



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PP17WB-62304

Jeanine Johnson and the Director of
the New Jersey Division on Civil Rights,

Complainants,

v.

Wells Fargo Bank,

Respondent.

Administrative Action
FINDING OF PROBABLE CAUSE

The Director of the New Jersey Division on Civil Rights (DCR), pursuant to N.J.S.A. 10:5-14 and attendant procedural regulations, hereby finds that probable cause exists to believe that an unlawful discriminatory practice has occurred in this matter.

On June 13, 2011, Jeanine Johnson filed a verified complaint with the DCR alleging that Wells Fargo Bank discriminated against her based on sex in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49, when one of its employees sexually harassed her and then refused to process her loan application because she rejected his sexual advances. Respondent denied the allegations of discrimination. DCR investigated the allegations, allowing the parties the opportunity to submit evidence and assert their position regarding the allegations. Following a review of the materials gathered as part of the investigation and the governing legal standards, the Director now finds the following.

Complainant is a resident of Newark who, at the relevant time, was working at a rest stop on the New Jersey Turnpike.¹ Respondent is a financial services company that provides banking, insurance, investments, consumer and commercial finance through more than nine thousand retail branches and other distribution channels, including many in New Jersey.

In or around November 2010, Respondent hired Henry Slay to work at its Madison, New Jersey, branch as a personal banker. His duties included selling banking services and products, taking loan applications, and transmitting the applications to Respondent's underwriting professionals.

Complainant reported that she met Slay on or about January 6, 2011, while she was working at the rest stop. He struck up a conversation and told her that he was a personal banker. When she stated that she was interested in obtaining a personal loan, Slay presented his Wells Fargo business card. He told her to contact him on his cell phone so he could help her secure a loan.

Complainant stated that on January 8, 2011, she contacted Slay about the loan. She alleged that during the telephone discussion, he asked if they could meet for dinner and a movie to discuss the loan. Complainant declined the invitation but agreed to meet at a diner for coffee instead. At Slay's request, Complainant turned over copies of her pay stubs, tax records, and filled out a loan application. He assured her that he would review her credit report and process the application. Over the next several days, Slay would show up at her place of work at the end of her shift and ask her to go out with him. He also sent her a number of text messages such as, "sweet dreams, little princess," "I need sum affection," and asking when he would "get a treat" for his hard work. Complainant stated that she ignored those remarks and pressed him for information about the status of her loan application.

¹ The Director of the Division on Civil Rights joins this matter as a complainant in the public interest pursuant to N.J.A.C. 13:4-2.2 (e). However, for purposes of this finding, the term "Complainant" will refer only to Ms. Johnson.

Complainant said that she went to the Madison branch on January 13, 2011, to question Slay about the status of her loan application. She brought along her uncle, Wayne Johnson. She recalled that Slay opened checking and savings accounts for them and gave her uncle a loan application to fill out, but provided no substantive information about the progress of her loan application.

Complainant stated that Slay showed up again at the rest stop on January 15, 2011. Complainant stated that when she continued to reject his sexual advances, he became verbally abusive and told her that he would not process her loan. On January 16, 2011, Slay sent Complainant the following text message, "fuk u and ur loan."

Complainant stated that she contacted Respondent's Service Manager, Rosemarie Cirillio,² to complain about Slay's inappropriate behavior, text messages, and inaction regarding her loan. Cirillio told DCR that after Complainant contacted her, she contacted Human Resources Associate Frances Coleman for advice on how to proceed. Based on that discussion, Cirillio and Branch Manager Glen Gould questioned Slay on or about January 28, 2011, about his conduct. The investigation showed that prior to January 28, 2011, Gould had already documented other concerns regarding Slay. For instance, on December 29, 2010, Slay left the branch office without permission. On December 31, 2010, police officers came to the branch to speak with Slay.

According to Respondent's records and information provided in interviews of its personnel, Slay did not deny sending the text messages. Rather, he told Cirillio and Gould that he and Complainant had a personal relationship that preceded her interest in a bank loan. Cirillio and Gould cautioned him that "personal relationships that become customer relationships must remain professional." They took no further action. There is no indication that they asked him about the status of Complainant's loan application or the whereabouts of her personal records (i.e., confidential tax records, pay stubs). They did not contact Complainant to give her an opportunity

² Improperly identified as Rosemarie "Servilla" in the verified complaint.

to rebut Slay's version of events or discuss the outcome of the investigation. They made no effort to apprise Complainant about the status of her loan application. Instead, they simply closed their review of the matter that same day that they spoke to Slay.

Respondent maintains a written harassment policy that expressly prohibits sexual harassment of any of its customers "in connection with company business." The policy states that Respondent must conduct an "effective, thorough, and objective investigation of the harassment allegations" and that complainants "will be contacted when the investigation is completed."

On or about February 26, 2011, Respondent terminated Slay's employment for issues unrelated to Complainant's allegations. Complainant never received word about the status of her loan application.

During the investigation, DCR attempted, but was unable, to interview Slay. However, DCR interviewed Complainant's uncle, who provided information consistent with the assertions from Complainant, and obtained the sworn statement of one of Complainant's co-workers, Thare Lebron, who corroborated that Slay appeared at their place of work and made advances toward Complainant.

At the conclusion of an investigation, the DCR is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the 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 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 an initial "culling-out process" whereby the DCR makes a preliminary 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, supra, 228 N.J. Super. at 56; Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978).

Sexual harassment is a form of sex discrimination. Lehman v. Toys 'R' Us, Inc., 132 N.J. 587, 601 (1993). Sexual harassment claims are not limited to the employment setting. The prohibition against sexual harassment extends to places of public accommodation,³ banking organizations,⁴ and in certain business relationships.⁵

Quid pro quo is a form of sexual harassment that occurs when an employer attempts to make an employee's submission to sexual demands a condition of his or her employment. It involves an implicit or explicit threat that if the employee does not accede to the sexual demands, he or she will receive unfavorable performance reviews or suffer other adverse employment consequences. Ibid.; see also J.T.'s Tire Service, Inc. v. United Rentals North America, 411 N.J. Super. 236 (App. Div. 2010), cert. den'd 201 N.J. 441 (2010) (holding that *quid pro quo* sexual harassment in business relationships violates N.J.S.A. 10:5-12(l)).

The investigation found that after providing Complainant with his Wells Fargo business card and suggesting he could assist her in obtaining a loan, Slay sought to initiate a sexual relationship with Complainant. When Complainant rejected these advances, Slay refused to process her loan application. Complainant's allegations in this regard are corroborated by her uncle and her coworker, and are consistent with Complainant's contemporaneous report of Slay's behavior to Wells Fargo personnel. Consequently, there is a reasonable ground for suspicion that while acting as an agent for Respondent, Slay sexually harassed Complainant, made her submission to his demands a condition of receiving the "accommodations, advantage, facilities or privileges" of the

³ It is illegal for the operator, agent, or employee of a place of public accommodation "directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantage, facilities or privileges therefore," or to discriminate in the provision of services "on account of . . . sex." N.J.S.A. 10:5-12(f). See also Thomas v. County of Camden, 386 N.J. Super. 582 (App. Div. 2006) ("[W]ithout doubt, the LAD proscribes sexual harassment . . . in places of public accommodation).

⁴ It is illegal for "any person, bank, banking organization . . . or other financial institution to whom application is made for any loan . . . [t]o discriminate against any person . . . because of . . . sex." N.J.S.A. 10:5-12(i).

⁵ It is illegal for "any person to refuse to . . . contract with or . . . provide goods, services or information, or otherwise do business with any other person on the basis of . . . sex." N.J.S.A. 10:5-12(l).

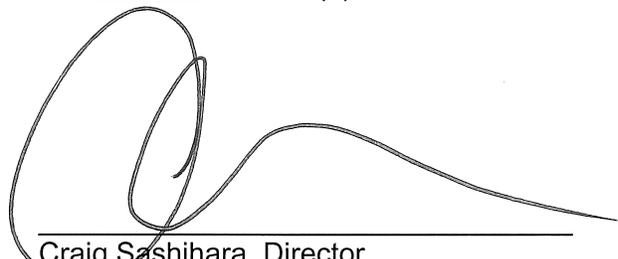
public accommodation, and ultimately withheld those accommodations, advantage, facilities or privileges because she refused his sexual advances, thus implicating N.J.S.A. 10:5-12(f). In addition to public accommodation discrimination, Respondent is a bank, thus implicating N.J.S.A. 10:5-12(i), and Slay refused to conduct business with her, thus implicating N.J.S.A. 10:5-12(l).

Respondent's response to the allegations was lacking on a number of levels. Although Respondent maintains a policy prohibiting employees from sexually harassing customers, the investigation indicates that it failed to follow its own policy with respect to Complainant's report. Rather than thoroughly investigate the allegations, it simply accepted Slay's assertions at face value despite the fact that his performance had been called into question on prior occasions during his very short tenure as a bank employee. There is no indication that Respondent questioned Complainant about her allegations, sought to corroborate Slay's version of events, or followed-up to determine if Slay had processed her loan application. Meanwhile, Complainant's loan application was never processed.

WHEREFORE, it is on this 17th day of MAY, 2013, determined and found that PROBABLE CAUSE exists to credit the allegations of the complaint; and

It is further ORDERED that, based on the finding of the investigation, the verified complaint is hereby amended to include violations of N.J.S.A. 10:5-12(i) and 10:5-12(l); and

It is further ORDERED that, in the public interest, the Director of the Division on Civil Rights hereby joins as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS