

Complainant (Massachusetts)

v.

Respondent (Saco)

I. Complainant's Charge:

Complainant alleges that Owner sexually harassed her by grabbing her buttocks and threatening her, forcing her to quit her job at Respondent for fear of further harassment.

II. Respondent's Answer:

Owner denies discrimination and alleges that the incident of alleged sexual harassment was an accident.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: July 3, 2007.¹
- 2) Date complaint filed with the Maine Human Rights Commission: November 28, 2007.
- 3) Respondent employs 2 - 9 people and is subject to the Maine Human Rights Act as well as state and federal employment regulations.
- 4) No party is represented.
- 5) Investigative methods used: A thorough review of the written materials submitted by the parties, phone interviews with both Complainant and Respondent, witness interviews, requests for further information.

IV. Development of Facts:

- 1) The parties and issues in this case are as follows:
 - a) Complainant worked at Respondent from November 24, 2003 to July 3, 2007.

¹ Although Complainant alleged ongoing harassment on her original Charge, she later described the other acts as merely crude (such as urinating in front of her, etc.) but not amounting to sexual harassment.

- b) Owner is the owner of Respondent and was Complainant's supervisor during her employment.
 - c) KC is Complainant's son and was also employed at Respondent.
 - d) KG was an employee at Respondent and worked with Complainant.
 - e) Detective X is a Detective at the SPD, the police department where Complainant filed her charge against Owner. He was responsible for investigating the charge.
 - f) Owner denies sexually harassing Complainant, and alleges that Complainant misrepresented the incident to police. Complainant alleges that this claim is false and that she quit her job because of the severity of the incident.
- 2) Undisputed facts are as follows:
- a) On July 3, 2007 Complainant quit her job and filed a charge against Owner with the SPD. The charge was investigated and then forwarded to the District Attorney's office for review of charges.
- 3) Complainant provided the following:
- a) On July 3, 2007 she was in the facility's office to discuss her daily duties with Owner and to request her paycheck. She went to the refrigerator to get a drink and Owner came up behind her, placed his hand on her buttocks and muttered, "blow me." She ran out of the office and down the stairs. While she was running down the stairs he stated, "I could throw you down and rape you any time I want." She angrily began yelling and swearing at him as she ran out to her car. She yelled that she could not believe he would do that to her. KC was nearby and heard this aftermath of the incident. KC definitely would have heard her screaming.
 - b) She left work directly following the incident and never came back for fear of further harassment. That same day she filed a complaint about the incident with the police. She did not give Owner a formal resignation. She was escorted by the police to pick up her belongings but she did not speak to him.
 - c) Before the incident she was friends with Owner. Crude things he did would bother her, such as him urinating in the horse stalls in front of her, but these things did not constitute sexual harassment. She never came on to him.
- 4) Witnesses provided the following:
- a) (KG – written statement) She was an employee of Respondent from October of 2004 to July of 2007. She noticed Owner had an "unhealthy obsession" with

Complainant and would make sexist and crude remarks about her. He stated things such as the fact that he was getting tired of "paying her without getting any loving," and "she thinks she's got a golden pussy and I'm going to just keep paying her bills without getting some loving in return." On July 3, 2007 Owner threatened to rape Complainant. She heard him yell it from the bottom of the stairs which is just below his office. She confronted Owner about this threat the next day and he said something to the effect of, "I can do anything to any woman I want to, that includes you." She left the premises and never returned, not even for the pay that was due to her.

- b) (KC) He worked at Respondent from 2004 – 2006. During his employment he witnessed Owner looking at young girls and discussing their body parts. (Young girls were present often because of a school program, or workers bringing their daughters, etc.) KC was 15 when he started there. While he was cleaning stalls sometimes Owner would urinate in a stall facing outward. This bothered him since there were young children around. He also caught Owner staring at Complainant's behind. Owner purchased a hot tub and would invite the girls in but not him or any other males. Owner also started a rumor that he and Complainant (his mother) worked on the farm.
- c) (Detective X) He investigated the charge filed by Complainant. At the conclusion of the investigation, the case was forwarded to the DA's office for review of charges. Cases that are unfounded are not forwarded on for review.

5) Respondent provided the following:

- a) Complainant's allegations are false. He also does not know why KG or KC would make these statements against him. He and Complainant were good friends and nothing more.
- b) The incident that Complainant complained about did not happen in that way. They were in his office and then "all of a sudden my hand was on her butt." She may have accidentally backed into his hand or purposely tried to back into it, but he did not put it there intentionally.
- c) Complainant would always throw herself at him. Other employees would vouch for this. However, none of these employees work for him anymore and he does not have their contact information.
- d) After the incident on July 3, 2007, KG came up to him drunk one night and tried to rub her breasts all over his back. She was "yelling about rape" and how he threatened to rape Complainant. He told KG this was untrue and admittedly said something to the effect of "If I did ever try to rape you girls, what would you do about it? You would never be able to stop me. I am the manager and you are small women." He regrets saying this but he was very angry at the time.

- e) Complainant never provided him with a resignation notice or told him that she quit. She was fired. He was interviewed by a police officer regarding the incident on July 3rd and was told that if there were any problems that he would be notified. He has not heard from the Detective, so he assumes nothing was found against him.

V. Analysis:

- 1) The Maine Human Rights Act requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Sexual Harassment – Hostile Work Environment

- 2) The Maine Human Rights Act makes it unlawful, “for any employer to . . . because of . . . sex . . . discriminate with respect to the terms, conditions or privileges of employment or any other matter directly or indirectly related to employment. . . .” 5 M.R.S.A. § 4572(1)(A).
- 3) The Maine Human Rights Commission Regulations provide, in part, that harassment on the basis of sex is a violation of Section 4572 of the Maine Human Rights Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature constitute sexual harassment when: . . .
 - such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Me. Hum. Rights Comm'n Reg. § 3.06(I) (1) (July 17, 1999).

- 4) “Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive working environment.” *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57. In determining whether an actionable hostile work environment claim exists, it is necessary to view “all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.” *Id.* (citations omitted). It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the workplace to become hostile or abusive. *Id.*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996). “The standard requires an objectively hostile or abusive environment--one that a reasonable person would find hostile or abusive--as well as the victim's subjective perception that the environment is abusive.” *Nadeau*, 675 A.2d at 976.

- 5) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st Cir. 1988). In some instances, Complainant may have the responsibility for telling the alleged harasser directly that his or her comments or conduct is unwelcome. In other instances, however, Complainant's consistent failure to respond to suggestive comments or gestures may be sufficient to communicate that the conduct is unwelcome. *Id.* Where Complainant never verbally rejects a supervisor's sexual advances, yet there is no contention or evidence that Complainant ever invited them, evidence that Complainant consistently demonstrated unalterable resistance to all sexual advances is enough to establish their unwelcomeness. *See Chamberlin v. 101 Realty, Inc.*, 915 F.2d 777, 784 (1990). Complainant may also be relieved of the responsibility for directly communicating unwelcomeness when she reasonably perceives that doing so may prompt the termination of her employment, especially when the sexual overtures are made by the owner of the business. *Id.*
- 6) It is undisputed that Complainant walked out on her job on July 3, 2007 after the alleged incident of sexual harassment. It is also undisputed that she filed a report with the police department that same day, and that the case was forwarded to the DA's office for review after investigation (meaning that the charges were not unfounded). These undisputed facts alone make it plausible that the incident occurred as Complainant alleges, and that she had no choice but to leave her job because of the severity of the act of harassment. Respondent's defense was that the incident was an accident and that, "all of a sudden my hand was on her butt." This is not being credited as it is implausible that Complainant would have walked out without notice due to an accident and even more implausible that she would file a police report on the matter which was found to have merit after investigation.
- 7) It is also undisputed that KG came up to Owner the day following the incident and confronted him about what had happened. Owner himself admits that KG came up to him, "yelling about rape." It is plausible that she was yelling about rape because of his threat to Complainant during the incident. Owner admitted that he responded to her by telling her that if he wanted to rape either of them, there is nothing they could do about it. This statement alone makes it more plausible that Owner did verbally threaten and physically harass Complainant on July 3rd as she alleges. Finally, both KC and KG made statements showing Owner's tendencies to make sexually harassing statements (see witness statements).
- 8) Physically touching Complainant's buttocks and threatening her is severe enough to be considered, "physically threatening or humiliating" harassment and enough to create a work environment that a "reasonable person would find hostile or abusive" (see above). Furthermore, Complainant clearly communicated unwelcomeness of the act of harassment by screaming and swearing at him, and walking off the job immediately.

Constructive Discharge

- 9) It is a violation of the Maine Human Rights Act if, although not formally terminated, an employee has no reasonable alternative to resignation because of intolerable working conditions. *See King v. Bangor Federal Credit Union*, 611 A.2d 80, 82 (Me. 1992). "The test is whether a reasonable person facing such unpleasant conditions would feel compelled to resign." *Id.* In addition, "an employee can be constructively discharged only if the underlying working conditions were themselves unlawful (i.e., discriminatory in some fashion)." *Sweeney v. West*, 149 F.3d 550, 557-558 (7th Cir. 1998).
- 10) As stated above, it is being credited that Owner sexually harassed Complainant by grabbing her buttocks and making illegal and inappropriate statements toward her. A "reasonable person" would also quit her job after facing such intolerable conditions.

VI. Recommendation:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 1) There are **Reasonable Grounds** to believe that Owner d/b/a Respondent sexually harassed Complainant and constructively discharged her from employment.
- 2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

Patricia E. Ryan, Executive Director

Angela Tizón, Investigator