

The Commonwealth of Massachusetts  
Commission Against Discrimination  
One Ashburton Place, Boston, MA 02108  
Phone: (617) 994-6000 Fax: (617) 994-6024

- DISMISSAL and NOTIFICATION of RIGHTS -

<b>To:</b> Susan Randall 6 Pine Lake Drive East Wareham, MA 02538	<b>Case:</b> Susan Randall v. A.D. Makepeace Company <b>MCAD Docket Number:</b> 16BEM02622 <b>EEOC Number:</b> 16C-2016-02405 <b>Investigator:</b> Evan Coleman
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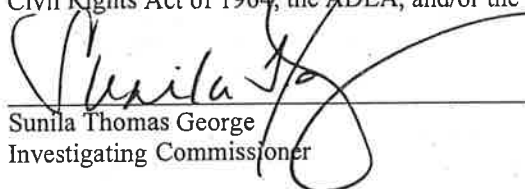
Your complaint has been dismissed for the following reasons:

- 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.
- 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: Nancy To.**

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.

  
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 Sunila Thomas George  
 Investigating Commissioner

Date 2/25/18

Cc:  
Elayne Alanis, Esq.  
Andrew Botti, Esq.

## INVESTIGATIVE DISPOSITION

Case Name: Susan Randall v. A.D. Makepeace Company  
MCAD Docket No.: 16BEM02622  
EEOC Docket No.: 16C-2016-02405  
No. of Employees: 25+  
Investigator: Evan Coleman, Compliance Officer  
Recommendation: **Lack of Probable Cause**

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### Introduction

On September 28, 2016, Complainant Susan Randall filed this action against Respondent A.D. Makepeace alleging that she was discriminated against on the basis of age (58 years old at the time of the alleged discrimination) and sex (female) in violation of M.G.L. c. 151 B § 4 paragraph (1), (1B), and Title VII, as amended.

### Complainant's Allegations

Complainant states that she was hired by Respondent as a scale house attendant on May 26, 2013 in its sand and gravel division. Complainant alleges that in or about January 2014, she applied for a promotion to the position of dispatcher, but was passed over by a male in his 30s. Complainant believed that she was more experienced than this individual because she had 15 years of experience at a previous company. Complainant alleges that in or about April 2015, the dispatcher position became available again and when she applied she was told that Respondent was looking for someone with more management experience; Respondent again hired a male younger than her. Complainant states that she nonetheless performed dispatcher duties when this individual was out sick or on vacation.

Complainant alleges that in or about early April 2016, the dispatcher position became vacant and she was asked by Pit Operations Manager Mark Bartlett if she was interested in the position. However, Respondent ultimately hired a 32 year old male who Complainant believed did not have any prior dispatching experience. Complainant alleges that in May 2016, she received a performance review that rated her as "good/excellent." Complainant states that on or about June 29, 2016, the staff in her department were told there would be no more overtime, but male drivers were still given overtime. Complainant alleges that on September 6, 2016, she forwarded an email to Jim Kane, Senior Vice President, reporting that there had been mistakes made on recent orders that needed to be addressed.

Complainant asserts that on September 12, 2016, she was terminated for allegedly not "caring about [her] co-workers and throwing them under the bus." Complainant denies this conduct and believes that she was subjected to disparate treatment and terminated due to her age and sex.

### Respondent's Position

Respondent, a company that grows cranberries, denies discriminating against Complainant and states that she was terminated due to poor work performance.

Respondent states that Complainant was hired on May 28, 2013, as a full-time scale house operator within its soils division. Respondent states that Complainant's first performance evaluation took place on July 17, 2014 and although she received "fully competent" the dispatch manager noted some performance deficiencies' related to team work. Respondent alleges that on April 26, 2016, Complainant received a written warning for insubordination after she approached her manager, Paul Menard, demanding when she would receive her review and get a raise. Complainant received the Corrective Action Form and was advised that if this disrespectful behavior and attitude continued, her employment would be terminated.

Respondent asserts that in June 2016, it transferred a staff accountant from Corporate Accounting to support the financial operations of Complainant's department. Respondent alleges that due to ongoing quality issues with data entry, it provided two weeks of live on-site training and retraining to its employees on the relevant software. Respondent states that Complainant disregarded the importance of the training and admitted to the two trainers that she had not bothered to read any of the Standard Operating Procedures for the Scale House. Respondent alleges that throughout July and August 2016, it continued to receive reports that the Scale House employees were not following the written procedures or using software properly.

According to Respondent, on August 31, 2016, it received an email from Complainant regarding an untimely delivery of a product, However, Complainant did not make any effort to rectify the problem when it first presented itself to her. Respondent was disappointed with Complainant's continued unwillingness to work to correct problems at the onset rather than to point fingers at others. Respondent states that on September 1, 2016, Mr. Kane visited the Scale House and found Complainant watching television at her desk. The next day, Mr. Kane directed the dispatcher manager to have the television removed. The following day, the dispatch manager met with Complainant and advised her to remove the television from the Scale House. Complainant allegedly responded with anger, tears, insults and accusations. Mr. Kane and the dispatch manager met with Human Resources and decided to terminate Complainant for continued poor performance and refusal to follow company procedures.

### Summary of Investigation and Analysis

#### *Disparate Treatment – Age and Sex*

To establish a prima facie case for disparate treatment based on age and sex, Complainant must establish that she is a member of the protected classes and that she was treated

differently from similarly situated individuals not of her protected classes with respect to a term or condition of employment, or circumstances give rise to a reasonable inference of discrimination based on her protected classes. If Complainant establishes a prima facie case, Respondent may show either that Complainant was not being treated differently than others, or that there are legitimate, non-discriminatory reasons for the different treatment that Complainant received. If Respondent succeeds in offering such reasons, Complainant must then show that Respondent's reasons are pretextual.

As an initial matter, under M.G.L. c. 151B §5, the Commission has jurisdiction over only those events which happened within the 300 days preceding the date of a complainant's filing. Complainant filed her complaint on September 28, 2016 and therefore, the Commission may only consider events that happened on or after December 3, 2015. To the extent that Complainant has alleged acts which occurred outside the statutory filing period, and offers them as evidence of discrimination, such evidence will be considered as background information and weighed for its relevancy to the timely allegations.

Complainant claims that she was passed over for multiple dispatcher vacancies due to her age and sex. In regards to the one dispatcher position referenced by Complainant that was within the statute of limitations, Complainant claims that Mr. Bartlett asked if she was interested in the position, but Respondent later hired a younger male. Investigation reveals, and Complainant admits, however, that she did not actually apply for the position. Complainant also claims that she was denied overtime opportunities due to her sex and age. Respondent alleges, and Complainant does not dispute, that it froze overtime for all employees due to business needs. Overtime was only allowed if approved by Mr. Kane and Complainant does not allege that she requested overtime, that she was denied, and a similarly situated younger male was given overtime under similar circumstances. Complainant also admits that Respondent never subjected her to any derogatory comments based on her protected classes. Complainant has failed to provide sufficient evidence of discriminatory animus.

#### *Termination – Age and Sex*

To establish a prima facie case of discriminatory termination based on age and sex, Complainant must show that she is a member of the protected classes, she was adequately performing the duties of her job, she was terminated, and she was replaced by someone not of her protected class or was terminated under circumstances that give rise to a reasonable inference of discrimination based on age and sex. If Complainant establishes the prima facie case, Respondent may show that legitimate, nondiscriminatory reasons exist for the termination. If Respondent succeeds in offering such reasons, Complainant must then show that Respondent's reasons are pretextual.

Complainant asserts that on September 12, 2016, she was terminated for allegedly not "caring about [her] co-workers and throwing them under the bus." Complainant believes that the real reason for her termination was discriminatory animus due to her protected classes. However, investigation reveals insufficient evidence to show that Complainant

was terminated based on her age or sex. Respondent provides a legitimate, non-discriminatory reason for terminating Complainant's position; she exhibited poor work performance.

Investigation reveals that Complainant's work issues date back to at least July 17, 2014 when her performance evaluation noted that the dispatch manager would "like to see more contribution to the team when they are overwhelmed." Complainant also received a written warning for insubordination on April 26, 2016 after she approached her manager demanding that she receive a review and a pay raise. Investigation reveals that although Complainant received a "fully competent" rating on her May 2016 performance evaluation, it was noted that "Sometimes we see [Complainant] pointing to the negative instead of what can we do to fix it before a problem occurs." Investigation further reveals that on August 31, 2016, Complainant sent Mr. Kane an email regarding an untimely delivery of a product. Respondent took issue with the fact that Complainant did not make any effort to rectify the problem prior to contacting Mr. Kane. Respondent alleges, and Complainant does not dispute, that she was ultimately terminated in September 2016 following her inflammatory response to being told to remove a television from her desk area.

Lastly, investigation reveals that Complainant was replaced by a 47 year old female and the only other individual involuntarily terminated for poor performance during the relevant time was a 26 year old male. Given the evidence presented and the totality of the circumstances, Complainant failed to provide sufficient evidence that Respondent's actions were motivated by discriminatory animus and therefore, a finding of Lack of Probable Cause is recommended.

#### Conclusion

A finding of Lack of Probable Cause is recommended for Complainant's claims of discrimination based on age and sex against Respondent.



Evan Coleman  
Investigator

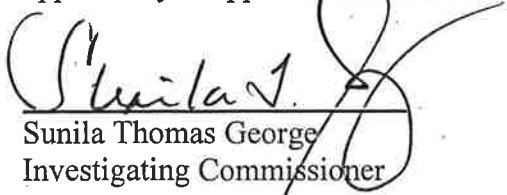


Karen Erickson  
Enforcement Advisor

#### 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.

  
Sunila Thomas George  
Investigating Commissioner

2/25/18  
Date