

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO.: EG14WB60616
REF AGCY NO: 17E-2009-00346

GLADYS RIVERA and CHINH Q. LE,)
DIRECTOR, NEW JERSEY DIVISION)
ON CIVIL RIGHTS,)
)
Complainants,)
)
-v-)
)
MCD NORTHERN CAFÉ, INC.,)
)
Respondent.)

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on April 7, 2009 and Amendment to the Verified Complaint, the above-named Respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.) and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12 (a) and (d) because of sex and reprisal.

Chinh Q. Le is the Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF COMPLAINT:

Complainant alleged that she was subjected to hostile environment sexual harassment by Edwin Andujar,¹ a co-worker. Complainant alleged that Respondent's Supervisor, Maribel Sarango,² and Manager, Steve Najer,³ were aware of the harassment, but failed to take prompt, remedial, corrective action. Complainant alleged that Respondent discharged her in reprisal for complaining about the sexual harassment.

¹ Andujar was erroneously referred to as Edwin Andujay in the verified complaint.

² Sarango was erroneously referred to as Maribel Arango in the verified complaint.

³ Najer was erroneously referred to as Steve Lajena in the verified complaint.

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SUMMARY OF RESPONSE:

Respondent denied discriminating against Complainant for any unlawful reason including reprisal. Respondent denied Complainant's allegation that she complained to management about the harassment. Respondent further denied that Complainant was discharged and contended that she left her job voluntarily.

BACKGROUND:

Respondent, MCD Northern Café, Inc., is an independently-owned franchise of McDonald's Corporation. Respondent provides cafeteria style foods to the public and is located in Newark, Essex County, New Jersey.

Complainant was employed by Respondent as a Cashier from June 23, 2008, through March 6, 2009.

SUMMARY OF INVESTIGATION:

The investigation revealed sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant in violation of the LAD and engaged in reprisal when it discharged her shortly after she complained about the discrimination.

With regard to the discrimination claim, Complainant alleged that her co-worker, Edwin Andujar, subjected her to sexual harassment over a period of at least several months, and that Respondent's management was aware of the harassment but took no corrective action. For instance, in her verified complaint, Complainant alleged that on January 23, 2009, Andujar said to her, "If you want to see how much of a man I am, let's go to bed." Complainant alleged that Respondent's Supervisor, Maribel Arango, and Respondent's Director of Operations, Steven Samuel, both heard Andujar's comment. Complainant further alleged that in February 2009, Andujar slapped her on her buttocks and told her that she has "a big ass" and that she "looks good." Complainant alleged that in February 2009, she complained to Respondent's Manager, Steve Najer, about the sexual harassment, but Respondent failed to take any steps to stop the harassment.

Respondent denied that management had knowledge of the alleged sexual harassment. At the Division's Fact Finding Conference, Andujar denied that he sexually harassed Complainant, and Samuel, Sarango, and Najer denied having knowledge of any alleged sexual harassment.

The investigation disclosed evidence that supported Complainant's claim that co-worker, Edwin Andujar, sexually harassed her and that several members of Respondent's management were aware of the harassment.

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In the course of the investigation, the assigned investigator interviewed several witnesses, including Complainant's adult daughters, Xiomara Carrero and Myra Carrero. These two witnesses signed Affidavits as well. In her Affidavit, Xiomara Carrero, who was employed by Respondent from November 2008 to April 2009, stated that she was present in January 2009 when Andujar said to Complainant, "Let's go to bed, and we'll see if I am a real man." Xiomara Carrero stated that Arango and Najer were also present, and that Arango must have heard the statement because she said under her breath, "You're a pig. What a pig." Xiomara Carrero also described other incidents in which Andujar engaged in conduct that made women at Respondent's café uncomfortable. She cited one example in November 2008, when Andujar stroked her hair suggestively as he walked past her, and another in December 2008, when she observed a female customer complain to Najer, Respondent's Manager, that she did not appreciate the way Andujar looked at her 13 year-old daughter's breasts. Xiomara Carrero stated that she informed Sarango, Respondent's Supervisor, about the customer's complaint. Xiomara Carrero stated that Sarango said, "What am I going to do with this man?"

Myra Carrero also corroborated some of Complainant's allegations. In her Affidavit, Myra Carrero stated that in September or October 2008, when she was visiting Respondent's café, she witnessed Andujar say to Complainant, "Don't bend over like that, because I get hard." Myra Carrero witnessed another incident when Andujar said to Complainant, "Don't bend over like that, because I could poke you in the ass." Myra Carrero stated that on several occasions when she called Complainant at work, Andujar answered the phone and would "talk about his dick." Myra Carrero stated that even though she was not employed by Respondent, she complained about Andujar's behavior to Sarango. She said that Sarango would laugh and say, "Edwin, he's crazy. Don't pay him no mind." Myra Carrero further stated that she once witnessed a female customer complain to Mirian Averos, the Manager on duty at the time, that a male employee made comments about her 14 year-old daughter's breasts. Myra Carrero stated that Andujar was the only male employee at the café during that time. (This alleged incident was different from the similar alleged incident observed by Xiomara Carrero, described above.)

The assigned investigator also interviewed Sandra Garrido, another former employee of Respondent who corroborated some of Complainant's allegations. Garrido stated that she witnessed Andujar sexually harass Complainant on several occasions. Garrido stated that, among other things, she heard Andujar tell Complainant that she has "a fine ass." She stated that she also heard Andujar tell Complainant, "What you need is a good screw. I'll give it to you. I'll take you to a hotel nearby." Garrido stated that she observed Complainant reporting the alleged sexual harassment to management. Garrido stated she was present when Complainant told Steven Samuel, the District Manager,⁴ that she felt sexually harassed by Andujar and that Andujar would tell her that he wants to screw her (Complainant). Garrido stated that Samuel responded by telling Complainant that

⁴Although Garrido stated that Samuel was District Manager, it was disclosed at the Division's Fact Finding Conference that Samuel was Director of Operations.

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Andujar was “just playing around.” Garrido stated that she also heard Complainant tell Sarango that she was being sexually harassed by Andujar. Garrido stated that she was present at a meeting with management, Sarango, Samuel, and Najer and staff, Complainant, Andujar, and Xiomara Carrero. Garrido stated that during this meeting, Complainant said that Andujar was “always sexually harassing her.” Garrido stated that Sarango told Complainant and Andujar that they are both guilty because they disrespect each other.

Garrido also told the assigned investigator that sometime in June or July 2009, she was threatened by a woman who identified herself as Maria and stated that she worked in Respondent’s main office. Garrido stated that she received a telephone call from “Maria,” who referenced Complainant’s allegations and said that Complainant was “crazy” and was involving a lot of people. Garrido stated that Maria informed her that she had to remember she was “an illegal,” that she had no papers, and that Respondent did not want to see her penalized for being an undocumented worker.

In her verified complaint, Complainant alleged that Respondent discharged her in reprisal for complaining about sexual harassment.

Respondent denied Complainant’s allegation of reprisal and alleged that Complainant voluntarily abandoned her job. In its answer to the verified complaint, Respondent stated, “Complainant was asked to come to meeting to discuss another situation which was to find the reason why she did not appear to work.” At the Fact Finding Conference, Najer stated that Complainant called him the same day she was scheduled to work. Najer stated it was either Friday, March 6, or Saturday, March 7, 2009. Najer stated that Complainant told him she was not coming in and did not know when she was coming back.

Complainant denied that she abandoned her job or that she failed to show up for a scheduled meeting. Complainant stated that Najer called her on March 6, 2009, and told her she was no longer needed. Complainant stated the week prior to this, Najer had given her verbal permission to take Friday, March 6, and Saturday, March 7, 2009, off. Complainant stated that asked to take the time off in order to care for her sister who had undergone back surgery. Complainant submitted as evidence, a copy of Respondent’s work schedule for the week of March 6, 2009. This document showed that Complainant’s name was crossed off the schedule from Thursday, March 5, 2009 through Saturday, March 7, 2009. Moreover, during her interview, Xiomara Carrero, stated she was present when Mr. Najer approved Complainant’s request for the time off.

An Appeal Decision from the New Jersey Department of Labor, dated May 15, 2009, stated that Complainant was eligible for benefits beginning March 8, 2009, because she was discharged for filing a complaint against an employee who sexually harassed her.

Based on the totality of the evidence gathered during this investigation, it appears that Respondent was aware that Andujar was sexually harassing Complainant, that Complainant

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complained to several members of management about the sexual harassment, that management failed to take immediate and corrective action, and that her employment ended soon thereafter. Thus, there is a sufficient basis to conclude that Complainant may have also been discharged in reprisal for complaining about the sexual harassment.

ANALYSIS:

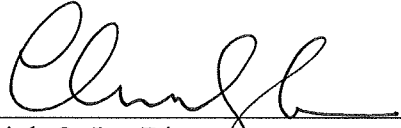
At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. 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. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

Here, the investigation disclosed sufficient evidence to support a reasonable suspicion that Complainant was subjected to sexual harassment and reprisal because she complained about the harassment. The investigation disclosed that the sexual harassment was sufficiently severe or pervasive that a reasonable woman in Complainant's position would find that her work environment had been rendered hostile and abusive. Although Andujar was not Complainant's supervisor, Respondent was aware of the hostile environment. Thus, Respondent was required to take the necessary steps to insure that the workplace was free from sexual harassment. There is sufficient evidence to conclude that Respondent did not meet this obligation. The investigation disclosed supports a finding of reasonable suspicion that Respondent discharged Complainant because she complained about hostile environment sexual harassment.

FINDING OF PROBABLE CAUSE:

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

06/08/10
Date


Chinh Q. Le, Director
Division on Civil Rights

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
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GLADYS RIVERA,)
)
COMPLAINANT,)
)
-vs-)
)
MCD NORTHERN CAFÉ CORP.,)
)
RESPONDENT.)

AMENDED VERIFIED COMPLAINT

Received and Recorded
Date: 6-8-10 *JKS*
Department of Law and Public Safety
Division on Civil Rights

I, Chinh Q. Le, Director of the New Jersey Division on Civil Rights, hereby intervene as a Complainant in the above referenced matter pursuant to N. J. A. C. 13:4-2.2 (e) and hereby amend the caption of the Verified Complainant, received and filed on April 7, 2009, to read as follows:

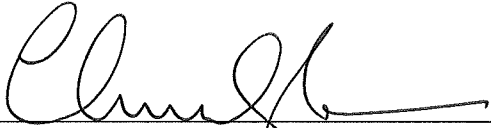
GLADYS RIVERA, AND
CHINH Q. LE, DIRECTOR
DIVISION ON CIVIL RIGHTS,

COMPLAINANTS,

-vs-

MCD NORTHERN CAFÉ CORP.,

RESPONDENT.



CHINH Q. LE, DIRECTOR
NEW JERSEY DIVISION ON CIVIL RIGHTS

Sworn to and subscribed before me

on this *8th* day of *June*, 2010.



NOTARY PUBLIC OF NEW JERSEY

LORRAINE F. LESTER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/26/2013