

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. ER14WB-64866
EEOC CHARGE NO. 17E-2014-00535

Lorraine Sclavounos,)
)
 Complainant,)
)
 v.)
)
 Wayne Hills Diner, and Phillip)
 Logothetis, Individually,)
)
 Respondents.)

Administrative Action

FINDING OF PROBABLE CAUSE

On August 22, 2014, Lorraine Sclavounos (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, Wayne Hills Diner, and one of its owners, Phillip Logothetis (Logothetis), sexually harassed her in a manner that led to a hostile work environment and her constructive discharge, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondents denied the allegations of discrimination and constructive discharge in their entirety. DCR's ensuing investigation found as follows.

Wayne Hills Diner is a restaurant located at 1465 Hamburg Turnpike, Wayne, which serves food and alcohol, 24 hours a day/seven days week. Phillip Logothetis, his brother Peter Logothetis, and brother-in-law Nick Tsambounieris, are the diner's co-owners.

Complainant is an Oakland resident who began working for Respondents in September 2013 as the night manager for \$11.50/hr. She received a \$.50/hr raise on or around Christmas 2013, and a \$1/hr raise in or around January 2014. Complainant told DCR that a few weeks after she began working, Logothetis touched her arm in a manner that "appeared to [her] to be intended to be a very personal action." She noted that he did not touch other employees when interacting with them. She alleged that around this time, she learned that Logothetis was

closely monitoring her through surveillance cameras that were set up in the diner and connected to his home. She alleged that while she was working, he would send her unwelcome text messages letting her know that he was watching her from his home. She alleged, for example, that he sent her a text message saying that he was keeping her company during the night. She alleged that he once sent her a text saying that he liked her hair the way she was wearing it (i.e., pinned up), and that when she let her hair down five minutes later, he sent a text message asking why she let her hair down. She alleged that in October and November, he sent messages to her such as, "Baby you are very sexy tonight. I can't take it anymore!" She alleged that in November, he sent her a picture of himself without a shirt on.

Complainant alleged that she told the night cook, Harry Demitrakopoulos, that Logothetis was "spying" on her through the close circuit camera system. She alleged that Demitrakopoulos once came out of the kitchen and sat next to her at the counter and patted her on the back while they had a friendly conversation. She did not find Demitrakopoulos's touch inappropriate. She alleged that the next time Logothetis came to work, he announced that that he saw Demitrakopoulos touch Complainant and directed Demitrakopoulos not to leave the kitchen or talk to Complainant again. She alleged that Logothetis repeatedly asked her if she was romantically involved with Demitrakopoulos, told her not to speak with him, and threatened to fire Demitrakopoulos if they continued to speak to each other. She alleged that on February 24, 2014, Logothetis fired Demitrakopoulos and told Complainant that he did so to protect her. Complainant alleged that Logothetis continued to send her unwelcome messages despite her request that he stop.

Complainant alleged that Logothetis told a regular customer that Complainant was "funny," describing her as a lesbian who was attracted to both sexes. Complainant alleged, "[M]y sexual orientation became a topic of conversation in the diner, and a number of my co-workers and customers began asking me very pointed and embarrassing questions about my personal sexual preferences."

Complainant alleged that Logothetis' wife, whom Complainant described as a co-owner, discovered some of her husband's text messages and became angry with Complainant. Complainant alleged that the wife cursed at her and asked a waitress if Logothetis was having an extra-marital affair with Complainant. Complainant alleged that in early March 2015, she told a co-worker, Carlos, that she was being harassed by Logothetis and his wife. She said that Carlos, in turn, conveyed the information to one of the co-owners, Nick Tsambounieris. Complainant alleged that she resigned on March 5, 2015, because she could no longer endure the situation.

She provided an affidavit from Demitrakoupoulos stating that "about a month" after Complainant began working for Respondents, he saw her crying and asked her what was wrong. He wrote that Complainant replied that "Phillip writes her love notes, which he would send to her by putting them in her pay packet" and that "she was made to feel so uncomfortable by Phillip's actions that she would gladly leave the job the next day if she could afford to."

Demitrakoupoulos wrote:

On a nightly basis Lorraine used to show me her telephone, pointing out the number of times Phillip would call her. She told me that he often would leave her messages . . . Often she would play the messages to me. Since I knew Phillip's voice well, I knew he was the one speaking on the messages . . . I recall on a regular basis Lorraine playing messages Phillip had left her cell phone, in Greek.

Such messages left by Phillip usually asked Lorraine why she did not return his phone calls, told her how much he cared about her, and asked her why she treated him the way she did by ignoring him . . . I also heard a message that came across in a very threatening manner . . . In such message Phillip asked Lorraine why she was ignoring him, and told her that he did not like being ignored, and reminded Lorraine that he had told her so in the past, and that this was not the first time he was telling her so . . . I could not help on commenting to Lorraine on the seriousness of the tone of the message. I recall stating to Lorraine, verbatim, "is he out of his fucking mind – does he think he is your boyfriend or something."

Complainant also produced a series of notes that were purportedly written by Logothetis, expressing his romantic interest in her. For example, one note said in part, "My heart! You are the woman who resurrected me!"

Respondents deny any wrongdoing. They state, "Mr. Logothetis and Ms. Sclavounos were co-workers, nothing more." They claim that although Logothetis had "several discussions" with Complainant in person, via telephone, and through text messages, they were work-related and aimed at improving her performance. They note:

She was frequently more focused on having personal conversations with customers and staff and paying attention to her cell phone rather than performing her job functions. She arrived late to work on several occasions, often with little notice. [She] did not perform many of the night manager job responsibilities . . . such as cleaning the bar area . . . [and] often neglected her cash register responsibilities . . . [and] had trouble with following up with vendors who delivered products to the Diner.

Respondents state that Complainant never complained to the owners or any co-workers that she felt sexually harassed by Logothetis. They note, "In fact, Mr. Logothetis has not received any harassment complaints from his employees in the twenty (20) years that he has worked at the Diner." Respondents state that Complainant voluntarily attended a "company-sponsored holiday party . . . that was off company property and not mandated by the Diner." Moreover, Respondents state that Complainant did not abruptly resign, but rather gave three week's notice, a number of months after she allegedly received offensive text messages from Logothetis, and that her stated reason for leaving was that she no longer wanted to work the overnight shift. They argue that those actions are inconsistent with claims of severe or pervasive harassment and an intolerable work situation.

Analysis

At the conclusion of an investigation, the Director is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. N.J.A.C. 13:4-10.2. Probable cause for purposes of this analysis means a "reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person in the belief that the [LAD] has been violated." Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on

the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

Hostile work environment sexual harassment is a form of gender discrimination. See Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 607 (1993). In such cases, the critical issues are whether the conduct occurred because of gender, and whether a reasonable woman would find the conduct to be severe or pervasive enough to alter the conditions of employment and create an intimidating, hostile, or offensive working environment. Id. at 603. In reaching those determinations, the focus is on the conduct itself, not its effect on the employee or the workplace. Cutler v. Dorn, 196 N.J. 419, 430-31 (2008). Neither a plaintiff's subjective response to the harassment, nor the defendant's subjective intent, is controlling as to whether a hostile work environment claim is viable. Ibid.

When the harasser is the owner of the business, his or her conduct “carries with it the power and authority of the office.” See Taylor v. Metzger, 152 N.J. 490, 505 (1998). In cases where the harasser is the ultimate supervisor, the employee's dilemma is “acute and insoluble” because she has “nowhere to turn.” Ibid.

Generally, a constructive discharge under the LAD occurs when an “employer knowingly permit[s] conditions of discrimination in employment so intolerable that a reasonable person subject to them would resign.” Shepherd v. Hunterdon Develop. Ctr., 174 N.J. 1, 28 (2002). However, an “employee has the obligation to do what is necessary and reasonable in order to remain employed rather than simply quit.” Ibid. The following considerations are relevant to a constructive discharge analysis: the “nature of the harassment, the closeness of the working relationship between the harasser and the victim, whether the employee resorted to internal grievance procedures, the responsiveness of the employer to the employee's complaints, and all other relevant circumstances.” Ibid.

In this case, Complainant alleges that soon after she began working at the diner, one of the co-owners became attracted to her and monitored her on the business's video surveillance system and made a number of unwelcome romantic overtures despite her protestations. Respondents, on the other hand, suggest that Complainant is misrepresenting the nature of the owner's communications and that the two were merely "co-workers, nothing more." In view of the affidavit of Demitrakoupoulos, and what purport to be handwritten notes from Logothetis, the Director is satisfied at this threshold stage of the process that there is enough to support a "reasonable ground of suspicion" to warrant a cautious person in the belief that the matter should "proceed to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56. Accordingly, in view of the above, it is found that PROBABLE CAUSE exists to credit the allegations of sexual harassment and constructive discharge.

DATE:

5-29-15



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS