

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**
on the Complaint of

CAROLAN L. HENNINGE,

Complainant,

v.

**YOUNG LEGENDS, LLC; DALE BLACKWOOD,
INDIVIDUALLY, AS AIDER AND ABETTOR, AND
AS CHIEF EXECUTIVE OFFICER OF YOUNG
LEGENDS, LLC; AND MELISSA ALMONOR,
INDIVIDUALLY AND AS CHIEF EXECUTIVE
OFFICER OF YOUNG LEGENDS, LLC.,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10115437

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on January 30, 2008, by Christine Marbach Kellett, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE KUMIKI GIBSON, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”), WITH THE FOLLOWING AMENDMENTS:

- Given the horrendous conduct in this case and the mental anguish that it caused, the last paragraph of the Opinion and Decision Section of the Recommended Order and the

award amount contained therein must be and hereby are STICKEN and replaced with the following paragraph.

- In addition to an award of lost wages, this case cries out for an additional award for the pain and suffering experienced by Complainant as a result of Respondents' unconscionable and discriminatory conduct. The evidence establishes, for example, that Respondents knew of Respondent Blackwood's sexually harassing conduct toward at least one other female employee prior to his rape of Complainant and did nothing; that Respondent Blackwood raped Complainant, a high school student, after she attempted (unsuccessfully) to fight him off; that Complainant reported the rape to her friend and later to the police; that Respondent Blackwood continued his harassing and threatening behavior toward Complainant after he raped her; and that Respondents terminated Complainant after she refused to be alone with Respondent Blackwood at his home. The evidence also establishes that Respondents' conduct caused Complainant, a mere high school girl, to feel scared, abused, violated, and ashamed; forced her to need to seek and to seek testing for transmittable diseases; caused her to stop trusting people; and forced her to need to seek and to seek counseling. (Complainant's Exhibit 3; Tr. 25-29, 33-35, 37, 46-47, 84-87, 90, 102-07) Given the extreme pain and suffering that Complainant experienced as a result of Respondents' horrendous and unlawful conduct, Complainant is entitled to an award of \$500,000 for emotional distress. *See New York City Transit Auth. v. New York State Div. of Human Rights (Nash)*, 78 N.Y.2d 207, 573 N.Y.S.2d 49 (1991) (Commissioner's award of \$450,000 for mental anguish confirmed where Complainant was a victim of shocking abuse); *Kondracke v. Blue*, 277 A.D.2d 953, 716 N.Y.S.2d 533 (4th Dept. 2000)

(Commissioner's awards of \$400,000 and \$350,000 for mental anguish to two complainants confirmed where complainants were subjected to a hostile work environment throughout their employment); *Hempstead v. New York State Div. of Human Rights*, 233 A.D.2d 451, 649 N.Y.S.2d 942 (2d Dept. 1996) (Commissioner's award of \$500,000 for mental anguish to complainant Lyons confirmed as complainant was a victim of relentless sexual harassment). And, Respondents Dale Blackwood and Melissa Almonor shall be and hereby are liable, individually and jointly and severally, for the payment of this award. See *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 483 N.Y.S.2d 659 (1984).

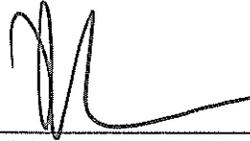
- In light of the foregoing, Paragraph 2 of the Order Section shall be and hereby is AMENDED so to omit \$25,000 and replace it with \$500,000, as the amount Respondents are ordered to pay Complainant, in addition to the award set forth in Paragraph 1 of the Order Section, within 60 days of the date of this Final Order (without any withholding or deductions).

In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts

business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED, this 21st day of March, 2008



KUMIKI GIBSON
COMMISSIONER

TO:

Complainant

Carolan L. Henninge
58 Cortland Street
Norwich, NY 13815

Respondent

Young Legends, LLC
Attn: d/b/a Quizno's
5631 State Highway 12
Norwich, NY 13815

Respondent

Dale Blackwood
11 Elfred Street
Johnson City, NY 13790

Respondent

Melissa Almonor
5631 State Highway 12
Norwich, New York 13815

Hon. Andrew Cuomo, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights

Pamela Chen

Deputy Commissioner for Enforcement

Caroline J. Downey

General Counsel

Sharon J. Field

Associate Attorney

Sara Toll East

Chief, Litigation and Appeals

Peter G. Buchenholz

Adjudication Counsel

Matthew Menes

Adjudication Counsel

Christine Marbach Kellett

ALJ

Anton Antomattei

Senior Attorney

TO:

Complainant

Carolann L. Hennings
58 Cortland Street
Norwich, NY 13815

Respondent

Young Legends, LLC
Attn: d/b/a Quizno's
5631 State Highway 12
Norwich, NY 13815

Respondent

Dale Blackwood
11 Elfred Street
Johnson City, NY 13790

Respondent

Dale Blackwood
Chief Executive Officer
Young Legends, LLC
d/b/a Quizno's
5631 State Highway 12
Norwich, New York 13815

Respondent

Melissa Almonor
Chief Executive Officer
Young Legends, LLC
d/b/a Quizno's
5631 State Highway 12
Norwich, New York 13815

Respondent

Melissa Almonor
5631 State Highway 12
Norwich, New York 13815

State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458

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EXECUTIVE OFFICER OF YOUNG
LEGENDS, LLC.,**

Respondents.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. 10115437

SUMMARY

Complainant charged Respondents with unlawful discriminatory conduct in employment (both hostile work environment and quid pro quo sexual harassment). Respondents did not deny the charges. Complainant met her burden of proof and is entitled to damages.

PROCEEDINGS IN THE CASE

On January 2, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

On November 7, 2007, the Division served an amendment of the complaint on the respondents including individual Respondents Dale Blackwood (“Blackwood”) and Melissa Almonor (“Almonor”), and on the Young Legends, LLC d/b/a Quiznos (ALJ Exhibits 7,8; Complainant’s Exh. 1) The parties acknowledged receipt of the notice of hearing with the amendment. (ALJ Exhibits 7, 8; Tr. 15)

After due notice, the case came on for hearing before Christine Marbach Kellett, an Administrative Law Judge (“ALJ”) of the Division. The public hearing was held on December 21, 2007.

Complainant and Respondents Blackwood and Almonor appeared at the hearing. The Division was represented by Anton Antomattei. Respondents appeared pro se.

FINDINGS OF FACT

1. Complainant charged Respondents with violating the Human Rights Law section 296.1(a) when they subjected her to discrimination based upon sex (both hostile work environment and quid pro quo sexual harassment). (ALJ Exh. 1)

2. Respondents Young Legends, LLC and Blackwood denied the charges in documents denominated Response to the Complaint and Amended Response to the Complaint (Respondents’ Exhibit 11; Tr. 8-11, 134) Blackwood and Almonor appeared in person at the public hearing and presented evidence in their defense. (Respondents’ Exhibits 1-11; Tr. 8-11)

3. Respondent Young Legends, LLC is a New York Corporation, currently in active status with the office of the Secretary of State. (Tr. 8-11)

4. Blackwood and Almonor, the owners and/or officers of Young Legends, LLC., were also the day to day supervisors at the store. (ALJ Exhibit 7; Complainant's Exh. 4; Tr. 20-21)
5. Respondents operated a Quiznos franchise in Norwich, New York which is now closed. (Tr. 61-62, 122)
6. Complainant is a female, and at the time of the complaint was a senior in high school. (Respondents' Exh. 2; Tr.16)
7. Respondents hired Complainant on September 20, 2006, to begin work on September 27, 2006, in their Quiznos fast food shop opening in Norwich, New York. (Tr. 17-18).
8. Complainant spent the first two weeks of her employment getting the store ready to open. (Tr. 18)
9. Both Blackwood and Almonor encouraged Complainant to learn every aspect of the operations in order to become a manager. (Tr. 21, 58-59, 95-96)
10. Complainant described Blackwood's treatment of the female employees as "touchy feely." (Tr. 21)
11. He would make inappropriate comments to the female workers regarding their dress, and would discuss personal matters with them. (Complainant's Exh. 4; Tr. 21-23)
12. At least one female employee, Amanda Collier ("Collier"), resigned in November 2006 telling Almonor in writing it was because of Blackwood's inappropriate conduct. (Complainant's Exh. 4)
13. Almonor acknowledged receiving Collier's letter. (Tr. 121)
14. Blackwood would take Complainant into the back room where they would talk for hours, mostly about Complainant's personal history, goals, ambitions and self-image. (Tr. 22-23)

15. Complainant told her mother that she was impressed by Almonor and Blackwood's many other business interests and entrepreneurship, including music and photography. (Tr. 95)

16. Blackwood encouraged Complainant to get a cell phone so he could contact her. (Tr. 72, 100-01)

17. Blackwood also kept asking Complainant to go to his apartment to see his photographs. (Tr. 23-24)

18. Complainant went to Blackwood's apartment on October 29, 2006. (Tr. 24-25)

19. There Blackwood produced a brown fur vest, lacy underwear, and a thong for Complainant to wear. (Tr. 25-26)

20. Blackwood told Complainant he had purchased these items particularly for her. (Tr. 25-26)

21. Complainant changed into these items standing next to the refrigerator; thereafter Blackwood took some posed photos of Complainant. (Tr. 25-26)

22. Once the photography session was over, and Complainant had begun to dress in her own clothes, Blackwood forced himself on Complainant, including sexual penetration. (Tr. 27)

23. Complainant vividly described how she tried to refuse Blackwood, fought with him, and told him to stop as "this is not right, you're my boss," but Blackwood told Complainant "Shh, shh, don't worry about it." (Tr. 27)

24. Blackwood told Complainant not to tell anyone what had happened. (Tr. 28)

25. Complainant's general demeanor was hesitant, soft spoken and reflected naiveté. The manner in which she reported the "Shh, shh, don't worry about it" comment was extremely evocative of a person who had been humiliated, and embarrassed. I find her report of the incident in Blackwood's apartment credible.

26. Complainant then walked home and called her friend Amanda, telling Amanda what happened, but Complainant told no one else. (Tr. 27-28)

27. Complainant continued to work at Quiznos, and Blackwood continued to ask her to his apartment. (Tr. 28-29)

28. Complainant's mother noticed Complainant was more withdrawn, not happy, and reluctant to go to work, particularly if she was scheduled "to close" with Blackwood. (Tr. 95-97)

29. Complainant's mother, who had a strained relationship with Complainant, became concerned over the text messaging going on between Complainant and Blackwood. (Tr.96-97, 101-103)

30. In December, Blackwood told Complainant he'd purchased a cash register for his home, on which she could learn. (Tr.29, 32-33)

31. When Complainant refused to come over, Blackwood told her he would treat it as though she had quit. (Tr. 29, 46, 47)

32. On December 17, 2006, Complainant broke down at school over some text-messages from Blackwood, and called her mother to pick her up. (Tr. 103-04)

33. Complainant filed a report with the Norwich police reporting the October 29th incident while her friend Amanda told Complainant's mother what had occurred. (Complainant's Exh. 3; Tr. 33-36, 103)

34. Complainant acknowledged she had received policies regarding sexual harassment from Blackwood and Almonor when hired. (Respondent's Exhibits 1, 2, and 3; Tr. 43-44, 50-53)

35. Complainant had not reported Blackwood's conduct to Almonor because she was scared and she needed the job. (Tr. 53, 79-80)

36. Complainant earned \$6.25 an hour, and worked an average of 15 hours per week between September 29, 2006, and December 29, 2006, based on the produced time sheets.

(Respondent's Exh. 4)

37. Complainant did not complete an application for unemployment insurance benefits.

(Tr. 83-84, 107)

38. Complainant did go to Planned Parenthood for testing for transmittable diseases. (Tr. 85 107)

39. Complainant felt violated, looked at people differently, and testified she is unable to trust people easily as a result of Blackwood's conduct. (Tr. 36-37)

40. Complainant produced reports of text messages she received from Blackwood in which he pressured her to work, stop saying no "to the right things," and commented on their fights calling her names. (Complainant's Exhibit 2; Tr. 29, 101-04) I find the text messages establish Blackwood was abusive and preyed on Complainant's vulnerabilities.

41. Complainant's text messages to Blackwood reflected her frustrations and anger at what had occurred between them. (Complainant's Exhibit 2)

42. Although present, Respondents neither testified nor called witnesses on their behalf. (Tr. 128-29)

43. Complainant obtained comparable employment in April, 2007. (Tr.82)

OPINION AND DECISION

It is a violation of Human Rights Law § 296.1 (a) for an employer to discriminate on the basis of sex in the terms and conditions of employment. Such discrimination can take the form of a hostile work environment and the form of quid pro quo sexual harassment. *Father Belle Community Center, Inc. v. New York State Division of Human Rights*, 221 A.D.2d 44, 642

N.Y.S.2d 739 (4th Dept. 1996), *leave to appeal denied* 89 N.Y.2d 809, 655 N.Y.S.2d 889, 678 N.E.2d 502 (1997).

The overwhelming evidence produced at the public hearing established that Blackwood, an owner and direct supervisor, engaged in repeated inappropriate discussions with Complainant and with other female employees at the work place, often with heavy sexual innuendo. Blackwood engaged in further harassing conduct in a series of text messages to Complainant, a senior in high school. The evidence also established that Blackwood, Complainant's employer and supervisor, forced himself on Complainant sexually one evening, and when she refused to return to his apartment, terminated her employment. Blackwood's conduct constituted sexual harassment in violation of the Human Rights Law. *Father Belle Community Center, Inc. v. New York State Division of Human Rights*, 221 A.D.2d 44, 642 N.Y.S.2d 739 (4th Dept. 1996), *leave to appeal denied* 89 N.Y.2d 809, 655 N.Y.S.2d 889, 678 N.E.2d 502 (1997).

Blackwood was Complainant's employer, her supervisor, and the owner of Young Legends, LLC. As such he had authority to hire and fire, and his conduct brings liability both to the corporation for which he acted and to himself personally as owner of that corporation and the direct perpetrator of the discriminatory conduct. *See: Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1988); *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 483 N.Y.S.2d 659, 473 N.E.2d 111 (1984).

Almonor, an owner and direct supervisor, was present in the store daily and therefore knew or should have known of the hostile work environment created by Blackwood's conduct at the store. Additionally, Almonor was on notice, based upon a resignation letter to her from another female employee, that Blackwood was making the female employees uncomfortable. Almonor did nothing, thereby condoning Blackwood's conduct. Such tacit condonation by an

owner leads to personal liability for Almonor. *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 483 N.Y.S.2d 659, 473 N.E.2d 111 (1984).

The Division may award damages to victims of illegal discrimination which violates Human Rights Law. Complainant is entitled to lost wages for the three months between the end of December 2006 and the beginning of April 2007 when she was out of work. The three month time frame contains thirteen weeks. Complainant averaged fifteen hours a week at \$6.75 while employed by Respondents, or \$93.75 a week. She would have earned at least \$93.75 per week for 13 weeks, or \$1,218.75 in lost wages. No deductions or withholdings should be made from these back wages. *Bell v. NYS Division of Human Rights*, 36 A.D.2d 1129 (3rd Dept., 2007). Interest shall be paid on such back wages from the reasonable intermediary date of February 15, 2007, until the date of the Commissioner's order. *See: Aurrecchione v. NYSDHR*, 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002).

Complainant testified as to the emotional impact on her as a result of Respondents' conduct. Complainant described humiliation, embarrassment, and anger. This high school senior had looked up to, and admired, Blackwood and Almonor as successful business people. Blackwood's text messages establish he was preying on Complainant's vulnerabilities. Blackwood took advantage of Complainant's youth and inexperience. Complainant lost the ability to trust other people easily. An award of \$25,000.00 for mental anguish is consistent with prior awards of the Commissioner and will fulfill the purposes of the Human Rights Law. *NYS Dep't. of Correctional Servs. v. State Division of Human Rights*, 215 A.D.2d 908, 626 N.Y.S.2d 588 (3rd Dept. 1995), *New York City Transit Authority v. State Division of Human Rights*, 78 N.Y.2d 207, 573 N.Y.S.2d 49 (1991).

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that Respondents and their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and

IT IS FURTHER ORDERED that the Respondents shall take the following actions to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

1. Within 60 days of receipt of the Commissioner's Final Order, Respondents shall pay to Complainant the sum of \$1,218.75 without any withholding or deductions, as damages for lost wages for the period from the end of December 2006 through the beginning of April 2007.

Interest shall accrue on the award at the rate of nine per cent per annum from the reasonable intermediate date of February 15, 2007 until the date of this Order. Interest shall continue to accrue on these damages, including the accrued interest, at a rate of nine per cent per annum from the date of this Order until paid.

2. Within 60 days of the date of the Commissioner's Final Order, Respondents shall pay to Complainant the sum of \$25,000.00, without any withholding or deductions, as compensatory damages for the mental anguish and humiliation suffered by Complainant as a result of the Respondents' unlawful discrimination against her. Interest shall accrue on the award at the rate of nine per cent per annum from the date of the Commissioner's Order until payment is actually made by Respondents.

3. The aforesaid payments shall be made by Respondents in the form of certified checks made payable to the order of Complainant, Carolan L. Henninge, and delivered by certified mail, return receipt requested, to the New York State Division of Human Rights, Office of the General

Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

4. Respondents shall furnish written proof to the New York State Division of Human Rights, Office of the General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of their compliance with the directives contained in this Order.

5. Respondents shall cooperate with the representatives of the Division during any subsequent investigation into compliance with the directives contained within this Order.

DATED: January 25, 2008
Bronx, New York

A handwritten signature in black ink that reads "Christine Marbach Kellett". The signature is written in a cursive style with a large initial 'C'.

Christine Marbach Kellett
Administrative Law Judge