STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EJ011B-67572

[redacted],	)
	)
Complainant,	)
	)
v.	)
	)
Professional Touch Dry Cleaning & Apparel Repairs, Inc.[1],	)
	)
Respondent.	

Administrative Action
FINDING OF PROBABLE CAUSE

On July 8, 2019, [redacted] (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR), alleging that Professional Touch Dry Cleaning & Apparel Repairs, Inc. (Respondent) subjected her to a hostile work environment based on her sexual orientation in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent is a dry cleaning business located in Bayonne, New Jersey. In September 2017, Respondent's owner, Mario Rivellini, hired Complainant as a counter employee. In this position, she was responsible for providing customer service, tagging clothes, bagging items, and handling transactions. Complainant alleged she was subjected to a hostile work environment during her employment because of her sexual orientation. Complainant told DCR she is lesbian.[2]

In the verified complaint, Complainant alleged that throughout her employment, Rivellini made discriminatory comments about her sexual orientation in front of employees and customers. Specifically, she alleged that he routinely told people with whom he came in contact that she was

[1] Respondent was identified as "Professional Touch Cleaners" in the verified complaint. The complaint is amended to reflect Respondent's proper corporate name.

[2] Complainant had previously worked for Respondent for a period between 2010 and 2016, and voluntarily left her employment in 2016 for reasons unrelated to this matter. Complainant told DCR that Respondent's discriminatory conduct toward her became more pronounced after she was rehired in 2017 and that she was unaware during her first round of employment that Respondent was disclosing her sexual orientation to customers and co-workers.

gay, directed employees not to relate information about their personal lives to her because she is a lesbian, and referred to Complainant as a "fucking lesbian" and said he did not want these "fucking gays here."

In its response to the complaint, Respondent denied the allegations that it subjected Complainant to a hostile work environment because of her sexual orientation. In its position statement, Respondent denied that Rivellini ever made any of the comments alleged by Complainant. Respondent also noted that Complainant was open about her sexual orientation and freely engaged in discussions with co-workers and customers about her partner and family life. Respondent further alleged in its position statement that even if certain comments regarding Complainant's sexual orientation were made, they failed to rise to the severe or pervasive level required to be actionable under the LAD.

In an interview with DCR, Complainant said Rivellini told customers and co-workers that she is lesbian on a weekly basis, and told others not to relate information to her because she is lesbian approximately three to four times. She told DCR that Rivellini never made any of these comments in front of her but that customers and co-workers would tell her what he had said. Complainant told DCR that she confronted Rivellini about these reports and asked him to stop. Complainant told DCR that when she confronted him, Rivellini denied having made the comments.

Complainant told DCR that Rivellini referred to others as "fucking lesbian" or "fucking gays" two or three times when discussing with her customers who were members of the LGBTQ community. Complainant denied being open about her sexual orientation with customers or co-workers. She said she only discussed the subject when others raised it with her after they said they heard it from Rivellini. Complainant told DCR that she never identified herself at work as lesbian, but that Respondent simply "assumed" it.

DCR interviewed counter employee [redacted], who said she heard Rivellini say Complainant was a lesbian on at least two occasions. [redacted] said once when she complimented how helpful Complainant was to her, Rivellini responded by saying that perhaps Complainant liked her because she is a lesbian. DCR also interviewed former employee [redacted], who said she witnessed Rivellini tell others a couple of times that Complainant was gay. [redacted] also said that when Rivellini he told her that Complainant was gay, he made a negative facial expression which she inferred as disgust. DCR interviewed customer [redacted], who said that Rivellini told her that Complainant is a lesbian. Customer [redacted] told DCR that Rivellini mocked Complainant behind her back by sticking his tongue out and mimicking oral sex.[3] None of these witnesses recall hearing Rivellini say "fucking lesbian" or "fucking gay." All of the witnesses interviewed by DCR said that Complainant did not discuss her personal life or sexual orientation prior to Rivellini first revealing her sexual orientation.[4]

Complainant told DCR that because of the work environment she searched for other employment and stopped working for Respondent in September 2019.

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[3] [redacted] told DCR that Rivellini's conduct he witnessed happened in 2012 or 2013. While this is beyond the statute of limitations, it is noted here to show Rivellini's attitude towards Complainant's sexual orientation.

[4] Complainant identified other witnesses concerning Rivellini's conduct but DCR was unable to make contact with these individuals to conduct interviews.

DCR reached out to Rivellini to conduct a follow-up interview concerning the information obtained during the investigation, but he did not respond to the requests.[5]

ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is 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.*, 498 U.S. 1073. 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.

The LAD prohibits discrimination on the basis of membership in a protected class, including sexual orientation. In enacting the LAD, the Legislature declared "that practices of discrimination against any of its inhabitants, because of [membership in a protected class], are a matter of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundations of a free democratic State.. . . " N.J.S.A. §10:5-3.

Under the LAD, it is unlawful to fire, refuse to hire, or otherwise discriminate in the "terms, conditions or privileges of employment" based on sexual orientation. N.J.S.A. 10:5-12(a). Creation of a hostile working environment based on sexual orientation is a form of discrimination prohibited by the LAD. N.J.S.A. 10:5-12(a); *Lehmann v. Toys 'R' Us, Inc*., 132 N.J. 587, 603 (1993); *Kwiatkowski v. Merrill Lynch*, 2008 WL 3875417 (App. Div. Aug. 13, 2008), 104 Fair Empl. Prac. Cas (BNA) 279. To establish a hostile working environment based on sexual orientation, a complainant must show that the complained-of conduct (1) would not have occurred but for the employee's sexual orientation; and it was (2) severe or pervasive enough to make a (3) reasonable person of the complainant's sexual orientation believe that (4) the conditions of employment are altered and the working environment is hostile or abusive. *Lehmann v. Toys 'R' Us, Inc*., 132 N.J. 587, 603-04 (1993); *Shepherd v. Hunterdon Dev. Ctr.*, 174 N.J. 1, 24 (2002).

While a hostile environment can arise out of "a series of separate acts that collectively constitute one 'unlawful employment practice,'" even a single utterance of an egregious slur can

[5] Respondent had been represented by counsel during DCR's investigation. Counsel subsequently withdrew his appearance when, according to counsel, Rivellini stopped responding to him.

be sufficiently severe to establish an actionable hostile work environment claim. *Taylor v. Metzger*, 152 N.J. 490 (1998). Further, the fact that the remark is made by a supervisor, or someone else with authority over the employee, "greatly magnifies the gravity of the comment." Id. at 503, 504; *Kwiatkowski v. Merrill Lynch*, 2008 WL 3875417 (App. Div. Aug. 13, 2008), 104 Fair Empl. Prac.Cas (BNA) 279 (single anti-gay slur by employee's supervisor may create a hostile work environment). Here, the offensive remarks were made by Respondent's owner, who held the ultimate employment authority over Complainant. In such cases, by engaging in such conduct an owner does more than merely allow a hostile environment, he perpetuates it. *Taylor*, 152 N.J. at 504.

The investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complaint based on her sexual orientation by creating a hostile environment. Four witnesses told DCR that they learned of Complainant's sexual orientation through Rivellini's unsolicited comments and derogatory remarks. All four witnesses denied Respondent's assertion that Complainant was open about her sexual orientation or that she freely engaged in discussions with co-workers and customers about her partner and family life. In addition, witnesses interviewed by DCR corroborated Complainant's assertion that Rivellini regularly discussed and disclosed Complainant's sexual orientation and made demeaning and derogatory comments about the fact that she is gay.

Also affecting the nature of Complainant's working environment were statements Complainant said were directed to others in her presence, including Rivellini referring to other people as "fucking lesbian" or "fucking gay." The complainant need not be the direct target of harassing conduct for it to fall within the LAD's ambit. *Lehmann*, 132 N.J. at 611. The Court in Lehmann stated that "the plaintiff need not personally have been the target of each or any instance of offensive or harassing conduct. Evidence of sexual harassment directed at other women is relevant to both the character of the work environment and its effects on the complainant." *Ibid*. These comments directed at others by Rivellini, if proven to have taken place, contributed to Complainant's work environment.

At this threshold stage in the process, there is sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." *Frank, supra*, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant's allegations of sexual orientation discrimination.

Date: December 8, 2020

Rachel Wainer Apter, Director
NJ Division on Civil Rights