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**STATE CIVIL RIGHTS COMMISSION RULES IN FAVOR OF
MASSACHUSETTS ARAB-AMERICAN FEDEX GROUND/
HOME DELIVERY DRIVERS**

***Commission Rejects FedEx's Position That Drivers are Independent
Contractors; Drivers Can Pursue Complaint Alleging Discrimination & Harassment***

BOSTON, MA (March 5, 2007) – The Massachusetts Commission Against Discrimination (MCAD) has rejected FedEx Ground Package System's argument that four of its Arab-American drivers are independent contractors and ineligible for protection under the state's anti-discrimination law.

The Commission denied the company's motion to dismiss the complaint, accepting instead the drivers' argument that they are employees and entitled to continue to press their claims that the FedEx Ground/Home Delivery unit and two of its terminal supervisors engaged in a pattern of racial, ethnic and religious discrimination against them.

The four foreign-born drivers, all residents of Massachusetts and practicing Muslims, are Loay El-Dagany, a native of Kuwait; Montaser Foad Harara, born in Palestine; Oukhayi Ibrahim, originally from Morocco; and Yasir Sati, born in the Sudan. They pick up and deliver packages to homes and businesses working out the FedEx terminal in Andover, Massachusetts, and previously worked at a terminal in Wilmington. The supervisors named in the complaint are David Goyette and Mike Melnyk.

Shannon Liss-Riordan, Esq., an attorney with the firm of Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, P.C., said all four drivers are charging the company and its supervisors with workplace discrimination on the basis of race, religion, and national origin and with aiding and abetting discrimination, and interfering with their rights in violation of state law.

"The drivers are seeking justice and are very encouraged that the Commission has determined that they are employees under state law and entitled to protection under the anti-discrimination laws. This case will show that these four hard-working, customer-focused drivers have gone through a living hell, experiencing a pervasive hostile work environment at FedEx," said Liss-Riordan. "They clearly have been treated differently than non-Arab, non-Muslim drivers to their detriment in the terms and conditions of their

employment.” As victims of harassment and discrimination, she said the alleged abuses have included:

- Mr. El-Dagany being repeatedly verbally harassed by David Goyette who, among other things, called him a “terrorist” numerous times and threw packages at him. Melnyk threatened him with physical harassment. When Mr. El-Dagany requested to have money transferred to him from his FedEx account, David Goyette asked if he was planning on sending money to Bin-Laden or Al-Qaeda. When Mr. El-Dagany complained to Goyette about the constant route changes he experienced, Goyette asked Mr. El-Dagany not to be angry and “not to blow up my car.” Other managers ignored Mr. El-Dagany’s complaints, and one manager specifically stated that she wanted workers who didn’t complain and who worked like “donkeys.”
- Mr. Harara being verbally harassed and called a “terrorist” by Goyette in Melnyk’s presence when Mr. Harara complained about his treatment. Goyette once saw Mr. Harara in the bathroom and asked if he “was reading the Koran inside,” a particularly offensive statement to a Muslim. When Mr. Harara asked Goyette to have money transferred to him from his FedEx account, Mr. Goyette asked if Mr. Harara was planning on sharing the money with Bin-Laden. When Mr. Harara and Mr. El-Dagany informed Goyette that they were taking a vacation, Goyette told another driver that he hoped Mr. Harara and Mr. El-Dagany would not be engaging in any terrorist acts. Mr. Harara was told by Melnyk not to use the bathroom because he “smelled it up.” Mr. Harara’s complaints about Goyette and other complaints about his treatment went unanswered and were ignored.
- Mr. Ibrahim being verbally harassed by various managers and also physically harassed and assaulted by Goyette. Goyette’s assault was reported by Mr. Ibrahim to FedEx, but each complaint made was ignored and went unanswered.
- Mr. Sati being verbally harassed by various FedEx managers by constantly being called “stupid,” threatened with physical harassment, and had packages thrown at him by Goyette.
- The segregation, against their wishes, by the company last year of the Arab drivers to a new, less desirable terminal. Since their transfer to the terminal in Andover, they have had to drive substantially longer distances to reach their routes than other non-Arab drivers who were not transferred.

The case has striking similarities to a California case involving Arab-American FedEx Ground/Home Delivery drivers that in June 2006 resulted in a California Superior Court jury awarding two Arab-American drivers \$50 million in punitive

damages over and above \$11 million in compensatory damages after finding that they had been victims of racial discrimination and harassment by the company and a terminal manager.

The evidence in the California case showed that the drivers complained to senior company management including the human resource department and the Western Regional Manager who controlled the entire West coast region. The evidence also revealed that FedEx Ground took no steps to prevent harassment or discrimination, provided no training to its managers, supervisors, or contractors as to what constituted unlawful harassment in the workplace and failed to take action once harassment was reported.

Those California drivers are class members in the landmark FedEx Ground/Home Delivery class-action lawsuit (*Anthony Estrada et al. v. FedEx Ground*, Los Angeles Superior Court # BC 210130) brought in 1999. In that case a judge ruled that the drivers are not independent contractors but employees who have been forced to individually shoulder millions in a broad range of operating expenses. Similar lawsuits exposing the company's use of the independent contractor sham to shift its operating costs to its workforce have been brought on behalf of thousands of drivers in 40 states. The four Massachusetts drivers pursuing the race discrimination claim would be class members in the Massachusetts lawsuit, *Sheehan et al. v. FedEx Ground*, which has been consolidated into a national class-action suit that is being litigated in Indiana.

Other agencies in Massachusetts have also found FedEx Ground/Home Delivery drivers to be employees and not independent contractors, making them eligible for benefits of employment. These include the Division of Unemployment Assistance (DUA), which has determined that FedEx drivers who lost their jobs are eligible for unemployment compensation, and the National Labor Relations Board (NLRB), which has ruled in two cases that drivers in Massachusetts terminals can vote to form a union.

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