APPENDICES

A001

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE
John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8106; mass.gov/courts/appealscourt

Dated: February 14, 2019

Camille T. Mata, Pro Se
184 Plumtree Road
Sunderland, MA 01375

RE: No. 2018-P-0782
Lower Court No: 1778CV00081

CAMILLE T. MATA vs. MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

NOTICE OF DECISION

Please take note that on February 14, 2019, the Appeals Court issued the following decision in the above-referenced case:

Decision: Rule 1:28 Judgment affirmed (Vuono, Hanlon, Shin, JJ.). *Notice.

Starting at 11:00 AM on the date of this notice, a copy of the court's decisions in this case will be available at:

https://www.mass.gov/service-details/new-opinions

You can type or copy and paste the above address to view or download the decision. Decisions are posted on the court's website for two weeks. A copy of all decisions older than two weeks will be available on http://www.lexisnexis.com/clients/macourts/

The clerk's office will not mail a paper copy of the decision to you. Only incarcerated self-represented litigants will receive a paper copy by mail. Any questions regarding retrieval of decisions should be directed to the Office of the Reporter of Decisions at 617-557-1030.

Any further filings in this appeal by attorneys must be filed by using the electronic filing system. For access go to http://www.efilema.com/

Very truly yours,
Joseph Stanton, Clerk

To: Camille T. Mata, Kristen Dannay, Esquire, Reid Michael Wakefield, Esquire

Mata v. Massachusetts Commission Against Discrimination

Copy Citation

Appeals Court of Massachusetts

February 14, 2019, Entered

18-P-782

Reporter

94 Mass. App. Ct. 1122 | 2019 Mass. App. Unpub. LEXIS 126

CAMILLE T. MATA *vs.* MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION.

Notice: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS RULE 1:28, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009), ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO RULE 1:28 ISSUED AFTER FEBRUARY 25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT. SEE *CHACE* V. *CURRAN*, 71 MASS. APP. CT. 258, 260 N.4, 881 N.E.2d 792 (2008).

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

Judges: Vuono, Hanlon & Shin, JJ.

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff filed a charge with the Massachusetts Commission Against Discrimination (MCAD), alleging education discrimination under G. L. c. 151C. An investigating commissioner made a finding of lack of probable cause, and the plaintiff filed an administrative appeal. After a preliminary hearing, see 804 Code Mass. Regs. § 1.15(7)(d) (2008), a second investigating commissioner affirmed the finding of lack of probable cause. The plaintiff then sought judicial

plaintiff now appeals.

The complaint was properly dismissed for lack of subject matter jurisdiction. "A preliminary hearing before an investigating commissioner . . . is not subject to G. L. c. 30A . . . , and no statutory right of appeal for judicial review applies to such a determination." *Christo* v. *Edward G. Boyle Ins. Agency, Inc.*, 402 Mass. 815, 818, 525 N.E.2d 643 (1988). See 804 Code Mass. Regs. § 1.15(7)(d). The plaintiff is mistaken to the extent she argues that a different result is required because she brought her discrimination charge under G. L. c. 151C, as opposed to G. L. c. 151B. The preliminary hearing process is the same regardless of the statutory basis underlying the charge. See G. L. c. 151C, § 5 ("The commission shall have the power, after public hearing, to adopt, promulgate, amend or rescind rules and regulations concerning proceedings at hearings and other investigations under this chapter, which rules and regulations shall be not inconsistent with the provisions of said chapter"); 804 Code Mass. Regs. § 1.01 (1999) (MCAD regulations "apply to [G. L.] c. 151C where not inconsistent with the provisions of [G. L.] c. 151C").

Nor is judicial review available under G. L. c. 151C, § 4 (*a*), which provides that "[a]ny party aggrieved by a final order of the commission may obtain a judicial review thereof." For this statute to apply, the full commission must have issued a final order after an adjudicatory proceeding. See 804 Code Mass. Regs. §§ 1.01, 1.24 (1999). An investigating commissioner's decision to affirm a finding of lack of probable cause does not constitute a final order by the full commission because only the investigating commissioner (or his or her designee) presides at a preliminary hearing. See *id.* at § 1.15 (7)(d). The plaintiff therefore could not obtain judicial review under G. L. c. 151C, § 4 (*a*). We note, however, that the finding of lack of probable cause did not bar the plaintiff from pursuing a civil action under G. L. c. 151B, § 9, against the institution that allegedly discriminated against her. See *Christo*, 402 Mass. at 817 ("There are two largely independent avenues for redress of violations of the anti-discrimination laws of the Commonwealth, one through the MCAD and the other in the courts" [citations omitted]).

Finally, the plaintiff appears to argue that the judge should have treated the MCAD's motion as one for summary judgment and denied it based on the existence of disputed facts. But to the contrary, the judge appropriately considered and resolved the motion as one to dismiss for lack of subject matter jurisdiction. See *School Comm. of Hudson* v. *Board of Educ.*, 448 Mass. 565, 577, 863 N.E.2d 22 (2007).

Judgment affirmed.

By the Court (Vuono, Hanlon & Shin, JJ.[1]),

Entered: February 14, 2019.

Footnotes

[1] The panelists are listed in order of seniority.

JUDGMENT ON MOTION TO DISMISS	Trial Court of Massachusetts The Superior Court
DOCKET NUMBER 1778CV00081	Susan K. Emond, Clerk of Courts
CASE NAME Camille T Mata vs. Massachusetts Commission Against Descrimination	COURT NAME & ADDRESS Franklin County Superior Court 43 Hope Street Greenfield, MA 01301

JUDGMENT FOR THE FOLLOWING DEFENDANT(S)
Massachusetts Commission Against Descrimination

JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S)
Mata, Camille T

This action came on before the Court, Hon. Michael K Callan, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Civ.P. 12(b),

It is ORDERED AND ADJUDGED:

Motion to Dismiss ALLOWED for the reasons stated in the Defendant's Memorandum and without opposition.

A TRUE COPY ATTEST
Susan K. Emond

Clerk of Courts

DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK
02/14/2018	X

Date/Time Printed: 02-14-2018 14:25:54

SCV083t 03/2016

C005

Supreme Judicial Court for the Commonwealth of Massachusetts

John Adams Courthouse
One Pemberton Square, Suite 1400, Boston, Massachusetts 02108-1724
Telephone 617-557-1020, Fax 617-557-1145

Camille T. Mata, Pro Se
184 Plumtree Road
Sunderland, MA 01375

RE: No. FAR-26694

CAMILLE T. MATA
vs.
MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

NOTICE OF DOCKET ENTRY

Please take note that on January 3, 2020, the following entry was made on the docket of the above-referenced case:

It has come to the court's attention that notice of the May 9, 2019 denial of the application for further appellate review was not sent to the appellant. The court is hereby reissuing notice of the denial to all parties.

Francis V. Kenneally, Clerk

Dated: January 3, 2020

To: Camille T. Mata
Kristen Dannay, Esquire
Ethan Crawford, Esquire

Gmail

Camille Tuason Mata <camille.mata69@gmail.com>

FAR-26694 - Notice of Docket Entry

2 messages

SJCCommClerk@sjc.state.ma.us <SJCCommClerk@sjc.state.ma.us> Fri, Jan 3, 2020 at 4:00 PM
Reply-To: SJCCommClerk@sjc.state.ma.us
To: camille.mata69@gmail.com

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: No. FAR-26694

CAMILLE T. MATA
vs.
MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

NOTICE OF DOCKET ENTRY

Please take note that on January 3, 2020, the following entry was made on the docket of the above-referenced case:

It has come to the court's attention that notice of the May 9, 2019 denial of the application for further appellate review was not sent to the appellant. The court is hereby reissuing notice of the denial to all parties.

Francis V. Kenneally, Clerk

Dated: January 3, 2020

To:
Camille T. Mata
Kristen Dannay, Esquire
Ethan Crawford, Esquire

Camille Tuason Mata <camille.mata69@gmail.com> Mon, Jan 6, 2020 at 5:34 PM
To: SJCCommClerk@sjc.state.ma.us

Dear Francis Kenneally:
I received this notification of entry of judgement on Friday, January 3, 2020 regarding SJC FAR-26694 (Lower Docket No. 2018-P-0782). I wish to follow up, and as discussed with Maura Moonie on the phone, I still need the original judgement with the original date on which the judgement was sent to me. This judgement should have also included the reasons given by the Justices for denying me further review. This information must be included in the Petition for Writ of Certiorari.

I shall leave a message on the central phone for assurance.

Thank you for your kind attention to this matter.
[Quoted text hidden]

--
Camille Tuason Mata, MURP, MSD, MA
Urban/Community Planning Consultant/Researcher
The ECOPlanning Institute (Owner)
Planning Communities with Care
Sunderland, Massachusetts
Linkedin.com:https://www.linkedin.com/in/camilletuasonmata
Mobile: +1 617-515-1642
Skype Name: camille100169

Gmail

Camille Tuason Mata <camille.mata69@gmail.com>

FAR-26694 - Notice of Entry: FAR

1 message

SJCCommClerk@sjc.state.ma.us <SJCCommClerk@sjc.state.ma.us> Fri, Mar 8, 2019 at 4:00 PM
Reply-To: SJCCommClerk@sjc.state.ma.us
To: camille.mata69@gmail.com

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: No.FAR-26694

CAMILLE T. MATA
vs.
MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Franklin Superior Court No. 1778CV00081
Appeals Court No. 2018-P-0782

NOTICE OF ENTRY OF APPLICATION FOR FURTHER APPELLATE REVIEW

On March 8, 2019, an application for further appellate review was filed. A response may be filed by March 22, 2019.

Thank you.

Francis V. Kenneally, Clerk

Dated: March 8, 2019

To:
Camille T. Mata
Kristen Dannay, Esquire
Reid Michael Wakefield, Esquire

Commonwealth of Massachusetts

C008

SUPREME JUDICIAL COURT

It is ORDERED that the following applications for further appellate review be, and hereby are, DENIED:

FAR-26330 2016-P-1748	R.R. v M.W.
FAR-26627 2018-P-0198	Commonwealth v Jason Clements
FAR-26628 2018-P-0097	Commonwealth v Brian Vines
FAR-26662 2017-P-0975	Commonwealth v Joseph Maldonado
FAR-26667 2017-P-0245	Commonwealth v Thomas F. Halpen Jr.
FAR-26675 2018-P-0106	Commonwealth v Robert L. Hunt
FAR-26683 2018-P-0886	Commonwealth v Corey Roy
FAR-26686 2017-P-1052	Commonwealth v Francisco Reyes
FAR-26687 2018-P-0195	Commonwealth v Brandon A. Hamilton
FAR-26689 2018-P-0291	Commonwealth v Daunte Beal
FAR-26690 2017-P-0602	Commonwealth v Stephane Etienne
FAR-26691 2017-P-1634	Steven Kruczynski v Jacqueline L Allen et al
FAR-26692 2017-P-1297	Commonwealth v Susan M. Brown
FAR-26693 2017-P-1189	Janice Smyth v Falmouth Conservation Commission & another
FAR-26694 2018-P-0782	Camille T. Mata v Massachusetts Commission Against Discrimination

FAR-26695 2018-P-0211	Commonwealth v Joshua Z. Graves
FAR-26701 2017-P-0829	Commonwealth v Chad Connors et al
FAR-26701B 2017-P-0829	Commonwealth v Chad Connors et al
FAR-26703 2017-P-1599	Commonwealth v Marcell R. Depina
FAR-26704 2017-P-1610	
FAR-26704B 2017-P-1610	
FAR-26705 2017-P-1529	NSTAR Electric Company v Board of Assessors of Boston
FAR-26706 2018-P-0389	Reem Property, LLC v James B. Bigelow
FAR-26708 2018-P-0452	Paula Carnelli et al v Bell at Salem Station et al
FAR-26709 2018-P-0675	
FAR-26714 2018-P-0152	Commonwealth v Lawrence L. Flores
FAR-26716 2018-P-0746	Commonwealth v Valerie B. Perry
FAR-26717 2018-P-0591	Stona J. Fitch et al v Concord Board of Appeals & another
FAR-26718 2018-P-0258	Commonwealth v Xavier Frederick
FAR-26725 2018-P-0146	Commonwealth v Adam R. Crane

FAR-26728 2018-P-0956	Commonwealth v George Lewis
FAR-26729 2018-P-0447	Commonwealth v Isaac Desir
FAR-26734 2018-P-0376	James J Decoulos v Elizabeth O'Keefe et al
FAR-26736 2017-P-1020	Veolia Energy Boston, Inc. v Board of Assessors of the City of Boston
FAR-26737 2017-P-1587	L.L. v M.M.
FAR-26738 2018-P-0173	Commonwealth v Juan F. Sheppard
FAR-26740 2017-P-1166	Commonwealth v Chiteara Thomas
FAR-26744 2018-P-0330	Timothy Creamer et al v Arbella Insurance Group
FAR-26746 2017-P-0401	Commonwealth v Sean P. Stevens

BY THE COURT,

Maura A. Looney

Maura A. Looney
Assistant Clerk

ENTERED: May 9, 2019

CIVIL ACTION COVER SHEET	DOCKET NUMBER	Trial Court of Massachusetts The Superior Court

PLAINTIFF(S): CAMILLE T. MATA

ADDRESS: 184 PLUMTREE ROAD
SUNDERLAND, MA. 01375

COUNTY: Franklin

DEFENDANT(S): MASSACHUSETTS COMISSION AGAINST DISCRIMINATION

ATTORNEY:

ADDRESS:

ADDRESS: 436 DWIGHT STREET
SPRINGFIELD, MA. 01103

BBO:

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
EO2	APPEAL FROM ADMINISTRATIVE AGENCY GI	x	[ ] YES [X] NO

*If "Other" please describe:

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(attach additional sheets as necessary)

A. Documented medical expenses to date:
1. Total hospital expenses ..... $
2. Total doctor expenses ..... $
3. Total chiropractic expenses ..... $
4. Total physical therapy expenses ..... $
5. Total other expenses (describe below) ..... $
Subtotal (A): $

B. Documented lost wages and compensation to date ..... $
C. Documented property damages to dated ..... $
D. Reasonably anticipated future medical and hospital expenses ..... $
E. Reasonably anticipated lost wages ..... $
F. Other documented items of damages (describe below) ..... $

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F):$

CONTRACT CLAIMS
(attach additional sheets as necessary)

Provide a detailed description of claims(s):

TOTAL: $

Signature of Attorney/Pro Se Plaintiff: X **Date: 12/21/2017**

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X **Date:**

Superior Court of Massachusetts
Franklin County

Camille T. MATA, Plaintiff,
v.
Massachusetts Commission Against Discrimination, Defendant.

December 20, 2017.

Plaintiff's Complaint for Judicial Review Pursuant G.L. c 30A § 14

Camille Tuason Mata, M.U.R.P; M.S.D; M.L.A., 184 Plumtree Road, Sunderland, MA. 01375, Mobile No. (413) 230-7095, camille.mata69@gmail.com.

INTRODUCTION

1. The plaintiff, Camille Tuason Mata ("T. MATA"), pursuant to the provisions of G.L. c. 30A, § 14, seeks judicial review of the decision by the Massachusetts Commission Against Discrimination ("MCAD") affirming the decision of the MCAD Investigator, Melvin Arocho, to dismiss her race-gender discrimination complaint (Civil Rights Act 1964, Title VI, Title IX) against the Massachusetts Institute of Technology ("MIT DUSP Complaint"), citing lack of probable cause. See Decision of the Investigating Commissioner ("Decision"), Exhibit A. This Decision was in response to the plaintiff's appeal of Investigator Melvin Arocho's ruling of lack of probably cause. See Plaintiff's appeal letter ("MCAD Appeal"), Exhibit B. See Investigator Melvin Arocho's ruling ("Arocho Ruling"), Exhibit C. As grounds therefor, the plaintiff states that this decision to affirm Investigator's Arocho's ruling is: without reasonable ground, unsupported by substantial evidence, an error in legal analysis and, therefore, arbitrary, and an abuse of discretionary powers. The Defendant also demonstrated an authority in excess of its jurisdiction.

JURISDICTION AND VENUE

2. The MCAD's decision is not reviewable by a direct appeal; therefore, G.L. c. 30A, § 14, authorizes judicial review in this Court. See e.g. Ceely v. Firearms Licensing Review Board, 78 Mass. App. Ct. 1125 (2011);

3. Venue is proper under G.L. c 30A § 14(1)(a);

PARTIES

4. Camille Tuason Mata, MURP; MSD, MLA ("T. Mata") is currently employed as a food service worker at the Franklin Dining Commons at the University of Massachusetts-Amherst. She is also a qualified, professional urban planning consultant and the owner of the sole proprietor urban planning consultancy, The ECOPlanning Institute. She has additional qualifications that enable her to consult in developing countries and on special urban planning topics addressing issues of sustainability and social inequalities. See DUNS Number confirmation, Exhibit D; See Testamurs, Exhibit E; See Curriculum Vita ("CV"), Exhibit F.

5. The defendant is an agency of the Commonwealth of Massachusetts held with the responsibility of investigating discrimination complaints and derives its authority from the provisions of M.G.L. c 151B/C.

FACTS

6. This Complaint for a Judicial Review is directly linked to the race-gender discrimination complaint filed with MCAD against the Massachusetts Institute of Technology, Department of Urban Studies and Planning ("MIT DUSP Complaint"), citing violations of Civil Rights Act 1964, Title VI and Title IX;

7. In January 2016, the plaintiff applied for admission to the competitive PhD program of the Department of Urban Studies and Planning, Massachusetts Institute of Technology ("MIT DUSP");

8. On March 8, 2016, the MIT DUSP informed the plaintiff that she had not been accepted into the doctorate program. See MIT Decision E-mail, Exhibit G;

9. On September 6, 2016, the plaintiff filed a discrimination complaint with the Defendant, citing violations of constitutional laws pertaining to race-gender discrimination. See Plaintiff's "MIT DUSP Complaint" letter, Exhibit H;

10. On November 28, 2016, the MIT DUSP filed their response to plaintiff's allegations of race-gender discrimination. See MIT DUSP Response, Exhibit I;

11. On May 31, 2017, The MCAD Investigator assigned to the MIT DUSP Complaint, Melvin Arocho, dismissed the complaint ("Arocho Ruling"), citing lack of probable cause;

12. On June 7, 2017, the plaintiff filed an appeal of the Arocho Ruling regarding her discrimination complaint against the MIT DUSP, demonstrating specific areas in which pretext for discrimination was evident, in which the MIT DUSP demonstrated discriminatory disposition, and overall a

failure by Investigator Arocho to apply the appropriate legal analysis in weighing the evidence provided by the plaintiff and MIT DUSP. See "MCAD Appeal," Exhibit B.

13. On November 22, 2017, the Defendant affirmed the Arocho Ruling and therefore denied the appeal. In the letter, the Defendant also made the claim that the Decision "is not subject to Judicial Review M.G.L. c. 30A." See Decision, Exhibit A;

14. The Defendant's decision erred in several respects, including:

a. its failure to apply the standards of legal analysis expected of state agencies responsible for investigating discrimination complaints in scrutinizing all of the provided evidence;

b. in reviewing the Arocho Ruling, inclusive of the rationale of Investigator Arocho, the response of MIT DUSP, the rebuttal and appeals of the plaintiff, and all of the evidence corresponding therewith, the Defendant failed: to apply the standards of "reasonable inference," see e.g. McConnell Douglas Corp. v. Green, 411 U.S. at 804 (1973), and Texas Dept. of Cmty Affairs v. Burdine, 450 U.S. 248, 255-56 (1981); to aptly scrutinize the evidence for "pretext for discrimination," see e.g. Anthony Ash et al. v. Tyson Foods, Inc. No. 05-379, Patterson v. McLean Credit Union, 491 U.S. 164, 187 (1989), and Faas v. Sears, Roebuck & Co., 532 F.3d (7th Cir.2008); to apply "preponderance of evidence" in weighing all of the evidence, see e.g. McConnell Douglas Corp. v. Green, 411 U.S. at 804 (1973), and Smith v. Lockheed-Martin Corporation, supra.; to recognize the discriminatory disposition of MIT DUSP, see (d) this section.

c. its failure to subject all of the evidence correlated with the Arocho Ruling to key constitutional standards, namely the Equal Protection Clause under the 14th Amendment, from which the Civil Rights Act of 1964, Title VI and Title IX spring, and in the process Defendant failed to subject itself to the same compliance standards;

d. its failure to incorporate key evidence demonstrating biased disposition of MIT DUSP towards Plaintiff, which: exhibited gross subjectivity in the evaluation of Plaintiff's doctorate application portfolio; utilized language that alluded to age discrimination, see Fetouh Letter, March 16, 2017, Exhibit J.

e. overall, its failure to review all of the evidence, correlating with the plaintiff's appeal of the Arocho Ruling, with a fair and balanced mind to ensure statutory fairness. See M.G.L. c. 30A, § 14(7)(a) and (d);

15. By asserting that the Decision was "not subject to a Judicial Review," the Defendant gives evidence of overreaching its authority and jurisdiction. See M.G.L. c. 30A, § 14(7)(b), indicating a discriminatory disposition towards the plaintiff. Her race-gender identity is disclosed throughout the complaint process against MIT DUSP ("MIT DUSP Complaint").

COUNT I. JUDICIAL REVIEW

16. Paragraphs 1-15 are incorporated as if fully set forth herein;

17. Disclosure of all original documents regarding race-gender discrimination complaint against MIT DUSP to be forthcoming with 9A package;

18. The Defendant committed errors in legal analysis, resulting in a decision that is without reasonable ground, unsupported by substantial evidence, arbitrary, demonstrated abuse of discretionary powers. Moreover, the Defendant demonstrated an authority in excess of its jurisdiction. These errors in legal analysis and manifestations of abuse of its power, authority, and jurisdiction are so substantial and material that a failure to correct them will result in manifest injustice to the plaintiff and will prejudice a substantial right of the plaintiff;

19. The plaintiff has no other remedy available other than judicial review under M.G.L. c. 30A, § 14;

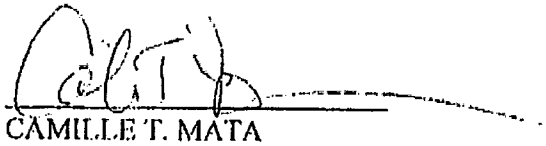
20. The Defendant's decision should be reversed under M.G.L. c. 30A, § 14 as a matter of law.

WHEREFORE, the Plaintiff respectfully requests that this Court:

a. Reverse the decision of the Defendant; and

b. Grant such other and further relief as is just and equitable.

Respectfully submitted,



CAMILLE T. MATA

184 Plumtree Road, Sunderland, MA. 01375
Mobile: (413) 203-7095
E-mail: camille.mata69@gmail.com

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

SUPERIOR COURT
DIVISION OF THE TRIAL COURT
CIVIL ACTION NO.: 1778CV00081

CAMILLE T. MATA,

Plaintiff,

v.

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER AND FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, SUBMITTED BY DEFENDANT, MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Pursuant to Rules 12 (b) (1) and 12 (b) (6) of the Massachusetts Rules of Civil Procedure, Defendant, Massachusetts Commission Against Discrimination, submits this Memorandum of Law in support of its Motion to Dismiss for Lack of Jurisdiction Over the Subject Matter and Failure to State a Claim Upon Which Relief Can Be Granted.

INTRODUCTION

Plaintiff, Camille T. Mata ("Mata"), improperly seeks to obtain judicial review of an investigative disposition of the Massachusetts Commission Against Discrimination ("Commission" or "MCAD") that dismissed a charge of discrimination due to a lack of probable cause following an investigation by the Commission. Mata's claim must fail as there is no statutory basis for her appeal. Massachusetts General Laws c. 30A, § 14, allows for judicial review of only final decisions of an agency following an adjudicatory proceeding and G. L. c.

151B, § 5, explicitly precludes judicial review of investigative determinations of the Commission. Because Mata seeks judicial review of an investigative determination after an agency investigation, the complaint should be dismissed as the Court does not have jurisdiction and because Mata has failed to state a claim upon which relief may be granted.

PROCEDURAL BACKGROUND

On September 8, 2016, Mata filed a complaint with the Commission alleging that the Massachusetts Institute of Technology discriminated against her on the basis of race, color, and sex in violation of G. L. c. 151C. The Commission conducted an investigation of the complaint and, on May 31, 2017, the complaint was dismissed for lack of probable cause. Mata appealed the investigative determination pursuant to G. L. c. 151B, § 5. A preliminary hearing was held in writing in accordance with 804 Code Mass. Regs. § 1.15 (7) (d) (1999). On November 22, 2017, the Investigating Commissioner affirmed the dismissal of Mata's charge of discrimination.

On December 21, 2017, Mata initiated the present action in Franklin County Superior Court seeking judicial review of the Investigating Commissioner's dismissal of the charge of discrimination for lack of probable cause, as affirmed following a preliminary hearing, and to request that the Court overturn the Commission's investigative determination. Pursuant to Rules 12 (b) (1) and 12 (b) (6) of the Massachusetts Rules of Civil Procedure, the Commission now submits this Memorandum of Law in support of its Motion to Dismiss Plaintiff's civil action for lack of jurisdiction and for failure to state a claim upon which relief can be granted.

ARGUMENT

I. THE COMMISSION'S INVESTIGATORY DETERMINATION OF LACK OF PROBABLE CAUSE IS NOT SUBJECT TO JUDICIAL REVIEW.

A. A finding of Lack of probable cause is not a final decision of the Commission subject to judicial review under Massachusetts General Laws, Chapter 30A.

There is no right under G. L. c. 30A, for judicial review of a lack of probable cause finding issued by an MCAD Investigating Commissioner. Pursuant to G. L. c. 30A, judicial review is limited to review of "a final decision of any agency in an adjudicatory proceeding." G. L. c. 30A, § 14. Here, however, the order dismissing Mata's charge of discrimination for lack of probable cause was issued during the investigative process, was not the result of an adjudicatory proceeding, and, therefore, is not a final decision of the Commission subject to judicial review.[1]

The Massachusetts anti-discrimination statute, G. L. c. 151B, provides a dual remedial process for resolving grievances arising under the statute. Christo v. Edward G. Boyle Ins. Agency, 402 Mass. 815, 817 (1988). The statute creates two distinct routes by which a complainant who has filed a charge of discrimination with the MCAD may choose to seek redress under G. L. c. 151B. A complainant, such as Mata, may either proceed through the Commission's administrative process, outlined in G. L. c. 151B, § 5, or file a private right of

[1] An adjudicatory proceeding, as defined by G. L. c. 30A, § 1, is "a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." Expressly excluded from the definition of adjudicatory proceedings are "proceedings solely to determine whether the agency shall institute or recommend institution of proceedings in a court." G. L. c. 30A, § 1 (1). The investigation and preliminary hearing the MCAD conducted in connection with Mata's charge of discrimination fall squarely into this latter category. Investigations and preliminary hearings are neither agency hearings nor adjudicatory proceedings because "no legal rights are determined" by the Commission. Stern v. Haddad Dealerships of the Berkshires, Inc., et al 477 F.Supp.2d 318, 325-326 (D.Mass. 2007). See Zannerini v. Massachusetts Comm'n Against Discrimination, 74 Mass.App.Ct. 1119, *2 (2009) (Rule 1:28); Brienzo v. Massachusetts Comm'n Against Discrimination, 60 Mass.App.Ct. 917, 917 (2004) (Rule 1:28) ("In fact, there is no benefit to the plaintiff of a finding of probable cause at the MCAD except an ability to proceed before the MCAD."). Simply put, investigative proceedings and adjudicative proceedings are separate and distinct processes serving entirely different functions within an agency. See Massachusetts Comm'n Against Discrimination v. Liberty Mutual, 371 Mass. 186 (1976) (recognizing the distinction between the investigatory and adjudicatory processes at the MCAD).

action in accordance with G. L. c. 151B, § 9. Id. See Stonehill College v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549, 565 (2004). In this matter, Mata chose to avail herself of the administrative process provided for in G. L. c. 151B, § 5.

In accordance with G. L. c. 151B, § 5, upon the filing of a formal charge of discrimination, a Commissioner is assigned to investigate the allegations and to issue an investigative finding as to whether the charge of discrimination is supported by probable cause. G. L. c. 151B, § 5. If, and only if, the Investigating Commissioner issues a finding of probable cause, may a certified Complaint be issued in the name of the Commission to be fully adjudicated at a public hearing before a Hearing Commissioner. Id. Following the full MCAD adjudicatory hearing, any aggrieved party may appeal to the Full Commission. Id. It is this Full Commission decision, which is a final order of the Commission, that is subject to judicial review in accordance with the standards set forth in the state's Administrative Procedures Act, G. L. c. 30A and G. L. c. 151B, § 6. See East Chop Tennis Club v. Massachusetts Comm'n Against Discrimination, 364 Mass. 444, 448 (1973).

Under this statutory framework, if, during the investigatory process, the Commission issues a finding of lack of probable cause, as it did here, the sole avenue of redress for an aggrieved complainant is a preliminary hearing as set forth in G. L. c. 151B, § 5 and 804 Code Mass. Regs. § 1.15 (7)(d) (1999). The preliminary hearing is an informal review of the complainant's case by the Investigating Commissioner or her designee. 804 Code Mass. Regs. § 1.15 (7) (d) (1999). The complainant appears before the Commission, either personally or in writing, to make any arguments supportive of reversal and to submit any information she believes is relevant to the case. Id. As discussed *infra*, the Commission's regulations make clear

that a finding of the Investigating Commissioner following a preliminary hearing is not a final decision of the Commission for purposes of judicial review. Id.[2]

For the purposes of judicial review under G. L. c. 30A and G. L. c. 151B, § 6, a final decision of the MCAD is defined as "the Decision of the Full Commission on appeal from the Decision of the Hearing Commissioner..." 804 Code Mass. Regs. § 1:24 (1999). A finding of lack of probable cause, affirmed after a preliminary hearing, does not constitute a final order of the Commission. G. L. c. 151B, § 5. Mata's complaint was neither heard by a Hearing Commissioner nor the Full Commission, but was, instead, dismissed by an Investigating Commissioner on the grounds of lack of probable cause after a preliminary investigation. Such an order of dismissal is not, by definition, a final decision of the Commission subject to judicial review pursuant to G. L. c. 30A. 804 Code Mass. Regs. § 1.24 (1999); See Hudak v.

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[2] Individuals, such as Mata, need not await any action or determination from the Commission on a complaint before filing a private right of action in court, under G. L. c. 151B, § 9, against the party alleged to have committed the unlawful discrimination. Hudak v. Massachusetts Comm'n Against Discrimination, 61 Mass.App.Ct. 1121 (2004) (Rule 1:28). See Christo v. Edward G. Boyle Ins. Agency, 402 Mass. 815, 817 (1988); Everett v. 357 Corp., 453 Mass. 585, 601 (2009). Massachusetts General Laws c. 151B, § 9, allows complaints filed with the Commission to be removed to the state court system "at the expiration of ninety days after the filing of a complaint with the commission, or sooner if a commissioner assents in writing, but not later than three years after the alleged unlawful practice occurred..." Notably, a finding of lack of probable cause itself does not prohibit individuals, such as Mata, from filing a private action against the named respondent in state court under G. L. c. 151B, § 9. See Stern v. Haddad Dealerships of the Berkshires, Inc., et al 477 F.Supp.2d 318, 326 (D.Mass. 2007); Zannerini v. Massachusetts Comm'n Against Discrimination, 74 Mass.App.Ct. 1119, *2 (2009) (Rule 1:28); Brienzo v. Massachusetts Comm'n Against Discrimination, 60 Mass.App.Ct. 917, 917 (2004) (Rule 1:28). Therefore, only the failure of an individual to act under G. L. c. 151B, § 9 within statute of limitations forecloses an individual's right to pursue the matter in state court. The Appeals Court has noted that "[p]roceeding in the Superior Court provides a complete remedy to any error that may have been made by the MCAD in failing to find probable cause." Massachusetts Sober Housing Corp. v. Massachusetts Comm'n Against Discrimination, 66 Mass.App.Ct. 1116 (2006) (Rule 1:28) *citing* Brienzo, 60 Mass.App.Ct. at 918.

Massachusetts Comm'n Against Discrimination, 61 Mass.App.Ct. 1121 (2004) (Rule 1:28). Because a finding of lack of probable cause is not a final decision of the Commission subject to judicial review under G. L. c. 30A, Mata's complaint seeking judicial review should be dismissed due to lack of jurisdiction and for failure to state a claim.

B. Massachusetts General Laws Chapter 151B, § 5, expressly states that an investigatory determination is not subject to judicial review pursuant to the provisions of the state's Administrative Procedures Act.

Both the relevant Massachusetts anti-discrimination statute and Commission regulations specifically exclude preliminary hearings from judicial review under G. L. c. 30A. See G. L. c. 151B, § 5; 804 Code Mass. Regs. § 1.15 (7) (d) (1999). Massachusetts General Laws, c. 151B, §5 states:

> [I]f such commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint ... said complainant or his attorney may ... request... a preliminary hearing ... provided however, that such a preliminary hearing shall not be subject to the provisions of chapter thirty A.

G. L. c. 151B, § 5 (emphasis added). See 804 Code Mass. Regs. § 1.15 (7)(d) (1999) ("The [preliminary] hearing shall not be subject to the requirements of M.G.L. c. 30A").

This principle was affirmed by the Massachusetts Supreme Judicial Court in Christo v. Edward G. Boyle Ins. Agency, Inc., 402 Mass. 815, 818 (1988), in which the court held that "[a] preliminary hearing before an [MCAD] investigating commissioner also is not subject to G.L. ch. 30A. . . and no statutory right of appeal for judicial review applies to such a determination."[3] Simply stated, no right of further appeal exists as to

[3] Relying on Christo v. Edward G. Boyle Ins. Agency, 402 Mass. 815, (1988), the Appeals Court has consistently found that an action seeking review of an appeal of an MCAD investigatory finding is non-cognizable under the law. See Zannerini v. Massachusetts Comm'n Against Discrimination, 74 Mass.App.Ct. 1119 (2009) (Rule 1:28); Massachusetts Sober Housing Corp. v. Massachusetts Comm'n, Against Discrimination, 66 Mass.App.Ct. 1116 (2006) (Rule 1:28);

the results of the Commission's investigative determination to dismiss Mata's allegations of discrimination for lack of probable cause.[4]

CONCLUSION

For the foregoing reasons, Defendant, Massachusetts Commission Against Discrimination, respectfully requests that this Court dismiss the Complaint, since it lacks jurisdiction over the subject matter and the Complaint fails to state a claim upon which relief may be granted.

Brienzo v. Massachusetts Comm'n Against Discrimination, 60 Mass.App.Ct. 917 (2004) (Rule 1:28); Hudak v. Massachusetts Comm'n Against Discrimination, 61 Mass.App.Ct. 1121 (2004) (Rule 1:28). See also, McBride v. Massachusetts Comm'n Against Discrimination, 677 F.Supp.2d 357 (D.Mass. 2009); Stern v. Haddad Dealerships of the Berkshires, Inc., et al 477 F.Supp.2d 318 (D.Mass. 2007).

[4] There are strong policy considerations for this statutory bar, as well. The Commission issues thousands of investigative dispositions each year. The majority of these dispositions are dismissals based on an investigatory finding of lack of probable cause or lack of jurisdiction. By definition, these are claims that the Commission, after due investigation, has found to lack sufficient evidence to proceed to an MCAD adjudicatory hearing. If these dispositions were subject to appeal and review in the Superior Court by any party aggrieved by the disposition, the dual remedial scheme created by the Legislature would be frustrated, and both the Commission and the courts would be overwhelmed by such appeals.

Respectfully Submitted,
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION
By its Attorney,

Kristen M. Dannay, BBO# 678490
Massachusetts Commission Against Discrimination
436 Dwight Street, Suite 220
Springfield, MA 01103
Kristen.Dannay@state.ma.us
(413) 314-6101
Fax (413) 784-1056

Dated: January 22, 2018

CERTIFICATE OF SERVICE

I, Kristen Dannay, hereby certify that on January 22, 2018, I served a true and accurate copy of the foregoing document upon Plaintiff via first-class mail, postage prepaid, and electronic mail:

Camille T. Mata
184 Plumtree Road
Sunderland, MA 01375
Camille.Mata69@gmail.com

Kristen Dannay

THE COMMONWEALTH OF MASSACHUSETTS
Commission Against Discrimination

436 Dwight Street, Rm. 220, Springfield, MA 01103
Phone: (413) 739-2145 fax: (413) 784-1056

Date: 11/22/2017

Camille T Mata
184 Plumtree Road
Sunderland, MA 01375

RE: Camille T Mata **v. Massachusetts Institute of Technology**
MCAD Docket Number: 16SED02743
EEOC/HUD Federal Charge Number:

Dear Sir/Madam;

Your request to submit your preliminary hearing in writing was granted regarding the above reference complaint to consider the Complainant's appeal of the lack of probable cause finding issued in this Complaint on May 31, 2017.

Based upon the submission of the Complainant's written appeal, the response from the Respondent and a review of the evidence adduced in investigation, I have determined that the Lack of Probable Cause finding in this case is ***affirmed.*** This means that investigation and appeal evidence fails to establish sufficient evidence to determine an unlawful act of discrimination has been committed.

The above decision represents a final action by the Commission and no further action regarding this complaint will be considered at the Commission Against Discrimination. This final action of the Commission is not subject to Judicial Review M.G.L. c. 30A.

All employment complaints where applicable, are dual filed with the U.S. Equal Employment Opportunity Commission (EEOC). Our finding will be forwarded to its Area Office, JFK Federal Building, Boston, MA 02203. The MCAD finding will be given substantial weight by the EEOC provided that such finding are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and/or The Americans with Disabilities Act of 1990.

Very truly yours,

Monserrate Quiñones
Investigating Commissioner

(GLM)

MQ/pw
Cc:

Dahlia S. Fetouh, Esquire
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139

The Commonwealth of Massachusetts
Commission Against Discrimination
436 Dwight Street, Rm. 220, Springfield, MA 01103
Phone: (413) 739-2145 Fax: (413) 784-1056

- DISMISSAL and NOTIFICATION of RIGHTS -

To:	Camille T Mata 184 Plumtree Road Sunderland, MA 01375	Case: Camille T Mata v. Massachusetts Institute of Technology MCAD Docket Number: 16SED02743 EEOC Number: Investigator: Melvin Arocho

Your complaint has been dismissed for the following reasons:

[ ] The facts alleged fail to state a claim under any of the statutes the Commission enforces.

[ ] Respondent employs less than the required number of employees.

[ ] Your complaint was not timely filed with the Commission, i.e. you waited too long after the date(s) of the alleged discrimination to file. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.

[ ] You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conference, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your complaint. You have had more than 30 days in which to respond to our written request.

[ ] The Commission's efforts to locate you have been unsuccessful. You have had at least 30 days in which to respond to a notice sent to your last known address.

[ ] The Respondent has made a reasonable settlement, offering full relief for the harm you alleged. 30 days have expired since you received actual notice of this settlement offer.

[x] The Commission issues the following determination. Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes a violation of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.

[ ] Other (briefly state)

- NOTICE of APPEAL -

If you wish to appeal the dismissal of your complaint and believe that the above stated reason for dismissal is incorrect, you may appeal to this Commission within 10 days after receipt of this notice. You or your attorney must make your appeal of the dismissal in writing to the appeals clerk of this Commission. **Attention: Patty Woods.**

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.

Jamie R. Williamson
Investigating Commissioner

5/31/17
Date

INVESTIGATIVE DISPOSITION

Case Name:	Camille T Mata v. Massachusetts Institute of Technology
MCAD Docket No.:	16SED02743
EEOC Docket No.:	N/A
No. of Employees:	N/A
Investigator:	Melvin Arocho, Compliance Officer
Recommendation:	**Lack of Probable Cause**

Introduction

On September 8, 2016, Complainant filed a complaint with this Commission against Respondent alleging discrimination based on race/color (Filipina) and sex (female) in violation of M.G.L. Chapter 151C.

Complainant's Allegations

Complainant alleges the following. On March 8, 2016, Complainant received the outcome of her application to the doctorate program in City and Regional Planning at Respondent. The letter was a rejection of her application. Complainant believes that race and gender played a role in the admission committee's decision to not admit Complainant. Complainant alleges she was qualified and that she would contribute to the diversity at Respondent.

Respondent's Position

Respondent asserts the following. Respondent is a co-educational, privately endowed research university located in Cambridge, Massachusetts. Complainant applied for admission to the doctoral program at Respondent's Department of Urban Studies and Planning ("DUSP"). DUSP is a department within Respondent's School of Architecture and Planning that was founded over eighty years ago. With forty faculty members (including lecturers), DUSP has the largest urban planning faculty in the United States. DUSP has been ranked No. 1 in the United States and Canada by the Planetizen Guide to Graduate Urban Planning Programs. DUSP is comprised of four specialization areas, also referred to as Program Groups, including City Design and Development; Environmental Policy and Planning; Housing, Community and Economic Development; and International Development Group; as well as three cross-cutting areas of study. Complainant was seeking admission to work with the International Development Group ("IDG") of DUSP. IDG is the longest standing and largest program within a United States planning school devoted to graduate study and research in subjects specific to the developing world. Approximately one-quarter of Master's students entering DUSP each year choose the IDG specialization, as do approximately one-third of the entering Ph.D. students. The IDG program is ranked No. 1 in the country among planning programs that include a focus on international development. As DUSP notes on its website, the diversity of its student body is an important aspect of the program: "One especially unique value of our student body is its diversity. Respondent attracts students from a wide range of national, international, and ethnic/cultural origins and a variety of professional backgrounds in all our programs. The

diversity within our student body is expressed in the breadth of interest and research areas of our students." That diversity is also reflected in DUSP's faculty, which includes individuals from a variety of backgrounds.

Admission to the doctoral program of DUSP is highly competitive. As a prestigious, highly selective institution, Respondent, and DUSP specifically, receives many more highly qualified applicants than it can accept. Once the applications have been submitted, DUSP conducts its review in two stages. First, each application is reviewed by four to six full-time faculty members from the program group to which the applicant applied. As part of this process, the reviewers assess a variety of factors for admission and provide an overall score for the application. Although applicants are not admitted strictly based on the numeric score, the scores provide an indicator of an applicant's relative strengths. The score is on a scale of one to five, with a score of five being the highest score an applicant can receive. After they have read the applications and provided their scores, the faculty members meet as a group and decide who to put forward to the second round. Those applications that are put forward for review by the program groups are then reviewed by the DUSP Ph.D. Admissions Committee, a committee consisting of faculty members from each of the program groups. That committee reviews the applications that have been advanced from the first round and makes the final decisions on offering admission. The applications that are not among the ones put forward from the first round are not typically reviewed by the Ph.D. Admissions Committee.

The criteria for selection are varied but are designed to select applicants who will be successful in the department. Applicants must have strong academic records, field experience, and nearly all successful applicants have previously completed at least one master's degree. Emphasis is placed on "academic preparation, professional experience, and the fit between the student's research interests and the department's research activities." A program group will only admit a doctoral candidate if the candidate's "interests match that of a faculty member." Respondent generally, and DUSP specifically, is committed to diversity and equal opportunity in its admissions process. Because of the large number of very highly qualified applicants and the limited number of spaces in the DUSP doctoral program, many highly qualified applicants are not offered admission each year.

The figures for the subset that enrolled in the IDG program group highlight this diversity. Of the six candidates who were offered admission, four are women, resulting in a group that is two-thirds female. In addition, the six candidates include a broad range of ethnicities, including individuals from Egypt, Argentina, Brazil, and Germany, and an American who identifies as both Caucasian and Asian.

Complainant's application for this highly-competitive program was simply weaker than other applications. Complainant's application was independently reviewed by five faculty reviewers, all of whom individually ranked Complainant's application on DUSP's five-point scale. In each case, her reviewers assigned her a score of just a one or two. Her average score was 1.4 out of 5. In other words, her reviewers were consistent. They each

believed that Complainant's application deserved one of the lowest two scores they could assign.

A comparison of Complainant's GRE scores to those of the admitted students is telling. Complainant's GRE scores fell well below those of the six admitted students:

GRE Section	6 Admitted Students (Average)	Complainant
Verbal	89th percentile	71st percentile
Quantitative	77th percentile	10th percentile
Analytical	4.75/6	4/6

Moreover, one of the principal criteria for admission, which is fully disclosed on DUSP's website, is a fit between the candidate's interests and that of a faculty member. Here, the IDG faculty did not see a fit between Complainant's interests and their own. DUSP looks for that fit for the benefit of the candidates. Success in the Ph.D. program is challenging in the absence of that level of connection.

Complainant points in her Complaint to her publications and master's degrees as support for her candidacy. But DUSP regularly denies admission to applicants with a strong record of publication. And almost all candidates have at least one master's degree, including all of those admitted in 2016. Indeed, DUSP discourages candidates from applying if they do not have a master's degree.

Consistent with its process, Respondent thoroughly and fairly considered Complainant's application. Respondent's decision not to extend her an offer of admission was not based on her race, gender, or ethnicity. Although Complainant has admirable experience, her application simply did not match the strength of other applications.

Summary of Investigation and Analysis

Complainant alleges that she was subjected to discrimination based on her race/color and sex. Respondent denies the allegations.

Education – Admission

In order to establish a *prima facie* case of discrimination in education, Complainant must show that she is a member of a protected class, who met the educational qualifications for the program, that she was refused admission to the program, and that similarly situated persons not of her protected class were admitted to the program. If Complainant establishes the *prima facie* case, Respondent may show that legitimate, nondiscriminatory reasons exist for the refusal to admit Complainant. If Respondent succeeds in offering such reasons, Complainant must then show that Respondent's reasons are pretextual.

Complainant is a member of a protected class because of her race/color and sex. Complainant alleges she met the educational qualifications for the program. Complainant

was refused admission to the program and she alleges similarly situated person not of her protected class were admitted to the program.

Even if Complainant had established the *prima facie* case, Respondent provided legitimate non-discriminatory reasons for the actions taken and there is insufficient evidence of pretext. The evidence shows that for fall 2016, the group of candidates who were offered admission to DUSP are incredibly diverse in sex, ethnicity, and race. Of the six candidates who were offered admission, four (4) are women, and these four women come from many diverse backgrounds. The evidence shows that the six candidates who were offered admission represent a wide range of ethnicities, including individuals from Egypt, Argentina, Brazil, and Germany and an American who identifies as Asian and Caucasian.

The evidence shows that the six applicants granted admission to the IDG side of the doctoral program had an average score of 4.37 out of the 5 point scale whereas Complainant scored a 1.4. The evidence shows that Complainant was not competitive when compared to the other applicants. Complainant's score of 1.4 placed her near the bottom of the 31applicants to the IDG. Additionally, the evidence further shows that Complainant's interest was not a fit to that of any faculty member. The investigation revealed that Respondent looks for that fit for the benefit of the candidates and that it is one of the principal criteria for admission. Furthermore the evidence shows Complainant scored in the 71st percentile in verbal, in the 10th percentile on quantitative, and 4/6 in analytical on the GRE, while the successful students scored an average in the 89th percentile in verbal, 77th percentile on quantitative, and 4.75/6 in analytical on the GRE. Additionally, the evidence shows that Respondent has a diverse group of students. Given all the above, there is insufficient evidence that Respondent committed an unlawful practice.

Conclusion

A finding of Lack of Probable Cause is recommended as to Complainant's claims of discrimination based on race/color and sex against Massachusetts Institute of Technology.

Melvin Arocho
Investigator

Jennifer Laverty
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.

Jannie R. Williamson
Investigating Commissioner

5/31/17
Date

Camille Tuason Mata
184 Plumtree Road
Sunderland, MA. 01375
Phone: (718) 362-7646
E-mail: camille.mata69@gmail.com

June 7, 2017

Massachusetts Commission Against Discrimination
ATTN: Appeals Clerk of the Commission
1 Ashburton Place, Suite 601
Boston, MA 02108

RE: Camille T. Mata vs. **Massachusetts Institute of Technology**
MCAD Docket number: 16SEDO2743

Dear Appeals Clerk of the Commission:

I received on Monday, June 5, 2017 the Investigative Disposition from the MCAD (Massachusetts Commission Against Discrimination), signed by Commissioner Jamie R. Williamson on May 31, 2017, regarding my discrimination complaint against the Massachusetts Institute of Technology Department of Urban Studies and Planning (MIT. DUSP). The ruling was "lack of probable cause', which I understand to mean, as per the definition provided on the Commission's website, that "MCAD did not find sufficient evidence to support a conclusion that unlawful discrimination occurred." In support of this ruling, MCAD Investigator Melvin Arocho wrote that the Respondent had demonstrated non-discriminatory reasons for rejecting me and that there was no pretext indicating discrimination. The reason for denying me admission, he concluded, was rather simply because I was a weaker applicant compared to the other PhD applicants, who had applied for the fall semester of 2016.

Before I move forward to the reasons for this appeal, I wish to reiterate the definitions of pretext as defined by US law, and the standard by which evidence is governed by US civil law. As I understand, the MCAD Investigator and all pertinent MCAD personnel are expected and required to abide by and adhere to these standards as established in US civil law. Pretext, as defined by the US Pretext Law Legal Definition website, "generally refers to a reason for an action which is false, and offered to cover up true motives or intentions." This same website further provides the legally acceptable measurements for determining pretext by explaining that "pretext can be found based on (a) statistics; (b) comparators similarly situated, (c) written or oral statements indicating bias, or (d) just plain false reasons" (https://definitions.uslegal.com/p/pretext/, retrieved on June 7, 2017).

With respect to evidence, I wish to assert again, as I had in my written rebuttal dated December 7, 2016, that the legal standard of evidence accepted in civil rights cases is **preponderance of evidence**. The preponderance of evidence standard is defined as "the proof need only show that the facts are more likely to be than not so (Loschavio, JD, and Waller, PhD, no date given, retrieved from http://www.theasca.org/files/The%20Preponderance%20of%20Evidence%20Standard.pdf on June 7, 2017).

I am appealing this ruling for three reasons. Firstly, the ruling of insufficient evidence of pretext is not true. I had laid out in both my rebuttal and initial complaint several examples of pretext associated with the failure of the MIT DUSP admissions committee to hold my academic attributes to the same standard as the other candidates, as well as the racial privileging given to the accepted applicants by virtue of the ethnic origin and race representation of senior level professors employed in the MIT DUSP during the fall semester of 2015 and spring semester of 2016, when admission decisions for entry in the fall of 2016 were made. The examples of pretext will be reiterated in the ensuing paragraphs.

Secondly, the Respondent (MIT DUSP) has not demonstrated non-discriminatory evidence, and this failure to demonstrate non-discriminatory evidence will be, likewise, explained in the ensuing paragraphs.

Finally, in ignoring key evidence I had provided in support of my discrimination complaint, the MCAD Investigator has not demonstrated impartiality.

In the remainder of my written appeal, I shall break down the points made in MCAD Investigator Arocho's written rationale justifying his decision of lack of probable cause.

In the opening remarks of the Investigative Disposition, MCAD Investigator Arocho reinforced the quality of the MIT DUSP, noting that the department is ranked first in the country, and is also known for its concentration in international development. I do not dispute this fact; it is the reason I chose to apply to MIT DUSP. Among the few planning schools that offered a concentration in international development planning, MIT DUSP was one of two, which had the most number of planning academics who could feasibly supervise me. This was important in case any of the planning professors left the department to take up employment at other universities.

MCAD Investigator Arocho also highlighted the commitment of the MIT DUSP to diversity, even quoting the MIT DUSP website assertion that the "unique value of our student body is diversity." However, the MIT DUSP has consistently marginalized Filipina Americans from its doctorate student body. Although, as Attorney Fetouh points out in her letter dated March 16, 2017, that MIT DUSP has accepted 8 applicants from the Philippines, she fails to note that this number is in fact extremely marginal, and not all individuals representing

this ethnicity are classified as a protected class, as of this ethnic cohort, only Filipina/o-Americans and permanent residents are. As such, among this protected class of Filipina/or-Americans, specifically, the number enrolled in MIT DUSP, is likely smaller. Furthermore, Attorney Fetouh does not clearly state whether these enrolled students either from the Philippines or of Philippine ethnic descent had also achieved three master's degrees and had published nine academic materials, academic attributes that are stronger determinants of potential for graduate school success. Filipina-Americans have equally been under-represented among the MIT DUSP. And then, in the years since 2004, a period during which I had reviewed both the faculty pages of MIT DUSP and its doctorate student body, there has been no representation of Filipina-Americans. Keep in mind that in my complaint, I alleged that I was not accepted into MIT DUSP despite exceeding the minimum standards for entry because I am Filipina American.

The absence of Filipina-American faculty in MIT DUSP turned out to be a significant factor in the admissions process, I discovered, when Attorney Dahlia Fetouh pointed to the ethnic origin and race identity representation of the entering doctorate students for fall semester 2016. She wrote that for fall semester 2016, MIT DUSP had accepted an applicant from Pakistan, one from Egypt, one from Brazil, one from Argentina, two from Korea, and one from the United States (an Asian-American). These identities can be traced to the ethnic origin and race identity of the senior level professors in MIT DUSP, who could influence the admission decision. Some professors had also worked in communities in the countries represented by the accepted doctorate students. Such links in the ethnic origin and race identity and signifies a statistical pattern of privileging certain identities. Such privileging is probable cause for denying admission. Because there were no Filipina-Americans in the faculty during the spring 2016, the year in which I applied to the doctorate program, there was no one among the faculty who could (or would) advocate for me. This alignment of the ethnic origin and race of the accepted doctorate applicants and the MIT DUSP faculty thus demonstrates that regardless of what I achieved, academically, I would not have been accepted into the doctorate program due to the nonexistence of a senior level Filipina-American professor among the MIT DUSP faculty during the spring semester 2016, the period in which my doctorate application for admission was considered. I pointed out the correlation between the ethnic origin and race identity of senior level faculty in MIT DUSP to those of the accepted doctorate applicants in my rebuttal. However, MCAD Investigator Arocho did not indicate in the Investigatory Disposition that he had investigated this correlation more deeply in order to verify its factuality. An example of a deeper investigatory action would be to obtain the employment record for the MIT DUSP faculty during the spring semester 2016 and during the fall semester 2015, and enquire about their ethnic origin/race identity and country affiliation. Although Attorney Fetouh insisted, in her letter to MCAD Investigator Arocho dated March 16, 2017, that the process was fair and unbiased because the ethnic origin and race identity of the doctorate students accepted for the fall semester 2016 were not in fact represented among that of the senior level professors employed in the MIT DUSP, at the same time, I know what I viewed on the MIT DUSP website when I reviewed the department in fall 2015 and spring 2016, and prior, to

help me decide on which schools to apply. Some of the faculty had even disclosed their ethnicity/country of origin on their faculty page. During this time of reviewing, I had noticed that some of the academics were from Egypt, Brazil, and South Korea, specifically, and that two had country affiliations with Argentina, Brazil, Egypt, and South Korea through their research. These notations were the reason the country representation of the accepted doctorate students stood out to me. Since that time, the faculty web pages have changed.

This discrimination is more pronounced in the bias exercised in the evaluation of my academic credentials and achievements. As I shall illuminate, the faculty demonstrated their prejudice in the way they put greater value on my GRE scores, while downplaying the other, more important areas of my application. MCAD Investigator Arocho ruled that I was the weaker applicant in comparison to those who were accepted into the doctorate program. The reasons for denying me admission were, therefore, due to non-discriminatory factors. He had raised the issue of my GRE scores, specifically, which were lower across the three test sections than the scores of the accepted doctorate students. The GRE test is required by MIT DUSP because it allegedly indicates an individual's potential to successfully complete a graduate program. He went so far as to include the table, provided by Attorney Fetouh in the response letter, which compared my scores to those of the accepted doctorate students. The usefulness of the test, though, for determining an individual's potential for success in a graduate program, as I had pointed out in my rebuttal, is controversial. For years, scholars have disputed its relevance to determining graduate school success (see the literature I have included with this appeal letter). The ETS, furthermore, admitted to flaws in the test and has cautioned universities against using the GRE score singly to determine admissions. The controversy surrounding the utility of the GRE score in predicting an individual's potential for successfully completing a graduate program is, therefore, unreliable.

The relevancy of the test is questioned also in the context of my having completed three master's degrees and having demonstrated a strong publishing record prior to taking the test. My publications were the result of my graduate trainings rather than from my having studied for the GRE test. Moreover, my publishing record indicates that I am already accomplishing, scholastically, what employed scholars generally accomplish. Due to these academic achievements, the GRE score is less of a predictor and would even be considered to be irrelevant in my case. And yet, in the Investigative Disposition, the MCAD Investigator did not raise this discrepancy between the value of the GRE scores with respect to the value of my other academic attributes, namely the academic preparation and evidence of scholastic publications. After all, if the GRE scores are to predict my potential to complete a graduate program, then according to this line of reasoning, my low scores relative to the accepted doctorate students would make me less likely to publish scholarly, peer-reviewed materials and, equally, be less likely to complete the doctorate program. On the contrary, I have published academically and have completed not one, but three master's degrees. The

latter is a reflection of my strong academic preparation and the former a reflection of the strength of this academic preparation.

Rather, MCAD Investigator Arocho merely parrots the assertion made by Attorney Fetouh, which is that my low GRE scores relative to the average scores of the accepted doctorate applicants was a strong enough reason to deny me admission. MCAD Investigator Arocho gave no indication in the Investigative Disposition of either questioning the relevancy of the GRE score to determining my academic success in the PhD program or the over-valuation of this score over the value granted to my other academic attributes.

Another indication of race and ethnic origin privileging as being a probable cause in the evaluation of my academic portfolio is in the failure of both Attorney Fetouh and the MCAD Investigator to draw comparisons between me and the accepted doctorate students in these other areas. As I had illuminated in my initial complaint and in my rebuttal, I earned three master's degrees. I had also published a combination of nine academic articles, book reviews, magazine articles, and a book on urban planning topics. Three of these publications came from both of my master's theses. One of the case studies in my first master's thesis was published in the MIT planning journal, Projections Volume 8, and the second master's thesis was published in entirety by the University Press of America in 2013 following the review of my submitted book proposal and three sample chapters by the publisher's acquisitions editor. This thesis was also given an honorable mention by the Graduate Mellon Fellowship program at the University of Minnesota, where I was able to present my research due to an honorarium granted to me. Although this award was already written in my CV, which I had included in my doctoral application, I submitted the award letter with my rebuttal in order to prove that the granting of this award was true and legitimate.

These publications indicate my ability to work independently, innovatively, with theory, and ultimately to contribute to the field of urban planning. Such scholastic skills are generally taught in the doctorate program, but I learned and refined them by completing three graduate degrees. I also credit my early publishing achievements to the fact that my other, two graduate degrees complemented my primary field of urban planning, both of which allowed me to expand my theoretical understanding of urban planning in two specialized fields, namely international development planning and food system planning. Any professional and academic planner would agree that the more knowledge one possesses the more effective they are as planning thinkers and practitioners. However, MCAD Investigator Arocho gives no mention of having consulted with an impartial professor about the value of attaining additional education beyond the graduate planning education. Nor does he indicate that he had consulted planning resources or knowledgeable individuals at the American Collegiate School of Planning (ACSP) that might give him insight about the significance of complementary education.

Keeping in mind these nine publications and my three graduate degrees, it is truly perplexing that the faculty reviewing my doctorate application only credited me points of 1.4, a score low enough to conclude that these stronger predictors of academic success were valued less than the GRE score. In other words, my GRE score was over-valued, while my three master's degrees and nine publications, including my book publication, were under-valued. And yet, the MCAD Investigator did not indicate in the Investigative Disposition how these other areas of my academic portfolio were weighed relative to the GRE score, and neither did he indicate that he had asked Attorney Fetouh how the MIT DUSP had weighed these other academic attributes more relevant to determining my potential for completing a doctorate program so that he would know how I was scored in these areas compared to the accepted doctorate students. The only information I received about these other applicants were examples of their achievements, such as 8 publications (though, Attorney Fetouh was unclear about whether the publications earned by this particular accepted doctorate student were co-authored or single-authored) and awards, the earning of one master's degree, professional experience, and interests that fell within the intersections of two MIT DUSP concentrations. These non-GRE achievements are pretty much equivalent to mine. As I had stated earlier, I have earned three graduate degrees, written two master's theses, single-authored nine publications (some of which I submit with this appeal letter as evidence), one of which was a book – my second master's thesis – earned an honorable mention for this master's thesis from a post-doctorate fellowship program (the Graduate Mellon Fellowship at the University of Minnesota, which I had included in my rebuttal letter with evidence), developed trainings as well as training materials, developed a business planning and development workshop, started a sole-proprietor urban planning consulting business through which I continue to bid on projects, served as a town planning advisor in sub-Saharan Africa, developed ideas for sustainability projects and written grants for them, and developed a professional certificate program intended to train employed community advocates to organize ideas for change through a focused planning methodology and through strategic planning. All of these academic and professional achievements are listed on my CV and can be verified online through my Linkedin.com profile, which was provided on the online application and on my CV. And yet, the MIT DUSP faculty reviewers seemed to either ignore them or to choose not to see them, and then essentially deem these achievements irrelevant compared to the achievements of the accepted doctorate students. Again, they only awarded me a score of 1.4 despite these achievements, indicative of the biased position of the faculty reviewers.

Rather than clearly demonstrating the methodology employed to objectively measure each accepted doctorate student's achievement against mine, the MIT DUSP faculty used subjective language that failed to acknowledge and weigh the true value of the attributes of my academic portfolio. In her letter dated March 16, 2017, Attorney Fetouh included the comments from the faculty reviewers, which further revealed the subjectivity of their assessments. These comments are included with this appeal letter for your review. An example of this subjectivity is in the valuation of my statement of objective as having been "below average." However, this rating is not clarified by an explanation of what elements in

the statement of objective would constitute a below average ranking versus a good ranking. Another commented that my discussion about how the DUSP IDG is a right fit for me was poorly discussed. To the contrary, my statement of objective included the elements requested on the online application, specifically about how I came to planning, my current research interests, and why I want to do my doctorate degree at MIT DUSP. I essentially followed the structure of the guidelines. Because of the page limit request, and because I was applying as an outsider, not as someone with whom the MIT DUSP faculty was familiar, I had to incorporate my background (my influences), and also my previous PhD experience into my statement of objective. Because there are no professors in American planning departments who are studying, specifically, resilience theory, I opted to apply to planning departments in universities that employed professors who had interests along the same lines of adaptive capacity. I knew that MIT DUSP had engaged in projects on natural hazards in the Philippines, an area of research that has incorporated adaptive capacity, and I therefore felt that the academics involved in housing and social inequality research would be able to handle resilience theory. I specifically refrained from naming any one professor because there is always the possibility of departures for other opportunities and challenges. It was more important that the department had a breadth of professors, capable of effectively working with theory, who could take over in case of a departure. I know that I am not expected to name a definite supervisor until I complete the doctorate course work requirements and pass the comprehensive examinations.

Another stated that I was not a fit for them. In light of my interests in international development planning, social inequality, and sustainability, I am apparently a fit for MIT DUSP. As I had mentioned in my statement of objective, I wanted to explore the theoretical intersections of international development planning, socio-economic justice planning and sustainability, and these explorations can be easily accommodated by coursework. My proposed doctorate thesis likewise falls within these intersections.

Somewhat disturbing were the erroneous comments about my experience in New Zealand, where I had started a doctorate program, albeit had to leave because of abuse and discriminatory treatment from those supervisors. Though uploaded on my Linkedin.com profile, I nevertheless include with this appeal letter for your verification the chapter milestones I had written while enrolled at both universities in order to pass and advance to the next stage. One faculty reviewer accused me of having been expelled from these schools, a comment attached to an allusion that MIT might have been sent false recommendation letters. I requested letters of recommendation from three former professors, who had given me good marks in my academic work when I was enrolled at my previous institutions in the United States. These individuals were Dr. Jon Goss, who was on my thesis committee and had contributed to my score of Satisfactory on my thesis (I published the two case studies from this thesis; one was published by Projections 8, the MIT student planning journal); Dr. Karen Umemoto, who had given me an A in the planning theory course she taught in the spring of 2001; Dr. Ralph Lutts, whose comments about my academic work can be found in my Goddard College transcript.

In another comment, I was accused of having been rejected from the University of Auckland, and was now angry about it. I was accepted by the University of Auckland and subsequently was dropped from the program without explanation even though I had completed the full research proposal as well as another chapter while enrolled there in order to satisfy my committee of two instructors. However, these two would not give me credit for either milestone. I include all of these documentations with this appeal for your review. These chapter milestone achievements are also uploaded on my professional Linkedin.com profile.

Another comment was a judgment about my having been out of school for too long, a subjective observation that sounds like ageism. This individual, however, did not acknowledge that I had worked in the planning profession, did not consider the possibility of other reasons for my challenging job search, such as the recession that began in 2008, which forced me to look for and accept jobs for which I was overqualified (e.g. deck hand, farm laborer) in order to earn an income that I needed to pay for my school loans and other bills. This comment also failed to notice that I had started a sole proprietor urban planning consulting business as a response to the vacuum of jobs that resulted from the recession, and also due to a discriminatory urban planning labor market that hired individuals without a planning education, yet thought it fit to reject my applications for planning employment. This labor discrimination resulted in rejections from virtually all the planning jobs to which I had applied despite my credentials. This labor discrimination is evident in my checkered work history and is the reason I have a checkered work history. To compensate for the few jobs in planning that I have been offered, I chose to publish and have continued to do so in order to stay abreast of planning knowledge. I noticed that the faculty reviewers failed to notice this relationship in their assessment of my PhD application portfolio.

These subjective, erroneous comments do not clearly and objectively explain how I am the weaker candidate. The comments of "below average" are not followed by an objective standard that explains what "below average" constitutes. I would add that these comments do not disclose the amount of graduate training the accepted doctorate students had received relative to me or how many peer-reviewed articles and/or books these same students had published relative to me. Apart from pointing out that each accepted doctorate student had completed at least a master's degree in urban planning, there was no mention of additional graduate trainings received by the accepted doctorate students that would augment the depth and scope of their planning knowledge that would generally support innovative thinking. In terms of other attributes in my background, they were just about on par with those of the accepted doctorate students. I have reiterated these achievements mainly because they have been ignored. Yet, the MIT DUSP faculty reviewers maintained their view that I was the weaker candidate. Without clearly drawing an objective comparison between me and the accepted doctorate students in these areas of

academic achievements, the MIT DUSP professors do not objectively delineate how I am the weaker candidate.

Another observation I have made about these comments is that the credit given to the academic and scholastic achievements of the accepted doctorate students was not consistent with the way I was credited for the same achievements. As such, it defied objectivity. I was not appropriately credit for my academic preparation, scholastic achievements, and professional experience, and yet, MCAD Investigator Arocho did not indicate in the Investigative Disposition that he had enquired about these differences in crediting. Certainly, he asked for an explanation about how the scores were calculated, but he does not ask why I was not credited equally for my three graduate degrees and nine publications. Nor did he verify with me the accurateness of the assumptions made by the faculty reviewers about the University of Auckland and the expulsion and the rejection. Neither assumption is true and should have been fairly obvious since I had included the official transcripts with my application as was required. Instead, rather than seeing the pretext underlying these so-called non-discriminatory reasons, MCAD Investigator Arocho was content to simply agree with Attorney Fetouh's rationale. The discrimination in the comments from the MIT DUSP faculty is in the assumptions made about my experience in New Zealand, but failed to demonstrate that they had made any attempt to verify the truthfulness of these assumptions. Evidently, they had simply chosen to ignore the truth about my achievements; if they had bothered to read through my application, they would have seen that copies of official transcripts from both Massey University and the University of Auckland were included. I had also requested from both schools that they send official copies to MIT DUSP, directly. As the University of Auckland transcript reveals, I <u>was not</u> expelled and was not rejected. It also turned out to my detriment that the MIT DUSP faculty reviewers had failed to see the chapter milestones I had achieved while matriculating at both universities. I had met them all. If they had reviewed my Linkedin.com profile, which I had included on my MIT DUSP doctoral online application as requested, they would have seen the chapters uploaded as projects under the title, "Doctoral Candidate," University of Auckland.

MCAD Investigator Arocho and Attorney Fetouh had stated that other applicants with publishing records were denied admission, but do not explain the reasons behind these denials. Similarly, my academic publications have been consistently under-valued and have been deemed irrelevant by the MIT DUSP faculty reviewers. In comparison, the publications and awards of the two accepted doctorate students mentioned in Attorney Fetouh's March 16, 2017 letter were. I noticed that both had graduate from MIT, and indicates that the legacy privilege more than likely gave them an edge over me and the others, who had also published, but were denied admission. Legacy, however, is not a constitutionally protected group. Though it might influence decisions, legally legacy is not a constitutionally protected right.

MCAD Investigator Arocho unquestioningly accepted another reason given by Attorney Fetouh to explain why I was denied admission: the fit of the department's concentrations and the faculty's intellectual and research interests with my cognitive and research interests. He classified this reason as non-discriminatory, but as I had explained in the early paragraphs of this appeal, I applied to MIT DUSP because of its offering in international development planning, and for the number of professors possessing interests in social inequality and sustainability. As such, the strengths of the MIT DUSP align very neatly with my research interests in poverty alleviation planning in the Philippines, in particular the social phenomena that create inequalities across regions, between people residing within regions, and other social inequality planning issues. My academic career goal is to conduct research on poverty alleviation in the Philippines, a developing country. I had explained these particular research and cognate stream interests in my statement of purpose, and therefore the faculty reviewing my application understood this quite well at the time of review. The fact that 40 professors comprised MIT DUSP was a plus for me, as I would be able to find at least three professors from the department, who could potentially serve on my PhD Committee. The fact that there is an alignment of my interest in poverty alleviation planning research and international development planning with the core emphasis of the department and topical interest of social inequality of several of the professors, and yet allusions are made to the viewpoint that there is little fit between my interests and the department's specialization and interest in inequality, it is equally clear that this so-called non-discriminatory reason is simply an excuse for denying me admission. Because it does not apply in my case, the viewpoint that the MIT DUSP is not a fit for my research interests, whether implied or otherwise, is thereby not a legitimate reason.

Conclusion and Summary

In the letter from Attorney Fetouh dated March 16, 2017 and the Investigative Disposition from MCAD Investigator Arocho, reasons were provided to explain why I was denied admission from the doctorate program in Urban Studies and Planning by the MIT DUSP. Both individuals attempted to demonstrate that the reasons for this denial were based on non-discriminatory evidence. The reasons, however, while seemingly non-discriminatory, are filled with discrepancies and erroneous assumptions that it is difficult to not conclude that race discrimination was not the motivating factor, influenced by country and ethnic origin and race identity affiliation. I note here that Attorney Fetouh insisted that there is no affiliation between the accepted doctorate students and the MIT DUSP faculty, but when I viewed the faculty web pages in the fall semester 2015 and spring 2016, I recognized the countries represented in the among the faculty. I had also noticed that some had worked and/or conducted research in, specifically Brazil, Argentina, and South Korea. Since then, the pages have changed slightly. I noticed that among those currently employed, none were of Filipina-American heritage. Furthermore, my observation of doctorate students at MIT DUSP revealed no representation of Filipina-Americans. Though MIT DUSP may have enrolled Philippine students in the past, this number (eight) remains marginal in the history of MIT DUSP. Filipina-Americans remain under-represented.

When comparing my academic achievements to the accepted doctorate students, the comments made by the faculty reviewers consistently refused to credit me equally for what I had achieved both professionally and academically. Instead of objectively evaluating my scholastic and professional achievements by crediting me for the strengths in my academic preparation, experience, and scholastic achievements, the faculty reviewers only found more weaknesses. Many of these comments consisted of assumptions about my academic history that were not true. Furthermore, they vociferously emphasized the GRE score as being extremely important. As other scholars, who have researched the accuracy of the test's merits have put forth, this score is unreliable. If this score was supposed to convey my potential to complete graduate studies, how is it that I completed three master's degrees, produced nine publications, and received an accolade for a post-graduate fellowship? Yet another instance of discriminate treatment

In effect, in my case, the faculty reviewers failed to balance the more important elements in my application, which were more accurately indicative of my scholarly potential and potential for graduate school success, against the GRE score. They also failed to inject perspective into the GRE score by interpreting the scores in absolute, as opposed to relative, terms. In my case, they over-valued the GRE scores and under-valued the other academic and professional attributes. The evaluations resulted in comments that do not convey the true value of these achievements. Furthermore, they failed to see the significance of my having attained three master's degrees, an achievement that led to my being able to publish academic articles, some in peer-reviewed journals without a co-author. This academic and scholastic achievements indicate that I am on my way to becoming a scholar.

MCAD Investigators are supposed to be impartial. However, Investigator Arocho is equally guilty of being biased. His investigation has not verified the accuracy of comments, and has likewise failed to find merit in academic and scholastic accomplishments. As a result, his ruling was one-sided and simply parroted the viewpoints of the faculty reviewers.

I wish to reiterate where pretext is found: "based on (a) statistics, (b) comparators similarly situated, (c) written or oral statements indicating bias, or (d) just plain false reasons." The pretext of racial and gender discrimination is found in the continued under-representation of Filipina-American doctorate students and in the reasons for deeming me a weaker candidate that, although seemingly non-discriminatory, belie another truth. Pretext is also found in the erroneous comments about my academic capacities, and in the disparate way the faculty reviewers credited the other academic attributes in my application portfolio compared to the accepted doctorate students. It is found in the failure to see any merit at all in my application despite my achievements. Race and gender discrimination may not always be motivated by malicious intent; the motivation might be due to other reasons. However, when discriminate treatment is evident, and the impacted

individual is a member of a protected group, the end result is the same: discriminatory conduct that eliminates opportunities for the individual.

If you need me to submit additional documentation for verification or for other reasons, please do not hesitate to contact me.

Sincerely yours,

Camille Tuason Mata

WESTLAW

Distinguished by Everett v. 357 Corp., | Mass., | April 13, 2009

Original Image of 525 N.E.2d 643 (PDF)

Christo v. Edward G. Boyle Ins. Agency, Inc., 402 Mass. 815
Supreme Judicial Court of Massachusetts, Middlesex. July 12, 1988. | 402 Mass. 815 | 525 N.E.2d 643 | 61 Fair Empl.Prac.Cas. (BNA) 3 | 47 Empl. Prac. Dec. P 38, 287 (Approx...

Supreme Judicial Court of Massachusetts,
Middlesex.

Kathleen CHRISTO
v.
EDWARD G. BOYLE INSURANCE AGENCY, INC.

Argued April 7, 1988.
Decided July 12, 1988.

Synopsis

Former employee sought damages for employment discrimination. The Superior Court Department, Middlesex County, Joseph S. Mitchell, Jr., J., granted employer summary judgment. On appeal, the Appeals Court, 25 Mass App.Ct. 87, 515 N.E.2d 594, Grant, J., affirmed. On further appeal, the Supreme Judicial Court, Wilkins, J., held that genuine issue of material fact as to whether equitable tolling would apply to employee's action precluded summary judgment.

Vacated and remanded to superior court for further proceedings.

West Headnotes (3)

Change View

1 Civil Rights ⚿ Time for proceedings; limitations
Before bringing a state law civil rights claim, plaintiff must have filed a timely complaint within six months of the act of discrimination with Commission Against Discrimination; deadline is, in effect, a statute of limitations subject to equitable tolling period. M.G.L.A. c. 151B, §§ 5, 9.

42 Cases that cite this headnote

2 Civil Rights ⚿ Judicial review and enforcement of administrative decisions
Investigating commissioner's decision during civil rights investigation before Commission Against Discrimination, that complainant had not met requirements for equitable tolling following her failure to file complaint within six months of the alleged act of discrimination, was not binding on a court in later filed civil rights action. M.G.L.A. c. 151B, §§ 5, 9.

29 Cases that cite this headnote

3 Judgment ⚿ Employees, cases involving
Genuine issue of material fact, as to whether civil rights plaintiff was entitled to equitable tolling of requirement that she file her complaint within six months of the alleged discriminatory act, precluded summary judgment for employer defendant.

9 Cases that cite this headnote

Attorneys and Law Firms

***644 *815** Richard L. Neumeier, Boston, for plaintiff.

Karen M. Thursby (John J.C. Herlihy, Boston, with her), for defendant.

Jean A. Musiker and Nathaniel Berman, Cambridge, for Massachusetts Com'n Against Discrimination, and Marjorie Heins, Boston, for Civil Liberties Union of Massachusetts, amici curiae, joined in a brief.

Before HENNESSEY, C.J., and WILKINS, LIACOS and ABRAMS, JJ.

Opinion

*816 WILKINS, Justice.

The plaintiff (Christo) filed a complaint in the Superior Court alleging that the defendant discriminated against her on the basis of her age and sex in discharging her from employment. Under G.L. c. 151B, § 9 (1986 ed.), a person claiming such discrimination may maintain a civil action only if she has previously filed a timely complaint with the Massachusetts Commission Against Discrimination (MCAD) and ninety days have passed (or a commissioner has assented to an earlier filing).

Christo agrees that, as a precondition to maintaining an action under § 9, any complaint to the MCAD must have been filed, as provided in G.L. c. 151B, § 5 (1986 ed.), within six months of the alleged act of discrimination, unless there is some reason to toll the six-month period. Her complaint was filed with the MCAD more than six months after her discharge and, for that reason, the investigating commissioner dismissed her complaint. The commissioner recognized that the six-month period could be tolled for equitable reasons but concluded that there was no factual basis to justify tolling in her case. Christo claims that within six months of the discrimination MCAD "intake" personnel thwarted her attempt to file a complaint. With the aid of counsel, Christo eventually did file a complaint with the MCAD, but, as we have said, after the six-month period had expired.

The basic question in this appeal by Christo from a summary judgment dismissing her claim of age and sex discrimination is whether a Superior Court judge in a proceeding under G.L. c. 151B, § 9, may make an independent determination whether the six-month period should be tolled or whether only the MCAD may do so, as the Superior Court judge and the Appeals Court have concluded (see *Christo v. Edward G. Boyle Ins. Agency, Inc.*, 25 Mass.App.Ct. 87, 89–90, 515 N.E.2d 594 [1987]). We granted Christo's application for further appellate review.

We decide that (a) Christo is not bound by the ruling of the investigating commissioner, (b) Christo had no right by appeal to obtain a ruling on the tolling question from the full commission, and (c) there is no principle applicable here analogous to the requirement of the exhaustion of administrative remedies. *817 See *East Chop Tennis Club v. Massachusetts Comm'n Against Discrimination*, 364 Mass. 444, 452–453, 305 N.E.2d 507 (1973). We vacate the summary judgment for the defendant and remand the case for further proceedings.

There are two largely independent avenues for redress of violations of the anti-discrimination laws of the Commonwealth, one through the MCAD (G.L. c. 151B, §§ 5–6) and the other in the courts (G.L. c. 151B, § 9). See *Carter v. Supermarkets Gen. Corp.*, 684 F.2d 187, 190–191 (1st Cir.1982). The statutory scheme rejects the administrative law principles of primary jurisdiction and exhaustion of administrative remedies. The filing of a § 9 **645 court action requires the MCAD to dismiss without prejudice any complaint pending before it and bars the plaintiff from pursuing the matter subsequently before the MCAD. G.L. c. 151B, § 9.

1 It is true that, before initiating a § 9 action, the plaintiff must have filed a timely complaint within six months of the act of discrimination. This deadline is in effect a statute of limitations subject to equitable tolling. See *Christo v. Edward G. Boyle Ins. Agency, Inc.*, 25 Mass.App.Ct. at 89, 515 N.E.2d 594. The same principle applies in analogous Federal civil rights actions where the 180-day deadline for filing a complaint with the Equal Employment Opportunity Commission (EEOC), which is a precondition to maintaining a civil action, has been treated as a statute of limitations subject to waiver, estoppel, and equitable tolling. See *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393, 102 S.Ct. 1127, 1132, 71 L.Ed.2d 234 (1982); *Bonham v. Dresser Indus., Inc.*, 569 F.2d 187, 192–193 (3d Cir.1977). The Federal courts decide equitable tolling issues under the cognate Federal law, and we see no reason why our courts should not decide these same issues in actions under § 9. The policy of giving employers fresh notice of complaints may be outweighed by considerations which justify equitable tolling of the statute. See *Zipes v. Trans World Airlines, Inc.*, *supra* 455 U.S. at 398, 102 S.Ct. at 1135. If, in this case, Christo was misled by agency employees who discouraged her from filing a timely complaint with the MCAD, perhaps the six-month filing period should be tolled to allow her to proceed with this action.

2 *818 The essential question before us is not whether tolling is appropriate in the circumstances but rather whether, because the investigating commissioner determined that Christo did not make a case for equitable tolling and because she sought no further relief before the MCAD, Christo has lost her right to an independent determination of the equitable tolling question in this § 9 action. We note first that, as the friend of the court brief here points out, there was no mechanism for an appeal to the full commission from the determination of the investigating commissioner on the tolling question. A preliminary hearing before an investigating commissioner also is not subject to G.L. c. 30A (1986 ed.), the State Administrative Procedure Act, and no statutory right of appeal for judicial review applies to such a determination. See G.L. c. 151B, § 5. We see in such a statutory pattern no intention to make an investigating commissioner's decision on the tolling of the six-month period binding on a court in a § 9 civil action, either on the theory that the MCAD alone can decide such questions or on the theory that issue preclusive effect should be given to the investigating commissioner's decision.[1] In the parallel Federal situation, the Federal courts generally have not considered themselves bound by the rulings of the EEOC on the timeliness of claims filed with it. See *Kocian v. Getty Ref. & Mktg Co.*, 707 F.2d 748, 754 n. 9 (3d Cir.), cert. denied, 464 U.S. 852, 104 S.Ct. 164, 78 L.Ed.2d 150 (1983); *819 *Goldman v. Sears, Roebuck & Co.*, 607 F.2d 1014, 1017 (1st Cir.1979), cert. denied, 445 U.S. 929, 100 S.Ct. 1317, 63 L.Ed.2d 762 (1980); *Weise v. Syracuse Univ.*, 522 F.2d 397, 413 (2d Cir.1975).

3 **646 We decline to decide, on this summary judgment record, whether Christo is entitled as a matter of law to a determination that the six-month period for filing her MCAD complaint should be equitably tolled. The Superior Court judge decided the summary judgment motion solely on the question of his authority to act on the equitable tolling issue. Christo did not move for summary judgment. The issue whether there was equitable tolling should not be decided here at this time.

The summary judgment for the defendant is vacated and the case is remanded to the Superior Court for further proceedings.

So ordered.

All Citations

402 Mass. 815, 525 N.E.2d 643, 81 Fair Empl.Prac.Cas. (BNA) 3, 47 Empl. Prac. Dec. P 38,287

Footnotes

1 The Appeals Court relied on *Ackerson v. Dennison Mfg. Co.*, 624 F.Supp. 1148 (D.Mass.1986), for its conclusion that only the MCAD can decide the tolling question and that the courts are bound by an investigating commissioner's unappealed determination on the subject. *Christo v. Edward G. Boyle Ins. Agency, Inc.*, 25 Mass.App.Ct. at 90, 515 N.E.2d 594. The Appeals Court and the judge in the *Ackerson* case (*supra* at 1150) both erroneously assumed that a person in Christo's position had a right to appeal the tolling question within the MCAD. The judge in the *Ackerson* case, without discussing the Federal cases suggesting the contrary, concluded that the requirement of § 5 that a MCAD complaint be filed within six months was a jurisdictional prerequisite to bringing a § 9 action. *Id.* The statutory scheme, contrary to what is said in the *Ackerson* opinion (*id.*), does not show a concern for prompt agency action as an alternative to judicial process. In fact, no agency action is required at all as a precondition to the bringing of a § 9 civil action. After ninety days, a plaintiff may commence a civil action under § 9 regardless of what the MCAD may or may not have done.

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Part I ADMINISTRATION OF THE GOVERNMENT

Title XXI LABOR AND INDUSTRIES

Chapter 151C FAIR EDUCATIONAL PRACTICES

Section 4 REVIEW OF COMMISSION'S ORDER; COURT ORDER FOR ENFORCEMENT; PROCEEDINGS; JURISDICTION; APPEALS

Section 4. (a) Any party aggrieved by a final order of the commission may obtain a judicial review thereof, and the commission may obtain an order of the court for the enforcement thereof by a proceeding described in this section. Such proceeding shall be brought in the superior court within the county wherein any respondent is located.

(b) Upon the filing of a bill of complaint and the service of said bill, the court shall have equitable jurisdiction of the proceeding and of the questions determined therein. Thereupon the commission shall file with the court a transcript of the record of the hearing. The court after hearing and argument shall have power to make and enter upon such record an order annulling or confirming wholly or partly, or modifying the determination reviewed, as to any or all of the parties, and directing appropriate action by any party to the proceeding.

(c) The decision of the commission shall be reviewed in accordance with the standards for review provided in paragraph (8) of section fourteen of chapter thirty A.

(d) The jurisdiction of the superior court shall be exclusive and its judgment and order shall be final, subject to review by the supreme judicial court, upon appeal by the commission or any party to the proceedings, in the same manner provided by general law for appeal from the equity jurisdiction of the superior court.

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Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

Title I COURTS AND JUDICIAL OFFICERS

Chapter 211 THE SUPREME JUDICIAL COURT

Section 3 SUPERINTENDENCE OF INFERIOR COURTS; POWER TO ISSUE WRITS AND PROCESS

Section 3. The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general

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or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.