

**STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EV19WB65423**

██████████,
)
)
Complainant,)
)
v.)
)
Premium Marketing Group,)
Inc., dba Premium Marketing)
and Nady Abraham,)
Individually,)
)
Respondents.)

**Administrative Action
FINDING OF PROBABLE CAUSE**

On June 29, 2015, Union County resident ██████████ (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, Nady Abraham and Premium Marketing Group (collectively Respondents), discriminated against her by creating a hostile environment because of her religion (Muslim) and her sex, and discharged her in retaliation for complaining about a sexually hostile work environment, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-12 (a) and (d).¹ DCR’s investigation found as follows.

Summary of the Investigation

At the time the verified complaint was filed, Respondent Premium Marketing was the trade name of Premium Marketing Group, Inc., a business located in Union County that provided graduation products, school photography and printing services to schools throughout New Jersey, New York and Connecticut. Premium Marketing Group, Inc. was owned by Nady Abraham. During the course of DCR’s investigation, Abraham sold the business. Following the sale, the business name was changed to Premium One Stop Grad, and the company is now located in Mountainside.¹ In March 2015, Respondent hired Complainant as its office manager. Complainant asserts that she was subjected to a hostile work environment on the basis of religion and sex at the hands of Respondent’s owner, Abraham, throughout her employment and was then fired in retaliation for complaining of same.

¹ On a November 25, 2019, DCR issued a Partial Finding of Probable Cause against Respondents for similar allegations in the case of L.S. v. Premium Marketing Group, dba Premium Marketing and Nady Abraham, (DCR Docket No. EV19WB-65422).

¹ DCR’s efforts to obtain information about the sale of the business were unsuccessful. It is nevertheless clear that the discriminatory conduct at issue emanated from Abraham, who was the owner of Premium Marketing Group, Inc. at the time the conduct occurred. Abraham was served with the verified complaint and participated in the investigation. Based on what was learned during the investigation, the verified complaint is amended to reflect who is believed to be the responsible parties for the alleged discriminatory conduct. See N.J.A.C. 13:4-2.9.

a. Hostile Work Environment (Religion)

Complainant alleged that on March 14, 2015, shortly after she was hired, Abraham subjected her to hostile work environment based on her religion. Specifically, Complainant alleged that, when Abraham introduced Complainant to a temporary employee, he stated, “This is [REDACTED], you can’t trust her because she is Muslim and works with ISIS.” Complainant said she told Abraham of her concerns with his derogatory comment and when Abraham said he thought it was funny, she told him she found the comment highly offensive and degrading.

DCR interviewed Complainant’s former co-worker [REDACTED]. [REDACTED] said Abraham had an “awkward” sense of humor. [REDACTED] told DCR that he witnessed Abraham publicly joke about Complainant’s religion on another occasion, when he said in Complainant’s presence: “Me and my sister here will come and get you – we’re in ISIS.”

During an interview with DCR, Abraham denied making these comments and said he had no religious bias towards Complainant. Abraham told DCR that though he was originally from Egypt, he has lived and worked much of his life around a lot of people who, like Complainant, are from a “Muslim background,” and that he was not prejudiced “against any Black people or Muslims.” “[Complainant] knew we were not prejudice of Muslim people,” [sic], Abraham told DCR, “We got out and eat with Muslims, I am not religious, but I have no problems with Muslims.”

b. Hostile Work Environment (Sexual Harassment)

Complainant further alleged that Abraham sexually harassed her throughout her employment. Complainant told DCR that Abraham’s harassing behavior began in or around April 2015, shortly after she was hired. According to Complainant, sexual harassment and demeaning remarks occurred “all the time.”

Specifically, Complainant said Abraham told her to “always wear shorts and skirts to work” because she was “really hot.” Complainant said after this initial comment she began wearing only pants and jeans to work regardless of the temperature outside in the hopes of avoiding Abraham’s comments about her appearance. Complainant also told DCR that Abraham would say “Look at that nice ass” when she walked in front of him. Complainant said Abraham would also tell her that: “I would love to lay you down on a carpet and make love to you.” Complainant repeatedly objected to Abraham’s advances and comments, but he would brush off her objections, telling her it was all in good fun. “Everything was a joke and hilarious to him,” Complainant recalled.

[REDACTED] told DCR that he witnessed Abraham making comments about Complainant, including “Damn you have a nice ass.” [REDACTED] said he came from a corporate background so he knew the comment, along with others he heard Abraham’s make, were “out of line.” [REDACTED] also told DCR that when he heard this comment, he was walking directly in front of Abraham and heard “exactly” what Abraham said. [REDACTED] said that after making this statement Abraham stopped and turned around in the direction of Complainant. [REDACTED] told DCR that at that point he witnessed Complainant shake her head and walk in the other direction. [REDACTED] told DCR that Abraham had certain taste in women and that he harassed Complainant because she “fit the bill:” “He only liked very, very pretty girls like [REDACTED].” [REDACTED] told DCR that he also witnessed Abraham make

sexually inappropriate statements to other female employees.

DCR also interviewed Complainant's former manager, [REDACTED], along with [REDACTED], purchased the business from Abraham in 2015 and were serving as its co-presidents when DCR interviewed them in October of 2016. [REDACTED] said that he could not recall witnessing Abraham make inappropriate comments to Complainant but he witnessed Abraham making sexually inappropriate statements to other female employees. [REDACTED] characterized Abraham as "inappropriate" when it came to female employees. Both [REDACTED] and [REDACTED] stated they did not confront Abraham about his sexually inappropriate conduct because he was their boss. They both told DCR that his mistreatment of female workers was "constant."

During an interview with DCR, Abraham denied ever sexually harassing Complainant, and specifically denied Complainant's allegation that he made sexually inappropriate comments about her clothes, her body, and wanting to make love to her. He also stated that she never complained to him. Abraham said his ex-wife, who was the office manager, never reported any complaints about him from Complainant.

c. Retaliation

Complainant alleges that on June 22, 2015, her final day of employment, Abraham asked her, "Oh, can I touch that soft ass of yours?" Complainant told DCR that she told Abraham that his statement was inappropriate. Later that day, Abraham asked Complainant about documents she had been working on prior to her recent sick leave. Complainant said Abraham had told her not to touch documents that were left on her desk. Complainant said she had been on leave due to illness, but found her co-workers had disturbed papers on her desk. Her co-workers moving things on her desk upset Complainant.

[REDACTED] told DCR that he saw that Complainant was upset that day and that she told him she did not appreciate her desk being in disarray. He directed Complainant to Abraham's office. Similarly, [REDACTED] told DCR that he observed Complainant searching for something that Abraham had requested on her desk and that she was upset that her desk was no longer neat. He said she had three stacks of papers, all of which she handed to Abraham. He said Abraham asked why the stacks of papers had been moved and then he returned them to Complainant's desk in the same three stacks made by Complainant's co-workers.

Complainant said Abraham told her not to touch any documents on the desk and questioned why she had done so. Complainant denied doing anything to documents. Abraham then yelled at her and Complainant told him: "I don't wish to be spoken to this way." Abraham then ordered Complainant to leave work in the middle of her shift and to go home.

While Abraham told DCR that he told Complainant to return to work the next day, Complainant recalled that Abraham told her to go home and not come back because she was fired. Complainant believed the entire incident was in retaliation for her complaint earlier that day about Abraham's sexually harassing behavior.

Complainant told DCR that Abraham knew that, in addition to sexually harassing her, she had seen him sexually harass other women. Complainant also believed that someone had filed a complaint filed against him in the past. Complainant told DCR that she believed she was terminated because Respondent feared that she too would report his harassing conduct towards

her.

Complainant said that Respondent's wife, ██████ who served as office administrator, contacted her two weeks after Respondent told her to leave. Complainant said ██████ had instructed Abraham to give Complainant back her job. She also said Abraham himself had texted her to return to work and get her job back. Complainant did not reply to his text. Complainant said she informed ██████ and Abraham that she had no intention of returning to work and that she was instead going to apply for unemployment benefits. She said ██████ offered to write the state Department of Labor to ensure she would receive the benefits to which she was entitled.

Complainant told DCR that Abraham was "very hot headed," and that he often had confrontations where he fired people, only to later invite them to return. She said Abraham only invited her to return because he was due to retire soon and would no longer be running the business. Complainant said she filed the instant complaint to prevent female employees from having to experience something similar in the future.

During an interview with DCR, Abraham denied he fired Complainant in retaliation for complaining about sexual harassment, and told DCR he had told her to return the next day. He said he liked Complainant's work and wanted her to return after their June 22, 2015 disagreement. He said Complainant threatened to "pay him back" for firing her.

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*.

a. Hostile Work Environment Based on Religion and Sex

(1) Religious Hostile Environment

A hostile work environment based on religion is a form of discrimination proscribed by the LAD. See Cutler v. Dorn, 196 N.J. 419 (2008) ("Antagonistic, degrading, or demeaning conduct in the workplace that is directed at or about one's religious faith, or ancestry, can be discrimination

and can amount to an unlawful hostile environment.”) Complainant told DCR that Abraham made at least one comment regarding her being Muslim and accused her of being a member of ISIS as he introduced her to a co-worker. Moreover, the DCR investigation found that one other employee witnessed Abraham make a similar comment regarding Complainant’s affiliation with ISIS. While the DCR investigation found evidence of only two such comments made by Abraham, the Director finds the content and context of these two comments sufficiently severe to meet the “severe” prong of the severe or pervasive hostile work environment standard and credit Complainant’s allegation that Abraham subjected her to a religious-based hostile environment. *Id.* at 438-39 (2008)(“religio[us]-based hostile work environment claim can arise from the corrosive effect that religious taunts, belittling derogatory comments, and insults about one's religious beliefs can have when made in the workplace” especially when such comments are made by supervisors). The New Jersey Supreme Court has recognized that when the individual engaging in the harassing conduct is also the employee’s supervisor and the company’s highest ranking official, as is the case here, the remarks “carr[y] with it the power and authority of the office” making the employee’s dilemma particularly “acute and insoluble” because she has “nowhere to turn.” *Taylor v. Metzger*, 152 N.J. 490, 503-505 (1998).

(2) Sexual Hostile Environment

A sexually hostile work environment is also a form of discrimination prohibited by the LAD. *Lehmann v. Toys’R’Us, Inc.*, 132 N.J. 587, 607 (1993). Here, DCR’s investigation found sufficient evidence to support a reasonable suspicion that Respondent subjected Complainant to a sexually hostile work environment. The DCR investigation found that Abraham, Complainant’s supervisor and owner of the company, subjected her to repeated, unwanted sexual harassment throughout her employment. Complainant’s assertions that Abraham constantly made comments about Complainant’s looks, attire, and body, and that he propositioned her on more than one occasion were corroborated by others and by the totality of circumstances presented here.

██████████ corroborated Complainant’s contention that Abraham made inappropriate and unwelcomed comments of a sexual nature, including comments about her body, her clothing, and her looks. ██████████ also corroborated Complainant’s assertion that Abraham’s harassment was constant throughout her employment. Moreover, both ██████████ and ██████████ told DCR that they witnessed Abraham sexually harass other women at work. And, as noted, DCR issued a Partial Finding of Probable Cause that Abraham had sexually harassed another female employee. See, footnote 2, above.

b. Aiding and Abetting

N.J.S.A. 10:5-12(e) makes it unlawful “[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.” A supervisor may be liable under this provision when he actively harasses a subordinate employee. *Mann v. Estate of Meyers*, 61 F.Supp.3d 508, 529-30 (D.C.N.J. 2014). Here, the alleged harasser was both the owner of the company and Complainant’s supervisor at the time of the complained of conduct. As such, Abraham had a duty to insure that Complainant’s work environment was free of discrimination based on religion and/or sex. Liability for aiding and abetting unlawful conduct lies where the supervisor fails to fulfill his or her affirmative obligation to insure a

workplace free of discrimination as well as where the supervisor is the harasser. Rowan v. Hartford Plaza Ltd, LP, 2013 N.J. Super. Unpub. LEXIS 766 at *19 (App. Div. April 5, 2013)(finding that, under the LAD, a supervisor can be individually liable for his own affirmative LAD violations.)

Here, the investigation found sufficient evidence to support a reasonable suspicion that Abraham subjected Complainant to a hostile work environment based on her religion and sex.

c. Reprisal

The LAD prohibits an employer from taking reprisals against an employee for engaging in LAD-protected activity. N.J.S.A. 10:5-12(d). To state a claim for reprisal under the LAD, Complainant must show that she engaged in an LAD-protected activity, was thereafter subjected to a retaliatory action, and that there was a causal connection between the two.

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent terminated Complainant in retaliation for her objections to and complaints about a hostile work environment. The evidence showed that Abraham terminated Complainant after she had complained about his unwelcome sexual harassment earlier that day. The temporal proximity between Complainant’s opposition to Abraham’s conduct and Abraham’s order that she leave the workplace on the same day would warrant a cautious person to believe that Abraham terminated her employment as a result of her opposition to his sexually harassing conduct. For purposes of establishing an LAD retaliation claim, “temporal proximity can serve as circumstantial evidence sufficient to raise the inference that [the plaintiff’s] protected activity was the likely reason for the adverse action.” Jackson v. Trump Entm’t Resorts, Inc., 149 F. Supp. 3d 502, 509 (2015).

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 religious and sexual hostile work environment, as well as her allegations that Abraham aided and abetted the hostile environment, and discharged Complainant in retaliation for engaging in LAD-protected activity.



Rachel Wainer Apter, Director
NJ Division on Civil Rights

Date: March 30, 2020