

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EL11WB-53908
REF AGY NO. 17E-2008-00439

MINNIE DAVIS, AND)
CHINH Q. LE, DIRECTOR,)
NEW JERSEY DIVISION ON)
CIVIL RIGHTS,)
Complainants,)
v.)
GALILEE BAPTIST CHURCH, AND)
REVEREND JOHN H. HARRIS, JR.,)
Respondents.)

FINDING OF PROBABLE CAUSE

Consistent with a verified complaint filed on May 7, 2008, the above-named Respondents have 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.

SUMMARY OF COMPLAINT:

Complainant, who was employed as a secretary at Respondent Galilee Baptist Church (GBC), alleged that she was repeatedly subjected to sexual harassment by Respondent John H. Harris, Jr., Pastor, and that Respondent Harris subjected her to reprisal for rejecting his sexual advances.

Complainant alleged that on March 28, 2008, she addressed a memo to Respondent GBC's Board reporting that she was repeatedly being sexually harassed by Respondent Harris. Complainant alleged that after submitting the memo, she was stripped of many of her duties, and was required to work every Saturday.

On June 3, 2008, after the filing of the complaint in this matter, Respondent terminated Complainant's employment.

SUMMARY OF RESPONSE:

Respondents denied that Complainant was subjected to any unlawful discrimination, including sexual harassment or reprisal. Respondent GBC denied that it had any notice of Complainant's allegations of sexual harassment until it received a March 28, 2008 letter from Complainant, and asserted that it promptly investigated her allegations. Respondents also denied changing Complainant's duties in retaliation for opposing or complaining about alleged acts of sexual harassment. Instead, Respondents asserted that Complainant's responsibilities were restructured to avoid contact with Respondent Harris until her internal complaint was resolved.

BACKGROUND:

Respondent Galilee Baptist Church is a place of worship located in Trenton, Mercer County, New Jersey. Respondent John Harris is the pastor of the congregation.

Complainant Minnie Davis, a resident of Trenton, Mercer County, New Jersey, was hired by Respondent GBC as a secretary in May 1997; she assumed the duties of Secretary/Church Clerk in 1999. Complainant's job title was subsequently changed to Administrative Secretary/Church Clerk. Complainant was discharged on June 3, 2008 (after the filing of the verified complaint in this matter).

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 INVESTIGATION:

The investigation disclosed sufficient evidence to support a reasonable suspicion that Complainant was subjected to sexual harassment and acts of reprisal, including discharge, for engaging in an activity protected by the New Jersey Law Against Discrimination (LAD).

The Division's investigation disclosed that, on or about December 7, 1998, Complainant and Respondents entered into a written employment contract for Complainant's Church Clerk/Executive Assistant to the Pastor position, which stated, among other things, that she would work Monday to Friday from 10 a.m. to 6 p.m., that she would be permitted to call out using vacation time for illness or emergencies because she would not receive any sick leave, and she would be an employee for the duration of Respondent Harris' tenure. The contract was modified by agreement dated January 8, 2003, to provide that, because Complainant was frequently called upon to work on Saturdays, Sundays, and extra hours, she would be permitted to take Mondays off. The investigation disclosed that, at all relevant times until April 2008, Complainant reported directly to Respondent Harris and much of her work required contact with Harris.

During the Division's January 26, 2009 fact-finding conference, Complainant explained that she had a consensual sexual relationship with Respondent Harris from 2001 to 2003. She asserted that, in or around October 2003, she made it clear to him that she was not interested in having a sexual relationship with him anymore, but Respondent Harris continued to try to force himself on

Davis v. Galilee Baptist Church and John H. Harris

Docket No. EL11WB-53908

Page 3

her in the workplace. She explained that he would try to “strong arm” her, pushed her against walls, grabbed her breasts, and grabbed her behind trying to force himself on her. Respondent Harris also attended the Division’s fact finding conference, and denied that he ever sexually harassed Complainant, had sex with her, touched her or threatened her.

By memo dated March 28, 2008, Complainant informed several of Respondent GBC’s deacons and trustees of the sexual harassment. In that memo, Complainant stated that Respondent Harris repeatedly propositioned her for sex, told her that he would rape her if she did not have sex with him, and would call her into his office or go to her office and lock the door so that he could sexually harass her. She specified that he repeatedly touched her inappropriately, including grabbing her breast and rear end, pinning her to the wall, exposing his penis and “literally tussling” with her.

Her memo also informed Respondent that, as a result of her refusal to consent to his sexual demands, Respondent Harris retaliated against her in a number of ways, in an effort to get her to quit her job. She listed a number of adverse actions he had taken, including taking away many of the office duties she had performed for years, minimizing her responsibilities so that it appeared there was no work for her to do, denying her a promised promotion and raise, attempting to convert her status from an employee to an independent contractor, requiring her to give 30 days notice for any time off, insinuating that she stole money, and accusing her of not doing her job. She noted that she was not the first female churchmember to be sexually harassed by Harris, and stated, “No one should have to tolerate threats from anyone because they will not have sex with them.” In that March 28, 2008 memo, Complainant also noted that she had received no response to a March 9, 2008 memo she sent to Respondent GBC’s Deacon Edwards, requesting a meeting to discuss Respondent Harris.

In its answer to the complaint, Respondent GBC asserted that after receiving Complainant’s March 28, 2008 memo, it gave a copy to Respondent Harris and on March 31, 2008, convened a meeting of its Board of Trustees to address Complainant’s allegations. By letter to Complainant dated April 3, 2008, Respondent GBC informed her that GBC’s attorney would be investigating her allegations of sexual harassment, and in the interim, she and Respondent Harris were both being instructed to have no contact with each other. The letter also informed Complainant that, effective immediately, she would report to Doreleena Sammons-Posey, Vice Chair of Respondent GBC’s Trustee Ministry, and assigned Complainant some tasks with specific deadlines. It noted that, as per a July 2007 memo, all vacation requests must be submitted 30 days in advance.

During the Division’s fact finding conference, Respondent GBC stated that its attorney, Rocky L. Peterson, Esq, investigated Complainant’s allegations of sexual harassment and reprisal, and found no evidence to support Complainant’s claims. Respondent was unable to provide the Division with a copy of the report of its investigation into the matter.

Complainant asserted that, after receiving her March 2008 letter, rather than taking any remedial action, Respondents GBC and Harris started retaliating against her. She alleged that Respondents took away most of her duties, and accused her of not performing as expected of her. She stated that no action was taken against Respondent Harris. Complainant alleged that she was no longer allowed to attend official meetings to take notes, as she had done in the past, including meetings with city officials and contractors. At the fact finding conference, Respondent GBC’s Vice

Chairman, Edmund Johnson, stated that he took these duties away from Complainant to prevent her from coming in contact with Respondent Harris.

The investigation disclosed that Complainant was out on approved vacation from May 24, 2008 through June 2, 2008, and while on vacation, she received a letter from Respondent GBC, informing her that effective June 3, 2008, she was being terminated for insubordination and neglect. During the Division's investigation, Respondent GBC submitted some documentation of purported deficiencies in Complainant's performance, asserting that she was discharged solely because of such performance problems, and not because of her sexual harassment complaint.

The Division's investigation revealed that, during Complainant's employment, Respondent GBC had no written employee policy prohibiting sexual harassment or any form of bias-based harassment or discrimination in the workplace, or any written procedures for employees to report sexual harassment or other types of employment discrimination. Respondent GBC had no written protocol for management to utilize when dealing with harassment complainants, and Respondent GBC did not retain, or require the retention of, any documentation of reports of sexual harassment or bias-based discrimination.

During the Division's investigation, Complainant asserted that Respondent Harris has sexually harassed other women associated with the church, including [REDACTED] and [REDACTED], as well as [REDACTED], [REDACTED], and [REDACTED]. Complainant asserted that other women had complained to Respondent GBC about Respondent Harris, but nothing was done about it.

The Division's investigation disclosed that in or around March 2005, Respondent GBC received an undated anonymous letter detailing some of the inappropriate actions of Respondent Harris. The letter was addressed to then-Deacons Elijah Tard and Shurman Riggins. The Division obtained a copy of the March 2005 letter, which among other complaints about Respondent Harris, stated that he "had inappropriate sexual relationships with several women in the church." It named Complainant and three others.

The Division's investigation disclosed that Respondent GBC convened a meeting on March 19, 2005 to address the anonymous letter. The minutes of that meeting show that twelve of Respondent GBC's deacons attended, as well as Respondent Harris and a moderator from the Middlesex General Baptist Association.¹ The minutes reflect that, in a preliminary discussion, Deacon Leon Sumners stated that "during his service as Chairman of the Deacon Ministry ... he had prayed over the complaints he had received and elected not to act on them." The minutes reflect that Deacon Tard distributed copies of the anonymous letter and read the letter aloud. He then asked Respondent Harris if he wanted to respond to the letter, and Harris refuted everything. Respondent Harris then stated that his refutation of the allegations absolved Deacon Tard, Deacon Riggins and the church of any liability and "he was on his own." Deacon Tard then advised Respondent Harris that, as Chairman of the GBC Deacon Ministry, he considered the matter closed.

¹Respondent Harris had also invited his wife and Complainant, but at Deacon Tard's suggestion, they left before the crux of the discussion commenced.

The Division interviewed Mr. Tard, former Chair of Deacons, who explained that he was a member of Respondent GBC for forty-one years, but he and his wife left the church in 2006. He stated that he could no longer remain a member and allow Respondent Harris to continue his inappropriate sexual activity. Mr. Tard acknowledged that he had received the anonymous letter complaining about Respondent Harris's sexual relationships with women in the church, including Complainant. He said that he tried to resolve the matter by first talking to Respondent Harris alone, and then calling the March 19, 2005 meeting that included Harris and Respondent GBC's deacons. Mr. Tard stated that when the meeting started, Respondent Harris denied the allegations and had his deacons suggest that the anonymous letter was not true. As a result, Respondent GBC took no action against Respondent Harris. He added that as a result of the March 19, 2005 meeting, he knew that he could no longer be a member of Respondent GBC.

Mr. Tard stated that he spoke with Complainant about the letter, and during their conversation, he never asked Complainant if she had a relationship with Respondent Harris, nor did she volunteer any information regarding the matter. He stated that Complainant did inform him that she was being treated differently by Respondent Harris after Respondent received the letter.

The Division also interviewed Deacon Shurman Riggins, former GBC member who was Chair of Respondent GBC's Trustee Board from February 2002 to February 2007. Mr. Riggins acknowledged that he received the anonymous letter in 2005, and stated that he tried to get other deacons involved to address the problem, but none of the deacons except Elijah Tard wanted to deal with the problem.

Mr. Riggins stated that when he first came to the church in 1999, he heard from the Assistant Pastor, Reverend Brooks, about sexual harassment complaints against Respondent Harris by some of the women in the church. He explained that he tried to get other members involved to bring Respondent Harris before the church board, but they would not get involved. Mr. Riggins said that, in 2004 and 2005, he approached Respondent Harris about allegations of sexual harassment and sexual relationships with female churchmembers, and he denied all of the allegations.

Mr. Riggins also stated that, after receiving Complainant's March 2008 memos, Respondent Harris wanted him to reprimand or terminate Complainant. Mr. Riggins told Harris that he could not do so because he did not have a valid reason, and Harris wanted him to make up a reason to get rid of her. Mr. Riggins noted that Complainant was a very good worker, that she put in extra hours and would take work home.

In an interview with the Division, Respondent GBC's Chairman of Deacons, Ed Williams, acknowledged that he received a copy of the anonymous letter complaining about Respondent Harris having inappropriate sexual relations with female churchmembers, including Complainant. He stated that he also received a copy of Complainant's March 2008 memo, and he advised Respondent Harris to seek legal counsel because he was not in a position to investigate the matter.

The Division also interviewed Respondent GBC's Assistant Pastor, Reverend Reid Brooks. Mr. Brooks stated that he was not involved in the termination of Complainant's employment. He added that many rumors have been circulating for years about Respondent Harris's sexual harassment of women in the church, particularly Ms. [REDACTED].

Davis v. Galilee Baptist Church and John H. Harris

Docket No. EL11WB-53908

Page 6

The Division interviewed [REDACTED], who was formerly employed by Respondent GBC in 1990-1991 as Respondent Harris's secretary, and was also a former church member. In an affidavit submitted to the Division, Ms. [REDACTED] stated that beginning in 2003, Complainant told her that Respondent Harris was trying to force himself on her, and that after she refused to have sex with him, he began retaliating against her. Ms. [REDACTED] stated that when she heard what [REDACTED] was going through, she knew it was true because she had also been sexually harassed by Harris. She stated that Respondent Harris made sexual advances toward her while she was working for him, and he tried to kiss her several times, but she always refused him. She stated that he also made comments about her bra size, and on one occasion, he told her that he wished he could have been watching her in the ladies room. She stated that she could no longer tolerate his sexual advances and unwelcome touching, so she quit her job and also left the church. Ms. [REDACTED] stated that Deacon Elijah Tard, who has since left the church, told her that Respondent Harris wanted him to fire her, and Tard told Harris that she was a good employee and there were no grounds for terminating her.

The Division also interviewed [REDACTED], former member of Respondent GBC, who stated that Respondent Harris sexually harassed her when she sought counseling from him. Ms. [REDACTED] explained that she was having a problem dealing with relationships because she had been molested as a child. She stated that when she sought counseling from Respondent Harris in May 1995, the first thing he said to her was "I am going to be your lover, and your everything." He also told her that she did not need anyone else in her life, that she was going to be his sex partner, and that she was going to do things for him that his wife could not do. Ms. [REDACTED] told him that she was not going to have sex with him, and in response, he threatened her, saying that if she talked to anyone about him, "he would make her life a living hell." She left his office crying, and she talked about the incident with Respondent GBC's Deacon Sumners. According to Ms. [REDACTED], Respondent Harris called her to a meeting at his home in May 1995, with Respondent GBC's Deacons Quenton Patterson (now deceased) and Samuel Thomas (moved out of state). At the meeting, Respondent Harris claimed she had taken what he said out of context and asked her to change her statement. When Ms. [REDACTED] refused to change her statement, Respondent Harris grabbed her shoulders and she pushed him back and ran out of his house, and she never went back to the church again. She stated that, immediately after this incident, she was so upset that she considered taking an overdose of pills, but a friend intervened.

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 of her refusal to consent to a sexual relationship with Respondent Harris, and her report of the sexual harassment to Respondent GBC. 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. As Respondent Harris was Complainant's supervisor, Respondent GBC is liable for Harris's unlawful conduct.

The investigation also disclosed that Respondent GBC knew or should have known of Respondent Harris's sexual harassment, in part because other women had reported sexual harassment by Respondent Harris, and because Complainant, who was Respondent Harris's subordinate employee, was named in an anonymous letter citing Respondent's inappropriate sexual activities. The investigation revealed that Respondent GBC's deacons and officers were aware of the allegations in that letter, as well as earlier reports of sexual harassment, yet they failed to properly investigate the allegations or take prompt effective remedial action.

The evidence supports a reasonable suspicion that Respondent Harris negatively altered Complainant's working conditions because she rejected his advances. The investigation also disclosed that after she complained about the sexual harassment, Respondents took adverse action against her and discharged her. The investigation disclosed sufficient evidence to support a reasonable suspicion that the changes in her working conditions and her discharge were, at least in part, a reprisal for her sexual harassment complaint.

Despite Respondent's documentation regarding purported performance deficiencies, the Division's investigation disclosed sufficient evidence to support a reasonable suspicion that Complainant's report of sexual harassment was a determinative factor in Respondents' adverse action against Complainant, including her discharge. Pending investigation of Complainant's allegations, Respondent GBC completely changed Complainant's duties and modified her working conditions, while making little or no change in Respondent Harris's duties. The timing of Complainant's discharge, after a long tenure with Respondents, coupled with Deacon Riggins' statement that Respondent Harris tried to contrive reasons for reprimanding or discharging Complainant, are additional evidence that her complaint played a role in her discharge.

The investigation further disclosed sufficient evidence to support a reasonable suspicion that Respondent Harris can be held individually liable for his own conduct in sexually harassing Complainant, and in retaliating against her for rejecting his sexual advances.

FINDING OF PROBABLE CAUSE:

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

09/21/09
Date


Chinh Q. Le, Director
Division on Civil Rights