

Employment - Age discrimination

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Where a complainant was laid off from her job on account of her age, she should be awarded back pay plus \$200,000 in emotional distress damages.

Evidence of bias

"Complainant has offered direct evidence of age discrimination in the form of testimony by Willowbend [Country Club, Inc.] member Kevin Foley that David Wood told him during a conversation in late September or early October of 2005, that Complainant was 'out of here [because] I need to bring in some younger blood' and 'younger, more attractive people' in order to create 'some energy and enthusiasm.' It is obvious that Wood's remarks concern staff rather than new members because they were made in the context of a discussion about re-training of real estate salespeople. I credit Foley's testimony, notwithstanding his litigation against Willowbend, because he was a sincere and convincing witness. The comments that Foley attributes to Wood are supported by a newspaper advertisement inviting applicants to apply for Willowbend positions following the layoffs with the following words: 'OUR NEW ERA BEGINS NOW.'

"The statements cited above are more than stray remarks because they go to the heart of the selection process during which Complainant was laid off and younger, less successful real estate agents were retained and hired. ... Expressing a preference for 'younger blood' constitutes explicit age animus. The references to 'energy,' 'enthusiasm,' and the start of a 'new era,' while less explicit, also provide direct evidence of age discrimination because they serve as veiled references to, or code words for, age animus. ...

"Complainant, born in 1945, was a member of a protected class based on her age. She was, by any measure, the most successful real estate agent in the office. Nonetheless, Complainant was terminated whereas Patty Kilgallon and Patrice Hovenesian, born in 1961 and 1960, respectively, were retained as real estate agents. On the same day that Complainant was terminated, two administrative assistants in the real estate office were also terminated: Bette Brady (dob: 1941) and Mary Perron Craighead (dob: 1947). Their duties were assigned to Diane McArthur, a former New Hampshire beauty queen (dob: 1966) who was subsequently fired for poor performance. Real estate paralegal Donna Bergamo (dob: 1941) was also laid off as an employee and used thereafter on an hourly basis. Following the October 17, 2005 layoffs, there were no employees in the real estate department who were over fifty years old. Of the thirteen employees who were laid off, ten were over fifty years old. These factors are sufficient to establish a *prima facie* case. ...

"There is no doubt that Respondents saved money from consolidating positions. But the issue in this case is not whether the downsizing was, in part, economically motivated. The issue is whether employees were selected for layoff based on age. From the foregoing evidence, both direct and indirect, I conclude that the personnel decisions in 2005 were infused with age-related animus and that this animus was the predominant factor in Complainant's 2005 termination. ...

"There is no dispute that Complainant engaged in protected activity by filing an MCAD complaint and that Respondents were aware that she engaged in protected activity. Complainant asserts that Respondents thereafter subjected her to adverse action by barring her and her husband as guests at Willowbend Country Club once their membership lapsed. Although such action was not directly related to Complainant's employment, I conclude that it constituted adverse action taken in response to Complainant's protected activity and that it was materially adverse to Complainant's interests."

MCAD, et al. v. Willowbend Country Club, Inc., et al. (Lawyers Weekly No. 22-029-09) (40 pages) (Waxman, Hearing Officer) (MCAD) Mark Redlich and Merle Hass for complainant Virginia

DiOrio; Lawrence Siskind and Neal Siskind, both of Siskind & Siskind, for the respondents (Docket Nos. 06-BEM-01392 and 02651) (Oct. 21, 2009).

Detailed Information

Court	Massachusetts Commission Against Discrimination
Docket #	22-029-09
Case Name	MCAD, et al. v. Willowbend Country Club, Inc., et al.
Judge	Waxman

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