

STATE OF RHODE ISLAND  
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 03 EPD 151

In the matter of

Paul J. Medeiros  
Complainant

v.

DECISION AND ORDER

R & D Roofing Inc. and Roger Pratas  
Respondents

## INTRODUCTION

On January 21, 2003, Paul J. Medeiros (hereafter referred to as the complainant) filed a charge with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against R & D Roofing, Inc. and Roger Pratas (hereafter referred to as the respondents). The complainant alleged that the respondents discriminated against him with respect to terms and conditions of employment and termination of employment because of his disability and in retaliation for opposing unlawful employment practices, in violation of R.I.G.L. Sections 28-5-7 and 42-87-2. This charge was investigated. On January 20, 2005, a complaint and notice of hearing issued in order to allow the parties to continue to present evidence on the allegations of the charge. The case continued in investigation. On June 30, 2008, Preliminary Investigating Commissioner Camille Vella-Wilkinson assessed the information gathered by a staff investigator and ruled that there was probable cause to believe that the respondents violated the provisions of R.I.G.L. Section 28-5-7 and R.I.G.L. Section 42-87-2. On January 27, 2009, an amended complaint and notice of hearing issued. The amended complaint alleged that the respondents discriminated against the complainant with respect to terms and conditions of employment and termination of employment because of his disability and in retaliation for opposing unlawful employment practices.

A hearing on the amended complaint was held before Commissioner Alberto Aponte Cardona on July 14, 2009. The complainant was represented by counsel. The respondents did not attend the hearing. The complainant filed a Post-Hearing Memorandum with the Commission on September 10, 2009. The respondents did not file a post-hearing memorandum.

At the commencement of the hearing, the complainant withdrew his claim that the respondents discriminated against him in retaliation for opposing unlawful employment practices.

## **JURISDICTION**

The respondent, R & D Roofing, Inc. (hereafter referred to as R & D), employed four or more people within the State of Rhode Island at the time of the events in question and thus it was an employer within the definition of R.I.G.L. Section 28-5-6(7)(i). R & D was an entity doing business within the state at the time of the events in question and thus it was covered by the prohibitions of Title 42, Chapter 87 of the General Laws of Rhode Island. R & D is therefore subject to the jurisdiction of the Commission.

Respondent Roger Pratas had an ownership interest in R & D, and acted, directly and indirectly, in the interest of the employer, R & D, and thus he is an employer within the definition of R.I.G.L. Section 28-5-6(7)(i). In addition, he is a person who took actions prohibited by R.I.G.L. Section 28-5-7(6). He was also doing business within the state and thus is covered by the prohibitions of Title 42, Chapter 87 of the General Laws of Rhode Island. Mr. Pratas is therefore subject to the jurisdiction of the Commission.

## **FINDINGS OF FACT**

1. R & D was a roofing company. Mr. Pratas had an ownership interest in R & D.
2. The complainant was employed by the respondents for approximately two years as a roofer. His work performance was excellent. The respondents had never disciplined him.
3. On or around July 20, 2001, the complainant suffered a work-related injury, Bronchospastic Disease. The Workers' Compensation Court found that he was partially incapacitated from July 21, 2001 to October 14, 2001.
4. On or around January 18, 2002, the complainant suffered a work-related back injury. He submitted a physician's note to the respondents by facsimile on January 22, 2002. The note, dated January 22, 2002 and entitled "Disability Certificate", stated that the complainant was totally incapacitated from January 21, 2002 to four weeks from then because of back pain.
5. On or around January 25, 2002, Maria, an R & D secretary, called the complainant. She told him that "Roger" didn't need his services any more.
6. The respondents regarded the complainant as having a disability.
7. The complainant received unemployment compensation for a month after his termination. He then found employment at H & R Gym Services, demolishing and installing bleachers. He worked for H & R Gym Services for approximately three to four months. He then became employed by Horizon Retail Services, Inc. as a carpenter. As of the date of the Commission hearing, he was still employed at Horizon Retail Services, Inc. as a carpenter/foreman.
8. The complainant's average weekly wage when he was employed at the respondents was

\$888.40. He worked for the respondents for three weeks in January 2002 before his injury. His earnings for that period were \$2,231.25. He received \$1002 in unemployment benefits in 2002. He earned \$5980 at H & R Gym Services in 2002. He earned \$5742.01 at Horizon Retail Services, Inc. in 2002.

## **CONCLUSIONS OF LAW**

The complainant withdrew his claim that the respondents discriminated against him in retaliation for opposing unlawful employment practices and therefore this issue is not before the Commission.

The complainant proved by a preponderance of the evidence that he was regarded as having a disability as defined in the Fair Employment Practices Act, R.I.G.L. Section 28-5-6, and as defined in the Civil Rights of People with Disabilities Act, R.I.G.L. Section 42-87-1.

The complainant proved that the respondents discriminated against him with respect to terms and conditions of employment and termination of employment because of his disability.

## **DISCUSSION**

### **I. THE STANDARDS FOR EVALUATING EVIDENCE OF DISABILITY DISCRIMINATION**

The Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (FEPA), prohibits employment discrimination on the basis of disability with respect to terms and conditions of employment and termination. R.I.G.L. Sections 28-5-7(1)(i and ii) provide in relevant part that it is an unlawful employment practice for any employer:

- (i) To refuse to hire any applicant for employment because of his or her race or color, ... disability, ...;
- (ii) Because of those reasons, to discharge an employee or discriminate against him or her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment....

The Civil Rights of People with Disabilities Act, Title 42, Chapter 87 of the General Laws of Rhode Island (PDA) prohibits employment discrimination on the basis of disability. R.I.G.L. Section 42-87-2 provides that: "No otherwise qualified person with a disability shall, solely by reason of his or her disability, be subject to discrimination by any person or entity doing business in the state ...."

R.I.G.L. Section 42-87-3(2) provides in relevant part that:

(2) Notwithstanding any inconsistent terms of any collective bargaining agreement, no otherwise qualified person with a disability shall, solely on the basis of disability, who with reasonable accommodation and with no major cost can perform the essential functions of the job in question, be subjected to discrimination in employment by any person or entity receiving financial assistance from the state, or doing business within the state.

R.I.G.L. Section 42-87-1(6) defined "otherwise qualified" with respect to employment as "a person with a disability who, with reasonable accommodations, can perform the essential functions of the job in question".<sup>1</sup>

The Commission utilizes the decisions of the R.I. Supreme Court, the Commission's prior decisions and decisions of the federal courts interpreting federal civil rights laws in establishing its standards for evaluating evidence of discrimination. The Rhode Island Supreme Court has utilized federal cases interpreting federal civil rights law as a guideline for interpreting the FEPA. "In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. *See Newport Shipyard, Inc.*, 484 A.2d at 897-98." [Center for Behavioral Health, Rhode Island, Inc. v. Barros](#), 710 A.2d 680, 685 (R.I. 1998).

The courts in [DeCamp v. Dollar Tree Stores](#), 875 A.2d 13 (R.I. 2005), [Barros](#), [Newport Shipyard v. Rhode Island Commission for Human Rights](#), 484 A.2d 893 (R.I. 1984), [St. Mary's Honor Center v. Hicks](#), 509 U.S. 502, 113 S. Ct. 2742, 125 L.Ed.2d 407 (1993), [Gillen v. Fallon Ambulance Serv.](#), 283 F.3d 11 (1st Cir. 2002) and [Monette v. Electronic Data Sys. Corp.](#), 90 F.3d 1173 (6th Cir. 1996) set forth methods for analyzing evidence of discrimination. According to these methods, the complainant must first establish a prima facie case of discrimination. [DeCamp](#) provides that a person may prove a prima facie case of disability discrimination in termination by proving that:

(1) he or she was disabled within the meaning of FEPA and RICRA [the Rhode Island Civil Rights Act, Title 42, Chapter 112 of the General Laws of Rhode Island]; (2) that the employee was a "qualified" individual, which means that "with or without reasonable accommodation, she was able to perform the essential functions of her job"; (3) "that the employer discharged her in whole or in part because of her disability." [Cite omitted.] 875 A.2d at 25.

*See also* [Monette](#) which similarly describes how a plaintiff can establish a prima facie case of disability discrimination in termination by proving that:

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<sup>1</sup> The FEPA and the PDA have been amended since the time of the events in question. The Commission will apply the statutory language in effect at the time of the events in question.

1. He or she had a disability known to the employer;
2. He or she was qualified for the position;
3. He or she was terminated/laid off;
4. He or she was replaced.

Once a complainant has made a prima facie case of discrimination, to avoid liability a respondent must present a legitimate, non-discriminatory reason for its actions. Hicks. If a respondent has presented legitimate, non-discriminatory reasons for its actions, a complainant may prove discrimination by proving that the reasons given are a pretext for discrimination. Hicks.

In addition to the above method for proving discrimination, the FEPA provides for another way to analyze evidence of discrimination. The FEPA specifically provides that a plaintiff may prove discrimination by proving that discrimination was a motivating factor for the respondent's actions, even though the decision was also motivated by other lawful factors. R.I.G.L. Section 28-5-7.3.

## **II. THE COMPLAINANT PROVED THAT THE RESPONDENTS DISCRIMINATED AGAINST HIM ON THE BASIS OF DISABILITY**

In accordance with the standards set forth in Section I, the complainant successfully established a prima facie case of disability discrimination.

The complainant proved that he had a disability. The issue of whether a complainant has a disability is a complicated one. The FEPA, in R.I.G.L. Section 28-5-6(4), defined disability as follows:

"Disability" means any physical or mental impairment which substantially limits one or more major life activities, has a record of an impairment, or is regarded as having an impairment by any person, employer, labor organization or employment agency subject to this chapter, and includes any disability which is provided protection under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and federal regulations pertaining to the act, 28 CFR 35 and 29 CFR 1630; provided, that whether a person has a disability shall be determined without regard to the availability or use of mitigating measures, such as reasonable accommodations, prosthetic devices, medications or auxiliary aids. As used in this subdivision, the phrase:

...

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory ....

(iv) "Regarded as having an impairment" means has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or has none of the impairments but is treated as having such an impairment.

The definition of disability in Section 42-87-1 was essentially identical to the above definition, although in a slightly different format.

The complainant proved that he had a disability under the FEPA and the PDA because he proved that he was regarded as having an impairment. R.I.G.L. Sections 28-5-6(4) and 42-87-1. The complainant had physical impairments. He was found to have had Bronchospastic Disease, which is a disorder or condition of the respiratory system. He had a back injury, a disorder or condition of the musculoskeletal system. The complainant did not testify as to how these conditions impaired his major life activities and both of the conditions were limited in time. The back pain lasted approximately four weeks. However, the respondents treated the complainant as if the impairments created a substantial limitation on major life activities. The respondents terminated the complainant's employment within a few days of learning of his back impairment. Given the complainant's excellent work performance and his record of no discipline, it is logical to conclude that the respondents considered him to have a physical impairment that substantially limited his major life activities. *See Medlin v. Rome Strip Steel Co., Inc.*, 294 F.Supp.2d 279 (D.N.Y. 2003) (summary judgment denied, plaintiff's evidence that the employer refused to allow him to return to work at all after he developed back pain was sufficient evidence to proceed to trial on the allegation that the employer regarded him as substantially limited in working a class of jobs or a broad range of jobs.) The complainant has submitted sufficient credible evidence that the respondents regarded him as having a disability.

This conclusion is supported by the respondents' failure to file an answer to the amended complaint. The amended complaint alleges that the respondents discriminated against the complainant "because of his disability". Commission Rules and Regulations, Rule 8.04 provides that "[a]ny allegation in the complaint which is not denied or admitted in the answer, unless respondent shall state in the answer that the respondent after due investigation is without knowledge or information sufficient to form a belief on the allegation, shall be deemed admitted".

The evidence submitted by the complainant, and the respondents' failure to answer the allegation that their actions were based on the complainant's disability support the conclusion that the respondents regarded the complainant as having a disability.

The complainant was a qualified individual. He had been performing the duties of the position for approximately two years. His performance was excellent and he had not received any discipline.

The complainant was terminated. The timing of the termination, three days after the complainant transmitted the Disability Certificate to the respondents, leads to the inference that the termination was caused by the respondents' perception that he had a disability.

In light of the above factors, the complainant made a prima facie case of discrimination.

As discussed above, once a complainant has made a prima facie case of discrimination, a respondent has the burden of presenting a legitimate, non-discriminatory reason for its actions. Hicks. The respondents did not meet this burden. The Commission, having credited the complainant's evidence that constituted his prima facie case of discrimination, finds that the complainant proved by a preponderance of the evidence that the respondents<sup>2</sup> discriminated

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<sup>2</sup> The statutory authority for the liability of an individual respondent such as Mr. Pratas rests in several sections of the FEPA and the PDA. Mr. Pratas was an individual who acted in the interest of R & D directly and indirectly and thus he is liable as a respondent under the definition of "employer". See R.I.G.L. Section 25-5-6 (7). He is also liable under R.I.G.L. Section 28-5-7(6) which provides that it is an unlawful employment practice:

[f]or any person, whether or not an employer, employment agency, labor organization, or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful employment practice, or to obstruct or prevent any person from complying with the provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful employment practice....

Mr. Pratas attempted directly to commit an unlawful employment practice and aided and abetted the unlawful employment practice of R & D. In addition, Mr. Pratas is liable under R.I.G.L. Section 42-87-2 of the PDA which provides in relevant part that: "No otherwise qualified person with a disability shall, solely by reason of his or her disability, be subject to discrimination by any person or entity doing business in the state...". See also R.I.G.L. Section 42-87-3(2).

against him with respect to terms and conditions of employment and termination of employment because they regarded him as having a disability.

## DAMAGES

R.I.G.L. Section 28-5-24 sets forth the remedies that the Commission can award after finding that a respondent has committed an unlawful employment practice.<sup>3</sup> R.I.G.L. Section 28-5-24(a)(1) provides as follows:

**§ 28-5-24 Injunctive and other remedies – Compliance.** – (a) If upon all the testimony taken the commission determines that the respondent has engaged in or is engaging in unlawful employment practices, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful employment practices, and to take any further affirmative or other action that will effectuate the purposes of this chapter, including, but not limited to, hiring, reinstatement, or upgrading of employees with or without back pay, or admission or restoration to union membership, including a requirement for reports of the manner of compliance. Back pay shall include the economic value of all benefits and raises to which an employee would have been entitled had an unfair employment practice not been committed, plus interest on those amounts.

The Commission will order the respondents to take action to deter future acts of discrimination. The complainant requested back pay for calendar year 2002 and the Commission will award the complainant back pay for that year. The complainant's average weekly wage at the respondents was \$888.40, which amounts to \$46,196.80 per year. The Commission will credit against this figure the complainant's interim earnings, unemployment benefits and earnings from R & D for 2002 before he was terminated. Thus, the back pay awarded is \$31,241.54.

The Commission awards interest the way it is awarded for tort judgments. *See* R.I.G.L. Section 9-21-10(a):

In any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon **from the date the cause of action accrued**, which shall be included in the judgment entered therein....

[Emphasis added.]

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<sup>3</sup> R.I.G.L. Section 42-87-5(a) provides that: “the commission may proceed in the same manner and with the same powers as provided in §§ 28-5-16 – 28-5-26...”.



The complainant has requested compensatory damages for pain and suffering. R.I.G.L. Section 28-5-24(b) provides in relevant part that:

(b) If the commission finds that the respondent has engaged in intentional discrimination in violation of this chapter, the commission in addition may award compensatory damages. The complainant shall not be required to prove that he or she has suffered physical harm or physical manifestation of injury in order to be awarded compensatory damages....

The Commission has awarded compensatory damages for pain and suffering in previous cases. The U.S. Equal Employment Opportunity Commission (EEOC) Policy Guidance on "Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991", 1992 WL 1364354 (EEOC Guidance 1992) (hereafter referred to as Enforcement Guidance) is helpful in determining compensatory damages. The Enforcement Guidance provides that it is EEOC's interpretation that compensatory damages are available for pecuniary and non-pecuniary losses caused by discriminatory acts. Non-pecuniary losses include damages for pain and suffering, inconvenience and loss of enjoyment in life. "Emotional harm may manifest itself, for example, as sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self esteem, excessive fatigue, or a nervous breakdown." Enforcement Guidance, p. 5. While "there are no definitive rules governing the amounts to be awarded," the severity of the harm and the time that the harm has been suffered are factors to be considered. Enforcement Guidance, pp. 7, 8.

The complainant presented evidence that his termination caused difficulties in his finances and in his family life. (Trans. pp. 16-17.) However, considering that there was no evidence on the length of time of his difficulties, that he had other employment in a short period of time and that the Commission was not persuaded that his difficulties rose to a level that caused him significant emotional harm, the Commission has determined that the complainant has not established damages for pain and suffering. See Azimi v. Jordan's Meats, Inc., 456 F.3d 228 (1<sup>st</sup> Cir. 2006), *cert. denied*, 127 S. Ct. 1831 (2007) (jury that found that the plaintiff was subjected to a hostile work environment based on his ancestral origin, race and religion was authorized to evaluate the testimony on the plaintiff's emotional distress and determine that no compensatory damages should be awarded).

## ORDER

I. Violations of R.I.G.L. Sections 28-5-7, 42-87-2 and 42-87-3 having been found, the Commission hereby orders that:

1. The respondents cease and desist from all unlawful employment practices;
2. The respondents pay the complainant \$31,241.54 as back pay and \$31,616.44 as statutory interest accrued from January 25, 2002 to June 30, 2010, for a total of \$62,857.98;
3. The respondents pay the complainant statutory interest of 12% per annum on the award in Paragraph I(2) above for the period from June 30, 2010 until the award is paid;
4. The respondents submit proof of payment to the complainant in accordance with Paragraph I(2 and 3) within forty-five days of the date of this Order;
5. The respondents are jointly and severally liable for the amounts in Paragraph I(2 and 3) above;
6. The respondents post a copy of the Commission's anti-discrimination poster prominently in all of their Rhode Island facilities;
7. R & D train its supervisors on state and federal anti-discrimination laws and provide a certification to the Commission within six (6) months of the date of this Order that the training has been completed, a list of the people who were trained, the name of the trainer and a copy of the syllabus;
8. Mr. Pratas be trained on state and federal anti-discrimination laws and provide a certification to the Commission within six (6) months of the date of this Order that the training has been completed, the name of the trainer and a copy of the syllabus.

II. The attorney for the complainant may file with the Commission a Motion and Memorandum for Award of Attorney's Fees no later than forty-five (45) days from the date of this Order. The respondents may file a Memorandum In Opposition no later than forty-five (45) days after receipt of the complainant's Motion. The parties' attention is directed to Banyaniye v. Mi Sueno, Inc. and Jesus M. Titin, Commission File No. 07 PPD 310 (Decision on Motion for Attorney's Fees 2009) for factors to be generally considered

in an award of attorney's fees under the FEPA. If any party would like a hearing on the issues involved in the determination of an appropriate award of attorney's fees, the party should request it in the memorandum.

Entered this [30<sup>th</sup>] day of [June], 2010.

\_\_\_\_\_/S/\_\_\_\_\_

Alberto Aponte Cardona  
Hearing Officer

I have read the record and concur in the judgment.

\_\_\_\_\_/S/\_\_\_\_\_

Iraida Diaz Williams  
Commissioner

\_\_\_\_\_/S/\_\_\_\_\_

Rochelle Bates Lee  
Commissioner

DISSENT OF COMMISSIONERS JOHN B. SUSA AND NANCY KOLMAN VENTRONE

We dissent from the Commission's Decision and Order. Even accepting the testimony of the complainant as credible, we find that there is insufficient evidence that the complainant had a disability. The majority does not find that the complainant had an impairment that substantially limited a major life activity, but finds that the respondents regarded the complainant as having a disability. We find that there is inadequate evidence to determine how the respondents regarded the complainant's condition.

We dissent from the majority opinion because it is our opinion that the complainant did not prove, by a preponderance of the evidence, that he had a disability as defined in the FEPA and the PDA.

\_\_\_\_\_/S/\_\_\_\_\_

John B. Susa  
Commissioner

\_\_\_\_\_/S/\_\_\_\_\_

Nancy Kolman Ventrone  
Commissioner