

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & TANZANIA WILSON,  
Complainants

v.

DOCKET NO. 10-BEM-00782

MASSACHUSETTS DEPARTMENT  
OF TRANSITIONAL ASSISTANCE,  
Respondent

Appearances: Benjamin Flam, Esq. for Tanzania Wilson  
Daniel P. LePage, Esq. for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 6, 2010, Complainant Tanzania Wilson, who is African-American, filed a complaint with this Commission charging Respondent with discrimination on the basis of her race and color and retaliation for her having engaged in the protected activity of filing internal complaints of discrimination. The Investigating Commissioner issued a finding of probable cause. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on September 14, 18 and October 8, 2015. After careful consideration of the entire record in this matter and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.<sup>1</sup>

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<sup>1</sup> Complainant filed a second complaint against Respondent (12-BEM-02803), alleging retaliation at her subsequent work location in Boston. The probable cause finding in the instant case includes an allegation of retaliation that occurred at Respondent's Boston office in March and April 2011. I did not hear evidence regarding that incident, ruling, over Complainant's objection, that only incidents occurring at the Milford location would be considered at the public hearing in this matter and that any claims arising out of her work at the Boston location are more properly reserved for consideration as part of Complainant's 2012 retaliation claim currently pending for hearing at the Commission.

## II. FINDINGS OF FACT

1. Complainant Tanzania Wilson is an African-American woman residing in Sharon, Massachusetts.

2. Respondent Department of Transitional Assistance is a state agency that assists low-income individuals and families in meeting emergency and transitional financial needs through a combination of federal and state funded programs.

3. In November 2005, Complainant was hired by Respondent at its Brockton office to assist food stamp applicants and recipients to verify their eligibility. Complainant received positive performance reviews for the years 2006-2008. (Ex. C-1) On November 9, 2009, Complainant transferred to the Milford office. She testified that she transferred in order to get a “fresh start” in a smaller office and that at first she liked the Milford office, where she continued to perform the same duties.

4. Complainant was the sole African-American employee in the Milford office. Her direct supervisor was Louise Stoddard, a longtime employee of Respondent, who reviewed the work of Complainant and other subordinates.

5. Sheila Smith was director of the Milford office in 2009 and 2010. Smith’s duties were to administer Respondent’s programs such as cash benefits, SNAP and job services and to insure that staff performed their work in a timely and accurate manner. Smith was a member of the hiring committee that recommended Complainant for the position in Brockton in 2005. Smith retired in March 2015. (Testimony of Smith)

6. In 2010, James Gorman was regional director of the North Region which included the Milford office. In this position, he worked with office managers to help implement Respondent’s regulations, policies and procedures. Gorman retired in 2011.

7. Complainant testified that “probably about eight” of the approximately 20 employees in the Milford office, including Stoddard and Smith, repeatedly referred to her as “the black girl” or “the new black girl,” despite her requests to call her by her first name. I do not credit Complainant’s testimony that she was referred to in this manner, and find it not credible that her co-workers and supervisors repeatedly refused to address her by name. Complainant’s testimony, in general, was vague, lacking in specificity, inconsistent and contradictory. Her testimony was also contradicted by the credible testimony of Respondent’s witnesses and the documentary evidence.

8. Complainant alleged that Stoddard referred to her as the “new black girl.” She testified that on an unspecified date, she overheard Stoddard say to another worker, “This black girl is driving me crazy.” I do not credit Complainant’s testimony. Stoddard denied ever referring to Complainant as “the black girl” or “the new black girl,” and she denied ever talking to another employee about Complainant in that manner. I credit Stoddard’s testimony.

9. Smith testified credibly that the Milford staff called Complainant “Tanzania” or “Tanzy.” Smith denied ever calling Complainant “the black girl” or the “new black girl” and testified that she never heard anyone else refer to Complainant in that manner. I credit Smith’s testimony.

10. In January 2010, Complainant, accompanied by the Assistant Director went to Smith and requested a new supervisor because Stoddard “seemed hostile,” toward her and they had a “personality conflict.” On January 8, 2010, Smith assigned Drina Filor to be Complainant’s new supervisor. (Testimony of Complainant; Testimony of Smith)

11. Complainant testified that Filor referred to her as “the black girl” or “the new black girl.” She stated that Filor made her work difficult by wrongfully and excessively returning

cases to her for corrections. She also stated that she was ostracized by unnamed persons in the office. I do not credit her testimony.

12. Filor testified credibly that she had a professional working relationship with Complainant. She never referred to Complainant as “the black girl” or “the new black girl,” and she never heard anyone else refer to her in that manner.

13. Filor testified credibly that she reviewed her subordinates’ cases for accuracy and would either sign off on their work, return their work for correction with a note instructing them to fix the mistakes or would “delete” the file and make the corrections herself. Deleting a file removed it from Filor’s case list and allowed her to better track cases awaiting her approval.

14. Complainant testified that on February 4, 2010, she met with Smith and told her she felt “uncomfortable” in the office. She stated that Smith told her to “get over it.”

15. Smith testified that in February 2010, Complainant came to her office accompanied the Assistant Director<sup>2</sup> and complained that Filor was returning an excessive amount of her work for correction. Complainant told Smith she wanted to take a leave of absence because she had been subjected to domestic violence and she wanted to transfer out of the Milford office. I credit Smith’s testimony.

16. Complainant took a leave of absence from February 4, 2010 to February 18, 2010. Complainant supplied a physician’s note dated February 11, 2010 stating that she “was in treatment for upset related to having experienced domestic violence.” (Ex. R-1; Attachment I)

17. At the public hearing, Complainant denied that her February leave was related to domestic violence. She testified, consistent with her complaint to this Commission, that she took a leave because of the hostile work environment at the Milford office. When questioned about

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<sup>2</sup> The assistant director of the Milford office was transferred in March 2010. Thereafter, Smith was the sole manager in Milford.

her physician's letter, Complainant revised her testimony and stated that she took a leave because the hostile workplace prevented her from dealing with "issues at home." (Testimony of Complainant)

18. On March 3, 2010, Complainant emailed a request to Smith to attend a work-related conference on April 15-16, 2010. Smith testified that employees were selected for attendance by Respondent's Central Office. On March 24, 2010, Complainant emailed Smith to inquire whether Smith had received a response to her request. Smith contacted the Central Office and informed Complainant that she had not been selected to attend the conference. (Ex. C-12) I credit Smith's testimony.

19. On March 17, 2010, Stoddard signed off on one of Complainant's cases after Filor had corrected it rather than return it to Complainant for correction.<sup>3</sup> Filor believed it would be easier to make the correction herself rather than returning the case to Complainant.

20. On March 17, 2010, Complainant complained to Smith that Filor's correcting her work made it appear that Complainant was unwilling to make corrections and that she was offended by this and felt it was discriminatory. She also told Smith she believed there was a problem with "diversity" in the office. Smith told Complainant that she was busy and could not discuss Complainant's concerns at the time, but would talk to her later. (Testimony of Complainant; Testimony of Smith)

21. On March 17, 2010, Complainant emailed Smith requesting to change supervisors "due to the nature of the situation that took place in office (sic) today with [Filor,] I feel it only appropriate to assign me to another supervisor. I feel uncomfortable having her as a supervisor." (Ex. C-11) Smith discussed the matter with Filor and Stoddard to determine what the issue was. They then spoke to Complainant and reported back to Smith.

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<sup>3</sup> Each food stamp application required two signatures for approval.

22. Stoddard documented her and Filor's discussion with Complainant in a lengthy email to Smith. Stoddard wrote that Filor corrected one of Complainant's cases and asked Stoddard to sign off on it because she did not want to provoke Complainant by returning it to her. The email stated that Filor and Stoddard told Complainant they did not intend to offend or discredit her by signing off on her file. Complainant went on to discuss the reasons why she felt she was the victim of discrimination, telling Filor and Stoddard that she was outnumbered and could not complain about racism as everyone would be against her and that she had to take her concerns to Boston. Stoddard stated that the office was very diverse and everyone got along fine and apologized to Complainant for the perception that some co-workers were treating her poorly. (Ex. R-1, Attachment F)

23. On Tuesday, March 23, 2010, Filor emailed Smith, describing essentially the same interaction as Stoddard did in her email regarding the March 17, 2010 meeting with Complainant. (Ex. R-1, Attachment H)

24. Complainant filled out an incident report dated "11-09 -3-17" in which she stated:

From the date of 11-09-2010 several DTA workers as well as managers constantly, automatically referred to me as the "New BLACK GIRL" I was addressed by name by very few workers or I wasn't addressed at all. Example: Where is that new "BLACK GIRL" I need to give her these cases.

One serious incident occurred on an unknown date. [a male worker] had a conversation with [a female worker] and stated 'Those BLACK PEOPLE' are corrupting our white kids with that rap music. He went into [the female worker's] cubicle and inquired about a rapper Jay-Z and [the female worker] looked the rapper up to gather information on the lyrics.<sup>4</sup>

(Ex. C-2)

Complainant testified that the incidents referred to in the complaint took place between the time she arrived in November 2009 and March 17, 2010. She testified that she overheard the

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<sup>4</sup> The incident report is missing a second page; it is not clear when Complainant filed this report with Respondent.

conversation about rap music and other derogatory remarks about African-Americans during this time period.

25. I do not credit Complainant's testimony regarding her allegations about rap music contained in the incident report. Instead I credit the testimony of Respondent's independent investigator Lisa Fischer, who wrote a report of her investigation into Complainant's allegations, and the documentary evidence reflecting that two workers did have a discussion about a song by the rapper Jay-Z, and one worker stated that he did not like rap music. Both workers strongly denied making any remark about black people corrupting white kids with rap music. (Testimony of Fischer; Ex. R-1)

26. Smith called Regional Director James Gorman to say that Complainant had concerns about "diversity" and the manner in which her cases were being handled and had requested a meeting. Gorman testified that anytime an employee raised a serious matter, the presence of two managers was required at a meeting. Since Smith was the sole manager in Milford, he agreed to attend a meeting with Smith and Complainant.<sup>5</sup>

27. On March 18, 2010 Smith hand delivered to Complainant a letter scheduling a meeting with her and Regional Director Jim Gorman on March 23, 2010. The meeting was rescheduled for March 31, 2010 at Complainant's request.

28. On March 31, 2010, Complainant, Smith and Gorman met at the Milford office. Gorman took notes during the meeting which he later transcribed. (Testimony of Gorman; Ex.C-9; C-10)

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<sup>5</sup> Before the meeting was held, Gorman received an email from Complainant inquiring whether the meeting was formal or informal, and asked whether she would require union representation. He responded that he did not know what she meant by formal or informal; however the matter was not disciplinary and the presence of a union representative was not required, but would be allowed.

29. According to Gorman, when the meeting began, Complainant stated that her concern was “diversity” and not discrimination. Complainant stated that there was racial tension in the office and employees used the word “black” instead of African American which she was accustomed to. For example, Complainant stated that a co-worker referred to a trainer from another office whose name she did not know as “the black trainer” rather than refer to the trainer by name. (Testimony of Gorman; Testimony of Smith) During the meeting Gorman asked Complainant for examples of Smith’s harassment of her. Complainant was not able to provide any specific examples of harassment. Gorman testified that the atmosphere then became contentious. Complainant accused Gorman of already making up his mind, stated he had prejudged her, and asked him if he thought he was God. He replied that he was not God; he was a regional director.

30. Gorman forwarded his notes to Respondent’s legal division, the Division of Labor Relations and the Assistant Secretary of HHS Lorraine Wilson for investigation. Once the investigation began, he had no further involvement in the matter. (Testimony of Gorman)

31. On April 5, 2010 Complainant filed a union grievance which stated:

On an ongoing and continuing basis the employer and its agents are acting in discriminatory manner towards me and creating a hostile and offensive work environment, by referring to me and by permitting others to refer to me by race and gender as the “black girl.” Such offensive speech is both dehumanizing and objectifying. The behaviors continued after I told people it was offensive. Additionally I have been treated differently since I complained. (Ex. C-9)

32. On April 6, 2010, Complainant emailed Respondent’s Commissioner Julia Kehoe, stating that the Milford office had violated Respondent’s anti-discrimination policy by discriminating against her, harassing her and retaliating against her because of her informal complaint. She wrote that Gorman and Smith had minimized her concerns and Gorman was very hostile during their meeting and made no effort to stop discriminatory statements. (Ex. C-4)



33. On April 6, 2010, Complainant filed a complaint with this Commission charging Respondent with discrimination on the basis of her race and color and retaliation for having filed an internal complaint.

34. Complainant testified that since filing her complaint in April 2010, her supervisors refused to certify her cases and returned work to her falsely claiming it was inaccurate. She stated Stoddard incorrectly denied one of her cases and in that instance she went directly to the Assistant Director who directed Stoddard to approve the case. (Ex. C-5)<sup>6</sup> I do not credit Complainant's testimony that this incident occurred subsequent to her filing the MCAD complaint as the Assistant Director had transferred out of the Milford office by April 2010.

35. In 2010, Lisa Fischer was Respondent's chief investigator responsible for investigating workplace violence, employee misconduct and complaints of discrimination, fraud, confidentiality breaches and hostile work environment and sexual harassment claims. Shortly after Respondent's Central Office received Complainant's internal complaint, Fischer was assigned to investigate the matter. (Testimony of Fischer)

36. Fischer testified credibly that when she first attempted to schedule a meeting with Complainant and an attorney for Respondent, Complainant responded that she did not want to meet with two "European" investigators and specifically requested the presence of Lorraine Woodson, an African-American woman who was then Deputy Director of Diversity and Civil Rights for EOHHS. Fischer told Complainant that Woodson was not available and, according to Fischer, Complainant nonetheless agreed to a meeting on April 6, 2010, but failed to appear or request a cancellation of the meeting. I credit Fischer's testimony. Complainant denied making the comment about "Europeans." I do not credit her testimony.

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<sup>6</sup> By way of proof, Complainant submitted an undated, hand-written note purportedly written by the Assistant Director instructing Stoddard that Complainant's calculations were correct.

37. Fischer testified that when she called Complainant to inquire why she had not appeared at the April 6<sup>th</sup> meeting, Complainant responded that the MCAD advised her to refer all inquiries to the MCAD investigator. Respondent then contacted an MCAD supervisor who told Respondent that the MCAD encouraged parties to meet with one another. Fischer then contacted Complainant who agreed to a re-scheduled meeting on April 14, 2010. At the public hearing Complainant denied that she ever agreed to the April 6<sup>th</sup> meeting date and stated she was confused about the process and thought Fischer was conducting an MCAD investigation, which was why she requested that an MCAD employee and Lorraine Woodson be present at the meeting. I do not credit her testimony.

38. On April 14, 2010, Fischer and the Respondent's attorney met with Complainant who told them that 80% of the Milford staff called her "the black girl." According to Fischer, when she asked Complainant how she would like to see the matter resolved, she told Fischer that she would like Smith and Gorman fired and for Respondent to provide diversity training for the Milford staff. (Testimony of Fischer; Ex. R-1) Complainant testified at the public hearing that she did not believe she asked for Smith and Gorman to be fired. I do not credit her testimony. Complainant acknowledged that the diversity training she requested was provided to the staff of the Milford office. (Testimony of Complainant)

39. In April 2010, Fischer interviewed a total of ten people in the Milford office including Complainant. Fischer concluded that Complainant was not referred to as "the black girl" or "the new black girl." Fischer verified two race-related comments by a co-worker who once referred to a trainer whose name she did not know as "the black trainer." On another occasion that same employee said to another worker, within earshot of Complainant, that a character in the movie "Big Momma's House had a "big black butt." The employee

acknowledged to Fischer that her remark about the movie character was inappropriate. In a report issued on October 1, 2010, Fischer concluded that there was insufficient evidence to support a finding of racist behavior at the Milford office and no evidence that the Milford office was a hostile work environment for Complainant.<sup>7</sup> (Testimony of Fischer; Ex. R-1)

40. Fischer's report was replete with written complaints from employees about Complainant's confrontational and belligerent manner.<sup>8</sup> (Ex. R-1; Testimony of Fischer)

41. For example, an IT manager reported that in March 2010, Complainant asked her to check on a problem with her computer. The IT manager corrected the problem and left Complainant a note advising her not to turn off her surge protector, PC or monitor. The next morning Complainant angrily approached the IT manager and accused her of checking on Complainant because of Complainant's "racial heritage." Complainant left the IT manager's office and immediately returned to ask what a surge protector was. The IT manager showed her a surge protector and Complainant again became angry and accusatory toward her and then stormed off. (Ex. R-1; Attachment U)

42. In addition, Complainant made unusual statements to others in the office: As an example, Complainant once asked Stoddard, "Why do all black people drive Cadillacs?" (Testimony of Stoddard; Ex. R-1)

43. On April 23, 2010, the managers at the Milford office underwent diversity training. On June 14, 2010, a workplace and sensitivity seminar entitled "Creating a Respectful Workplace: Meeting Each Other Half Way," was held for all of the employees of the Milford

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<sup>7</sup> Fischer also concluded that Complainant's claims of racism coincided with her supervisors' confronting her about work performance issues. Complainant had fallen behind in her work and her supervisors received numerous complaints from clients. They also received complaints from co-workers about Complainant's spending excessive time on personal calls, despite her backlog of cases. (Ex. R-1, at p. 29)

<sup>8</sup> Fischer's report contained incident reports filed by and about Complainant during her time in the Brockton office.

office. Complainant was on leave and did not attend the seminar. (Testimony of Smith; Testimony of Complainant; Ex. C-12; Ex. R-1)

44. On April 27, 2010, Complainant referred a food stamp client to a cash assistance (TAFDC) worker for advice on whether she would qualify for cash benefits. The TAFDC worker informed the client that her receipt of child support made her ineligible for cash assistance. The client became upset and Complainant took the client into her cubicle in order to console her. According to Complainant, the TAFDC worker came to Complainant's cubicle and, in the presence of the client, angrily accused Complainant of trying to get the client to stop collecting child support in order to become eligible for cash benefits, which Complainant denied. (Testimony of Complainant)

45. On April 28, 2010, Complainant filed an incident report regarding this incident stating that the TADFC worker's actions caused her to feel "degraded, devalued, insulted, ridiculed, scorned and disempowered." (Ex. C-3) The client backed up Complainant's statement that the TAFCD worker yelled at Complainant. (Ex. C-3) The TAFCD worker also filed an incident report stating that when she told Complainant, "I hope you are not telling [the client] not to take child support." Complainant responded in a condescending tone in front of the client and the TAFCD worker walked away. Another worker gave a report more in line with the TAFCD worker's version of events. Smith interviewed the client and gave the TAFCD worker a verbal warning regarding this event. (Ex. R-1; p. 3; Attachments C and D)

46. Complainant went out of work on an FMLA leave from April 29, 2010 through September 13, 2010. On the certification of health care provider form, her psychiatrist wrote that Complainant was "unable to function because she was discriminated against and verbally

mistreated at work” and she was prescribed weekly psychotherapy sessions and medications.

(Ex. C-7)

47. In September 2010, Complainant returned to the Milford office and was assigned to a new supervisor. Complainant stated “a couple of weeks or months” after she returned, her new supervisor falsely accused her of throwing something onto the supervisor’s desk and Complainant was transferred to the Boston Office in late 2010, where she was still employed at the time of the public hearing.

### III. CONCLUSIONS OF LAW

#### A. Racially Hostile Work Environment/Disparate Treatment

In order to establish a claim of racial harassment that creates a hostile work environment, Complainant must establish that she was a member of a protected class; that she was the target of speech or conduct based on her membership in that class; that the speech or conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment; and that the harassment was perpetrated by a manager or supervisor, or Respondents were on notice of the harassment and failed to take prompt remedial action. Beldo v. Univ. of Mass. Boston, 20 MDLR 105, 111 (1998), citing Richards v. Bull H.N. Information Systems, Inc., 16 MDLR 1639, 1669 (1994); College-Town, Division of Interco v. Massachusetts Comm'n Against Discrimination, 400 Mass. 156, 162 (1987); Vance v. Southern Bell Tel. & Tel. Co., 863 F.2d 1503, 1511-1515 (11th Cir. 1989); Walker v. Ford Motor Co., 684 F.2d 1355, 1358-1359 (11th Cir. 1982); Rogers v. EEOC, 454 F.2d 234, 238 (5th Cir. 1971).

Complainant alleged the following evidence of a racially hostile work environment: Her co-workers and supervisors repeatedly failed to address her by name, and instead referred to her

as “the new black girl” or “the black girl.” Respondent’s witnesses credibly denied that this ever occurred. I did not credit Complainant’s testimony. I found Complainant’s testimony to be evasive, contradictory and disingenuous in so many respects as to cast doubt on her credibility in general. In addition to disbelieving Complainant’s purported direct evidence of discriminatory acts and conduct, Complainant gave conflicting testimony as to when she first reported the alleged conduct and to whom. I resolved these disputed issues of fact in favor of Respondent, whose witnesses’ testimony was credible and consistent with the documentary evidence of record.

Complainant also alleged that she complained of instances of offensive statements by co-workers. The only incidents substantiated through an internal investigation were that a co-worker who once referred to a trainer, whose name she did not know, as “the black trainer.” On another occasion the same co-worker was overheard to refer to a movie character having a “big, black butt.”

The use of the term “black” to describe a trainer by a worker whose name she did not know, in context, was descriptive, and no reasonable person could conclude that it created a hostile work environment. While the use of the term “big, black butt,” to describe a movie character was offensive, I conclude that this one comment, not directed at Complainant, was not sufficiently severe and pervasive so as to humiliate, threaten, or interfere with Complainant’s ability to perform her job or compromise her full participation in the workplace. Other than these stray comments by one co-worker that were not directed at Complainant, there is no evidence to support Complainant’s allegations of racial intolerance or hostility in the office.

“A few isolated remarks over a period of time” are generally insufficient to meet the pervasiveness standard. Prader v. Leading Edge Products, Inc., 39 Mass. App. Ct. 616, 619-20

(1996). Chapter 151B is not a clean language statute and does prohibit all use of profane or offensive language. Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 214 (2000); Prader, *supra*, at 619-20 (1996).<sup>9</sup> I conclude, based on the above, that Complainant has failed to establish that she was subjected to a racially hostile workplace. Her other allegations are not credible or substantiated. Complainant's lack of credibility leads me to conclude that she fabricated a self-serving fictional account of racial intolerance and hostility toward her based on these two incidents. Furthermore, the fact that she raised these issues only after her performance was called into question and her errors were challenged by her supervisors renders her motivation suspect.

Complainant further alleges that she was subjected to disparate treatment because her supervisors excessively and unjustifiably returned her work for corrections or by-passed her and performed the corrections themselves, based on racial animus. However, there is no evidence that Complainant's work was singled out for corrections or returned to her more frequently than the work of her white and Latino co-workers or that correcting her errors had anything to do with her race and color.<sup>10</sup> Similarly, the fact that a co-worker had an altercation with Complainant in the presence of a client was not evidence of disparate treatment or racial animus, given the genuine dispute about what benefits were appropriate for the client. Finally, Complainant's allegation that she was not selected to attend training because of her race was totally without foundation; there was no evidence that she was treated differently in this regard from workers not in her protected class. Therefore, I conclude that the evidence does not support the claim that Complainant was subjected to disparate treatment on the basis of her race and color.

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<sup>9</sup> Moreover, these comments were made by a co-worker and were not reported to managers until March 17, 2010 at the earliest, after which time Respondent proceeded promptly to investigate Complainant's complaints of a racially hostile work environment. Thus Respondent was not liable for those remarks.

<sup>10</sup> Respondent's witnesses did not testify directly about Complainant's work performance. Documentary evidence suggests that Complainant's poor performance was the reason for the number of cases returned to her for correction.

## B. Retaliation

Pursuant to M.G.L.c.151B§4¶4, it is unlawful for any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five.

Complainant has alleged that her supervisors returned her work for corrections in retaliation for her having made an internal complaint and for filing an MCAD complaint of race discrimination and harassment. In order to establish a prima facie case of retaliation, Complainant must show that she engaged in a protected activity, that Respondent was aware of the protected activity, that Respondents subjected her to an adverse action, and that a causal connection existed between the protected activity and the adverse action. Mole v. University of Massachusetts, 58 Mass.App.Ct. 29, 41 (2003). In the absence of any direct evidence of retaliatory motive, as in this case, the Commission follows the three-part burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 972 (1973). Abramian v. President & Fellows of Harvard College, 432 Mass 107,116 (2000); Wynn & Wynn v. MCAD, 431 Mass 655, 665-666 (2000). Once Complainant has established a prima facie case of retaliation, the burden of production shifts to Respondent to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason for its actions. Abramian, at 116-117; Wynn & Wynn, at 665. If Respondent meets this burden, then Complainant must show by a preponderance of the evidence that Respondent acted with retaliatory intent, motive or state of mind. Lipchitz v. Raytheon Company, 434 Mass 493, 504 (2001); see, Abramian, 432 Mass at 117. Complainant may meet this burden through circumstantial evidence including proof that



"one or more of the reasons advanced by the employer for making the adverse decision is false." Lipchitz, 434 Mass at 504. However, Complainant retains the ultimate burden of proving that Respondent's adverse action was the result of retaliatory animus. *Id.*; Abramian, 432 Mass at 117.

Under M. G. L. c. 151B, s. 4 (4), Complainant has engaged in protected activity if she... "has opposed any practices forbidden under this chapter or . . . has filed a complaint, testified or assisted in any proceeding under [G. L. c. 151B, s. 5]." In this case, Complainant made an internal complaint of race discrimination and filed an MCAD complaint. This was protected activity within the meaning of the statute. However, I conclude that there no credible evidence of a causal connection between the Complainant's complaints of discrimination and the amount of work returned to her for corrections. Complainant has not established that more work was returned for corrections after she filed her complaints. The frequency with which she sought new supervisors suggests that her performance was a genuine issue and needed to improve and that this fact was unrelated to her complaints. Therefore, I conclude that Complainant has failed to establish causation, an essential element of a prima facie case of retaliation.

### C. Investigation

Complainant argues that Respondent failed to adequately investigate her complaints of a racially hostile work environment. I do not agree. The evidence demonstrates that Complainant first complained of issues of "diversity" in the office in March 17, 2010. Within two weeks, Respondent's office director and regional director had met with Complainant and immediately referred her complaint for internal investigation. Respondent's investigator then engaged in a thorough investigation that included interviews with 10 employees of the Milford office, multiple written statements and an examination of Complainant's caseload and work product.

The investigator also reviewed documents from Complainant's previous work location in Brockton, where she engaged in confrontational behavior with co-workers and supervisors. Respondent's investigator concluded that there was no evidence of racism in the Milford office and found that Complainant was not credible, had a higher rate of return of cases than her co-workers because of her poor work performance and when her supervisors called her work performance to her attention, she raised the issue of racism to deflect attention away from her own shortcomings. I conclude that regardless of the outcome, Respondent took prompt action to investigate Complainant's allegations and provided anti-discrimination training to the workplace as a preventative measure.

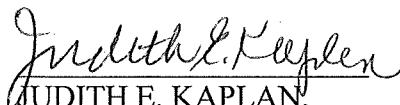
For the reasons stated above, I conclude that Respondent did not engage in unlawful discrimination on the basis of race and color or retaliation.

#### IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final order of the Hearing Officer. 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 1<sup>st</sup> day of April, 2016.

  
JUDITH E. KAPLAN,  
Hearing Officer