

## **Massachusetts Appeals Court Reinstates \$195,000 in Emotional Distress Damages For Disability Discrimination**

*July 9, 2009*

Recently, the Massachusetts Appeals Court reinstated an order of the Massachusetts Commission Against Discrimination (“MCAD”), requiring the City of Boston to pay \$195,000 to Diana Sabella, a teacher in the Boston Public School system, for emotional distress she had suffered as a result of disability discrimination. In *City of Boston v. Massachusetts Commission Against Discrimination*, the Appeals Court recognized that the amount of the award was high but ruled that substantial evidence supported the damages. While prior court decisions had sought to curb runaway emotional distress awards by the MCAD, the decision suggests that Massachusetts courts may be shifting away from scrutinizing such damages.

Sabella began working as a teacher at Boston Public Schools (“BPS”) beginning in 1985. In 1993, she was diagnosed with a condition causing foot pain, which substantially limited her ability to walk and stand. Sabella informed BPS of her condition, and it initially provided her with a series of accommodations. However, over a period of several years, BPS required Sabella to transfer to different schools within the system, and those schools did not provide her with the requested accommodations.

Sabella filed two charges of disability discrimination with the MCAD. After a five-day public hearing on the charges, the MCAD hearing officer concluded that BPS had discriminated against Sabella on the basis of her disability by failing to provide reasonable accommodations. The hearing officer awarded Sabella more than \$125,000 in lost wages and \$195,000 for emotional distress damages. In issuing the award for emotional distress, the hearing officer credited Sabella’s testimony that, as a result of BPS’s actions, she suffered severe emotional distress and an exacerbation of her medical condition, and relied upon Sabella’s medical records, including psychotherapy records, which corroborated her testimony. The full commission of the MCAD affirmed the decision of the hearing officer.

BPS appealed the decision to the Massachusetts Superior Court. The Superior Court ruled that there was substantial evidence to support the MCAD’s finding that BPS had discriminated against Sabella, but that the amount of emotional distress damages was disproportionate to the distress Sabella suffered as a result of BPS’s actions. It thus reduced the award to \$50,000. The Superior Court reasoned that Sabella’s situation resembled that of a prior case, in which a \$50,000 award for emotional distress damages was upheld. The Superior Court further explained that Sabella’s discrimination-related emotional distress could not be neatly separated from her pre-existing and ongoing emotional distress, which included a complicated psychological history involving food issues, a possible abuse history, and a failed relationship.

On appeal, the Appeals Court reversed the reduction of the emotional distress damages. It held that substantial evidence supported the award of \$195,000, finding that a reasonable person could conclude that this was the appropriate value of Sabella’s emotional distress. The Appeals Court recognized that the amount was high, but explained that the value of emotional distress is not subject to scientific precision.

While damages for emotional distress are necessarily dependent on the specific facts of the case, the decision signals that Massachusetts courts will tolerate six-figure awards by the MCAD. Plus, a successful plaintiff may also recover future pay and attorneys’ fees, as well as punitive damages if a case were brought in court. As this case demonstrates, these types of damages often exceed the plaintiff’s actual lost wages and substantially increase the potential liability in discrimination cases.

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