusetts Bay Transportation Authority v. Massachusetts Commission Against Discrimination et al, 450 Mass. 327, 342 (2008) Disability cases are by nature "difficult, fact intensive, case-by-case analyses, ill-served by per se rules or stereotypes." Such cases require employers to make an individualized assessment of whether an employee's accommodation is reasonable. Garcia-Ayala v. Lederle Parenterals, Inc., 212 F.3d 638, 650 (1st Cir. 2000) A leave of absence may be a reasonable accommodation under some circumstances, if it does not create an undue hardship for the employer. Thibeault v. Verizon New England, Inc., 33 MDLR 39, 47 (2011) Employer leave policies must be sufficiently flexible to anticipate the facts of each individual claim. Garcia-Ayala, 212 F.2d at 650. There may be circumstances where an extended leave of absence is an appropriate or reasonable accommodation, including a request for a limited extension, which sets a definite time for the employee's return, but each case must be evaluated on the circumstances. Russell v. Cooley Dickinson Hospital, Inc., 437 Mass 443 (2002) citing Garcia-Ayala, supra, at 650. (under the circumstances request for two-month extension was reasonable); EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the ADA III-23 ("Flexible leave policies should be considered as a reasonable accommodation when people with disabilities require time off from work because of their disabilities....where this will not cause an undue hardship.") MCAD Handicap Guidelines, p. 36, 20 MDLR (1998) This Commission has held that a further brief continuance of a leave to allow an employee to completely recover may be a reasonable accommodation and in such instances termination may be premature. See Santagate v. FSG, LLC, 36 MDLR 23 (2014); Laing v. J.C. Cannistraro, LLC, 37 MDLR 85 (2015)

Complainant was granted a leave following the birth of her child, totaling 17 weeks, during which she used her sick and vacation time. She was entitled to eight weeks of maternity leave by statute (c. 149, s. 105D) and an additional four weeks of FMLA leave under Federal Law for any pregnancy related medical issues. By late November, 2009, Complainant hoped to return to work by mid-January, 2010 and testified that she informed Respondent of this in mid-December, 2009. Complainant was not seeking an indefinite or open-ended extension of her leave. In mid-December she requested to remain on leave for an additional few weeks, pending the next evaluation by her health care providers, who she was scheduled to see on January 7th and 14th. At that time it would be determined whether she was able to return to work in mid-January. At most, Complainant was seeking four additional weeks of leave. Respondent did not respond to Complainant's request and her employment was terminated by letter dated December 29, 2009 with no discussion, notwithstanding her request for a short extension to determine a return to work date in consultation with her health care providers. At the time she was just two weeks short of potentially returning to work and according to her husband, had laid the plans to do so.

I conclude that Complainant met her obligation to keep Respondent informed and up-to-date as to her condition and to engage in an interactive dialogue regarding any information she had about a date certain for return to work in the near future. I conclude that the request to extend her leave of absence until early to mid-January was a reasonable request that would constitute a reasonable accommodation to her disability. However, rather than engage in an interactive dialogue about the feasibility of extending the leave for a few more weeks, Respondent arbitrarily terminated Complainant's employment by letter dated December 29, 2009. Respondent's misplaced reliance upon the 12 week leave period required by the FMLA as

a measure of reasonableness resulted in a determination that granting Complainant leave time in excess of 12 weeks was not required by law and that any extension beyond the 12 weeks was a benevolent act that expunged any requirement of further dialogue. While compliance with FMLA leave requirements may in some instances constitute a reasonable accommodation to a disability under c. 151B, the determination of what constitutes a reasonable accommodation under state law is not constrained by rigid time periods. To determine the reasonableness of an accommodation by relying solely on the requirements of the FMLA is misguided. Massachusetts disability law requires a more flexible approach and an interactive dialogue to determine what constitutes a reasonable accommodation, given the particular circumstances.

At the time of Complainant's termination, the prognosis for her recovery was still unclear, but she was not seeking an indefinite or unreasonable extension of her leave. Respondent should, at the very least, have permitted Complainant to obtain the anticipated re-evaluation from her treating providers as she sought to do. If by mid-January, the time frame Complainant indicated she hoped to return, she had no definitive prognosis for improvement and no date certain to return to work, Respondent's obligation to continue providing further accommodation would have more likely have ceased.

In assessing the reasonableness of a request for an extended leave of absence, Respondent must produce evidence of an undue burden on its operations or finances. [2] Respondent provided no evidence whatsoever that extending Complainant's leave for a few more weeks would have created an undue burden to its operations. Moreover, Respondent presented no evidence of

[2] The factors in determining undue hardship include: (1) the overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget or available assets; (2) the type of the employer's operation, including the composition and structure of the employer's workforce; and (3) the nature and costs of the accommodation needed. MCAD Guidelines: Employment Discrimination of the Basis of Handicap, at II, B. (1998)

hardship or undue burden to its operations caused by Complainant's 17 week leave of absence. See M.C.A.D. and Carta v. Wingate Healthcare, Inc., 38 MDLR 117,123 (2016)

Given the dearth of evidence on this issue, I conclude that Respondent has failed to establish that a short extension of Complainant's leave would have constituted an undue burden to its business and that its failure to grant such extension was a denial of a reasonable accommodation to Complainant's disability.

For the reasons stated above, I conclude that Respondent engaged in unlawful discrimination on the basis of disability in violation of M.G.L. c. 151B, s. 4(16) when it terminated Complainant's employment on December 29, 2009 in lieu of granting her reasonable request for a brief extension of her medical leave so as to re-evaluate her condition and determine a date certain for her return.[3]

IV. REMEDY

Pursuant to M.G.L. c. 151B s. 5, the Commission is authorized to grant remedies to make the Complainant whole. This includes an award of damages to Complainant for lost wages and emotional distress suffered as a direct and probable consequence of her termination by Respondent. Bowen v. Colonnade Hotel, 4 MDLR 1007 (1982), citing Bournewood Hospital v. MCAD, 371 Mass. 303, 316-317 (1976); See Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997).

A. Emotional Distress

An award of emotional distress "must rest on substantial evidence and its factual basis must be made 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 the

[3] Complainant also argued that she was treated differently from similarly situated employees with physical, as opposed to mental, disabilities. Because of my ruling in this matter, I do not reach this issue.

complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm (e.g., by counseling or by taking medication)." In addition, complainants must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress. Stonehill College v. Massachusetts Commission Against Discrimination, et al., 441 Mass. 549 (2004). "Emotional distress existing from circumstances other than the actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable." Id.

Complainant testified that Respondent's termination of her employment was like a kick in the stomach to her and she felt traumatized and hurt by Respondent's actions. She had never before been terminated from a job. She lay awake worrying how she would pay the bills and find work and felt that despite her doing all she could to improve her health, things had now gone "backwards," her depression worsened and she experienced a continued sense of trauma for about six months. She testified that as of the time of hearing she continued to feel bad whenever she thought about her termination and continued to be nervous and anxious about encountering former co-workers of Respondent in her hometown. Complainant's husband Anthony LaPete testified that after the birth of their son, Complainant became withdrawn, was not acting like herself and struggled to perform daily household tasks. He testified that by mid-December Complainant's mood had improved somewhat and they had arranged for full-time day care for their son in anticipation of Complainant's return to work. He confirmed that after her termination Complainant became miserable and more withdrawn and depressed than she had been previously and that she was unable to keep up with her daily routine of household chores for several months. I conclude that Complainant was distressed by her termination, that what began as post-partum depression was exacerbated, and that her depression continued for several

months. Complainant's husband described the changes in her demeanor and her withdrawal from daily life and routine tasks. While Complainant had lingering distress from her post-partum depression, it is clear that her emotional distress was exacerbated by, and was a direct result of, Respondent's discriminatory actions. I conclude that Complainant is entitled to an award of damages for emotional distress in the amount of $50,000.00.

B. Back Pay

The Complainant has the responsibility to mitigate damages by making a good faith search for employment. The evidentiary burden is on the Respondent to show that the Complainant failed to mitigate damages. J. C. Hillary's v. Massachusetts Commission Against Discrimination, 27 Mass App. Ct. 204 (1989). Complainant testified credibly that she searched for jobs daily by researching websites and applying on-line and by calling and visiting potential employers. Despite her efforts, Complainant did not become employed until the following year. Respondent did not submit evidence of comparable available jobs for which Complainant was qualified and did not apply. I conclude that given her efforts to find employment and demonstrated willingness to work, Complainant has met her duty to mitigate her back pay damages. Therefore, she is entitled to lost wages from the time she was able to return to work in January until the time she became employed by Muzak and received a higher salary than she did at Respondent. Pursuant to my detailed earlier findings, her total lost wages for that period of time are $12,197.57.

V. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that:

1) Respondent immediately cease and desist from discriminating on the basis of disability by adhering to any policy that limits disability medical leaves to FMLA requirements. Respondent shall adopt a policy for determining reasonable accommodations for disabilities that facilitates an interactive dialogue with employees who seek accommodations for disabilities and provides for individual assessments in each case where accommodation is sought.

2) Respondent pay to Complainant the sum of $50,000 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.

3) Respondent pay to Complainant the sum of $12,197.57 in damages for back pay 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.

4) Respondent shall conduct an initial training on unlawful discrimination on the basis of disability and the provision of reasonable accommodations for all managers and supervisors it employs at any and all of its facilities in the Commonwealth of Massachusetts. With respect to such training:

a. Each training session for managers and supervisors must be at least three (3) hours in length. All managers and supervisors, employed in the Commonwealth of Massachusetts shall be

required to attend the initial training. No more than 25 persons may attend each training session. Country Bank for Savings shall repeat this training once each calendar year for the next five years for all new supervisors and managers who were hired or promoted after the date of the initial training session.

b. Within 30 days of the receipt of this decision, Country Bank for Savings shall select a trainer to conduct the initial training sessions. The trainer must be selected from the list of trainers who have completed the Commission-certified discrimination prevention-training program, available from the Commission's Director of Training.

c. Within one month after the completion of the training, Country Bank for Savings must submit documentation of compliance to the Commission's Director of Training, signed by the trainer, identifying the training topic, the names of persons required to attend the training as identified in paragraph (a) above, the names of the persons who attended each training session, and the date and time of each training session.

d. In the event that Country Bank for Savings is sold, materially changed, or taken over by new management, any and all successor purchasers, assignors, managers, or operators of Country Bank for Savings (hereinafter referred to as the "new owners") shall be responsible for fulfilling the training requirements specified in this decision if any of the following shall apply:

i. The majority of the managers and supervisors employed by Country Bank for Savings as of the date of this decision continue to work for the new owners as of the succession date;

ii. The majority of Country Bank for Savings' governing board (e.g., board of directors, trustees) as of the date of this decision continues to serve on the new owner's board as of the succession date;

iii. The new owners are relatives of Country Bank for Savings, or previously employed by Country Bank for Savings as a manager or supervisor; or,

iv. Country Bank for Savings continues to retain an interest in the successor entity.

For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with 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 of this order.

SO ORDERED, this 5th day of February 2017

Judith E. Kaplan

JUDITH E. KAPLAN,
Hearing Officer