Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

DAWN KELSEY,

Complainant,

v.

LAW OFFICE OF RONALD R. BENJAMIN, RONALD R. BENJAMIN, ESQ.,

Respondents.

NOTICE AND FINAL ORDER

Case No. 10199780

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 December 22, 2023, by Michael T. Groben, 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.

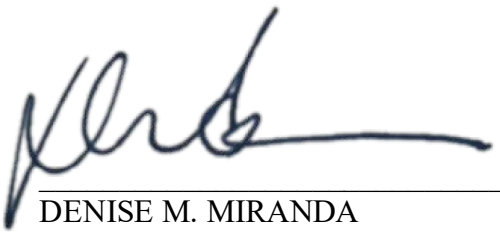
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE DENISE M. MIRANDA, ESQ., ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, NY 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, NY 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: 10/02/2024
Bronx, NY



DENISE M. MIRANDA
ACTING COMMISSIONER

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

DAWN KELSEY,

Complainant,

v.

LAW OFFICE OF RONALD R. BENJAMIN, RONALD R. BENJAMIN, ESQ.,

Respondents.

RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10199780**

SUMMARY

Complainant alleges that Respondents unlawfully discriminated against her in employment because of sex and retaliated against Complainant after she filed a complaint with the Division of Human Rights. Respondents deny the allegations. Complainant has failed to sustain her burden of proof, and the complaint is dismissed.

PROCEEDINGS IN THE CASE

On March 15, 2019, Complainant filed a 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 February 8, 2021, the Division filed an amended complaint, alleging that Respondents retaliated against Complainant by terminating her employment.

After due notice, the case came on for hearing before Michael T. Groben, an Administrative Law Judge ("ALJ") of the Division. Virtual public hearing sessions were held on July 12-13, 2021, November 8-9, 2021, and April 18-19, 2022.

Complainant and Respondents appeared at the hearing. The Division was represented by Senior Attorney Luwick Francois. Respondent Ronald R. Benjamin, Esq., appeared for Respondents.

Permission to file post-hearing briefs was granted. Respondents timely filed proposed findings of fact and conclusions of law which were considered, and where appropriate, adopted.

FINDINGS OF FACT

1. Complainant is female. (Tr. 13)

2. Respondent Ronald R. Benjamin ("Respondent Benjamin") is an attorney who operates a law practice under the name of Law Office of Ronald R. Benjamin. (ALJ's Exhibit 4)

3. In 2015, Complainant began employment with Respondents as a secretary, with some paralegal duties. In September 2016, Complainant resigned her position. (Tr. 13-15, 17-19, 771-72, 781, 787-789, 795)

4. In January 2018, Complainant called Respondent Benjamin to discuss possible legal representation of Complainant's boyfriend at the time. Respondent Benjamin advised her that he had an opening for a receptionist at the law office. (Tr. 20-21, 772-73)

5. In January 2018, Complainant began working for Respondents as a receptionist. (Tr. 464, 772, 789)

6. Complainant's duties included answering the telephone, filing, and handling mail. (Tr. 700, 794)

7. Complainant, in addition to other employees, conducted "intakes" of potential clients. (Tr. 789-91)

8. In conducting an intake, Complainant would speak to the potential client on the telephone and elicit appropriate information. Complainant would then submit the intake documentation to Respondent Benjamin, who would decide whether to take the case. (Tr. 791-94)

9. Complainant did not have the authority to determine which cases to take. (Tr. 701, 776)

10. During the relevant time, Respondents employed about seven persons, including Respondent Benjamin. (Tr. 446-47, 553, 701)

11. Diane Walter ("Walter") is employed by Respondents as a paralegal. (Tr. 726, 738)

12. In 2017, Amy Armstrong ("Armstrong") was hired as a paralegal by Respondents. (Tr. 443-44)

13. During a portion of 2018, Armstrong functioned as the office manager. During that time, Complainant reported to both Armstrong and Walter. (Tr. 742, 785)

14. Megan Clark ("Clark") was hired by Respondents in late October 2018, as a bookkeeper. In January 2019, Clark was appointed office manager, and all employees except Walter reported to her. (Tr. 553, 699-701, 712, 743)

15. Armstrong left Respondents' employ in December 2019. (Tr. 629)

Complainant's Performance

16. In 2018, Walter and Armstrong found that Complainant would not respond to requests to perform certain work or answer questions, and that she was not performing in a "professional" manner at the office. In the fall of 2018, Walter met with Complainant in an effort to resolve the situation, which was unavailing. (Tr. 734-36, 744-45)

17. Complainant was aggressive and "very rude" to Respondents' clients. Armstrong occasionally had to intercede between Complainant and a client. (Tr. 667, 689, 693)

18. On one occasion, during the relevant time period, a client was forced to drive to the office in order to speak to Respondent Benjamin in person because Complainant would not put the client's call through to him. (Tr. 780)

19. On one occasion (date unspecified) when the two were arguing, Complainant invited Armstrong to "go outside" for a fistfight. (Tr. 668, 689)

20. During the relevant time period, Armstrong complained to Clark about Complainant's refusal to do assigned work or to respond to directions. (Tr. 702-03, 721)

21. Respondents required any employee seeking time off to fill out a time off request sheet for approval. (Tr. 704)

22. On one occasion in 2018 during Armstrong's tenure as office manager, Clark heard Complainant and Armstrong "screaming at the top of their lungs." (Tr. 703)

23. Complainant then left for the day without permission and altered a previously submitted time off request sheet to indicate that she had been granted permission to take that day off. (Tr. 703-04)

24. Complainant acknowledged in testimony that she and Armstrong had argued, encounters which she described as "tiffs," or "bickering." (Tr. 221-22)

25. Clark then counseled Complainant about her behavior. (Tr. 715-16)

26. Clark observed that Complainant ignored her directives to do certain tasks or did not perform them as directed. In addition, Complainant retorted to Clark's instructions by stating that she reported only to Respondent Benjamin, which was incorrect. (Tr. 701-02, 712)

27. In testimony at the public hearing, Complainant admitted that she had refused to perform tasks which Clark requested, in the belief that it was not her job, or that Clark did not have the authority to assign work to her. (Tr. 223, 237, 336)

28. In response to ongoing complaints from Complainant's fellow employees about her behavior, Respondent Benjamin found it necessary on at least two occasions to direct Complainant to "change your attitude" in order to work harmoniously with other people. (Tr. 776-77, 806-07)

29. Clark concluded that her efforts to change Complainant's behavior were ineffective and that it was appropriate to terminate Complainant's employment. In or about mid-March 2019, she made that recommendation to Respondent Benjamin. (Tr. 709, 722, 779, 804)

30. At the time Complainant filed her complaint with the Division, she was aware that Respondent Benjamin was considering terminating her employment. (Tr. 234)

31. Because of Complainant's repeated performance issues and misbehavior, Respondent Benjamin agreed to terminate Complainant's employment. (Tr. 711, 779-80)

32. On March 12, 2019, Complainant brought her complaint in the instant case to Respondents' office to be notarized by Armstrong. (Tr. 613; ALJ's Exhibit 3)

33. In late March 2019, shortly after Respondents received Complainant's Division complaint, her employment was terminated by Clark. (Tr. 709-10, 721-23, 808)

Allegations of Sexual Harassment

34. Respondent's offices include a public entrance into the front reception area, followed by a conference room, a copier and mailroom, and Armstrong's office, followed by Walter's office, and Respondent Benjamin's office. (Tr. 21-22, 727-29)

35. Complainant's workplace was in the front reception area. (Tr. 21, 729)

36. Armstrong testified at the public hearing as a witness, claiming to have witnessed incidents of sexual harassment of Complainant by Respondent Benjamin, and to have discussed these incidents with Complainant "every day." (Tr. 454-58, 477-78, 481-82, 484-85, 596-97, 603-04).

37. During her testimony, Armstrong did not answer questions directly (Tr. 480-81, 648-51, 661, 683-84), avoided answering questions (Tr. 664, 673-74, 692, 694-95), gave testimony which was implausible or exaggerated (Tr. 604), or contradictory (Tr. 499-500, 653-54, 670-72, 677-78, 678-79).

38. Armstrong's claim that she was able to observe Respondent Benjamin harassing Complainant in the reception area and office mailroom was contradicted by reliable testimony and photographic evidence. (Tr. 323-24, 681-85, 704-05, 731-32, 739-42, 777, 800-03; Respondent's Exhibit 9)

39. Michael Turbush ("Turbush") is a Human Rights Specialist with the Division. He conducted the Division's investigation of the instant complaint. (Tr. 563, 565)

40. On or about July 25, 2019, Turbush conducted an in-person interview with Respondent Benjamin, followed by separate telephone interviews of Armstrong, Walter, and Clark, in which each was alone while on the telephone with Turbush. (Tr. 565-67, 570-74, 620-21, 706-08, 732-34)

41. Armstrong told Turbush during the October 25, 2019, interview that she was not aware of Respondent Benjamin "engaging in inappropriate conduct of a sexual nature to anyone," and that Complainant had not complained to her about his behavior. This contradicted Armstrong's testimony that she had observed Respondent Benjamin harassing Complainant, and supported Respondent Benjamin's denial that he had ever done so. (Tr. 622, 653-56, 660-66, 689)

42. Armstrong also admitted to Turbush that when Complainant presented her Division complaint to Armstrong to notarize in March 2019, she had folded the pages over so that Armstrong could not see that she was notarizing a Division complaint against her employer, and that Armstrong was angry when she later found out that Complainant had deceived her. These admissions contradicted Armstrong's testimony at the hearing. (Tr. 655-56, 765; ALJ's Exhibit 3)

43. Armstrong was not a reliable witness.

44. Complainant's testimony that she had observed Respondent Benjamin in the habit of "screaming" at female clients such imprecations as "motherless cocksucker" and "nigger bitch" is implausible. (Tr. 307-10, 404-06)

45. Complainant's claim that Respondent Benjamin routinely screamed at her in the office such imprecations as "whore," "cocksucker," "cunt," and "bastard" was similarly not credible, particularly considering Complainant's claims regarding his behavior with clients. (Tr. 212-17, 312-14, 411)

46. I do not credit Complainant's testimony that Respondent Benjamin often accosted her while she was seated at her desk in the reception room, an area open to the public, and that while discussing office business with Complainant, he continuously fondled her breasts while he would "hug" her face to his crotch. (Tr. 44-46, 315-23, 406-09)

47. Complainant's testimony regarding her allegation that Respondent Benjamin would fondle her breasts while she was working in the office mailroom, an area open to and frequented by other employees, was similarly not credible. (Tr. 324-27, 407)

48. I did not credit Complainant's testimony that while she reviewed legal matters with Respondent Benjamin in his office, he continually caressed her thighs, buttocks, and breasts for approximately 10 to 15 minutes at a time during which time Complainant "shifted" her body in an effort to evade his attentions. (Tr. 141-46, 155-56, 218-20, 343-48)

49. Respondent Benjamin did not importune Complainant to have a romantic relationship with him in exchange for a promotion to paralegal or any other reason. (Transcript 772-76, 779)

50. Respondent Benjamin was in the habit of having an employee drive him on long trips to court appearances. (Tr. 775-76, 784-85, 797)

51. On a number of occasions, including February 2018 and September 2018, Complainant drove Respondent Benjamin to distant court appearances in Albany and other locations. I did not credit Complainant's testimony that throughout these trips, Respondent Benjamin touched her breasts, stomach, and vagina for minutes at a time while Complainant continuously shifted her body to avoid his attentions and continued to drive. (Tr. 27-28, 30-31, 57-58, 65-67, 209-211, 289-300, 381-83)

52. On or about February 4, 2019, Complainant drove Respondent Benjamin to a hotel in White Plains, New York for a court appearance the next day. (Tr. 84-85, 89-90, 217-18, 796-98)

53. The lodgings reserved for Complainant and Respondent Benjamin by Walter consisted of a two-bed hotel suite. A separate bedroom, with a door, was located within the suite. (Tr. 94, 110-12)

54. I do not credit Complainant's testimony that during their stay, Respondent Benjamin advanced toward her with no shirt and with his unzipped pants falling down, and that, believing she was in danger of being raped, Complainant fled the room, where she remained outside for a significant time in cold weather. (Tr. 106-10, 373-74, 377-79)

55. Complainant's amended Division complaint does not include any allegation that Complainant left the room because of any act by Respondent Benjamin. (Tr. 379-81; ALJ's Exhibit 4)

56. Complainant acknowledged in testimony that she spent the night in the hotel suite without incident. (Tr. 112-13)

57. In testimony at the public hearing, Complainant occasionally did not respond directly to questions (Tr. 39-40, 42-43, 65, 184, 212-13, 221, 223-24, 228, 236-37, 240-41, 244-46, 246-47, 250, 253-54, 260, 263, 291, 300-01, 323, 328, 333-34, 352, 366, 375), exhibited a poor memory of important events (Tr. 175, 296-97, 363, 366-67, 382), gave testimony which was implausible (Tr. 219-20, 227-28, 308-09, 322-23, 383), and gave contradictory testimony (Tr. 219-20, 251-52). Complainant was not a credible witness.

58. Based on the demeanor and behavior of the witnesses at the public hearing, I credit Respondent Benjamin's denial that he harassed Complainant or terminated her employment in retaliation for Complainant's filing of a Division complaint. Respondent Benjamin candidly admitted that he was in the habit of raising his voice in the office but denied calling Complainant or other employees abusive names. (Tr. 775-80, 783, 803-04)

OPINION AND DECISION

Pursuant to New York Exec. Law, art. 15 ("Human Rights Law") § 296.1, it is an unlawful discriminatory practice for "an employer... because of an individual's... sex...to refuse

to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

Sexual harassment has been recognized as a form of discrimination which is actionable under the Human Rights Law. A person seeking relief for sexual harassment may proceed under two theories: *quid pro quo*, and hostile work environment. *Karibian v. Columbia University*, 14 F.3d 773 (2d Cir. 1994), citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

In order to establish a hostile work environment claim, a complainant must show that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 310, 786 N.Y.S.2d 382, 394 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S.Ct. 367 (1993)). Whether an environment is hostile or abusive can be determined only by looking at 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. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive." *Id.* at 311 (quoting *Harris*, at 23). Moreover, the conduct must both have altered the conditions of the victim's employment by being subjectively perceived as abusive by the plaintiff and have created an objectively hostile or abusive environment-one that a reasonable person would find to be so. *Id.* (quoting *Harris*, at 21).[1]

---

[1] Effective October 11, 2019, Human Rights Law § 296.1 (h) amended the definition of harassment and the standard applied to such claims. However, because the allegations which gave rise to the harassment claims in the instant complaint were purported to have occurred prior to the amended law's effective date, said allegations will be analyzed under the former severe or pervasive standard.

Complainant must show that the discriminatory conduct occurred because of her protected class membership. *See Arcuri v. Kirkland*, 113 A.D.3d 912, 914, 978 N.Y.S.2d 439, 441 (3d Dept. 2014).

Where the individual alleged to be the harasser is a high-ranking officer of the employer, the employer is strictly liable for the harassment. The victim need not have complained to management, there is no notice or knowledge requirement, and the existence of an anti-harassment policy is irrelevant. See *Randall v. Tod Nik Audiology, Inc.*, 270 A.D.2d 38, 704 N.Y.S.2d 228 (1st Dept. 2000).

In order to sustain a claim of *quid pro quo* sexual harassment, complainant must show that "she was subjected to unwelcome sexual conduct and that the reaction to that conduct was then used as a basis for decisions, either actual or threatened, affecting compensation, terms, conditions or privileges of employment." *Bracci v. New York State Div. of Human Rights*, 62 A.D.3d 1146, 1147, 878 N.Y.S.2d 830, 831 (3d Dept. 2009), *appeal dismissed*, 15 N.Y.3d 865, 910 N.Y.S.2d 31 (2010).

In the instant case, Complainant alleged that Respondent Benjamin, the proprietor of Respondent Law Office of Ronald R. Benjamin, subjected Complainant to a hostile work environment on a daily basis by screaming and cursing at her, physically grabbing Complainant, and pawing her on an almost daily basis during her employment. In addition, Complainant alleged that Respondent Benjamin subjected her to *quid pro quo* harassment when he sought to have a romantic relationship with her and offered to promote her to a paralegal position if she acceded to his demands.

Complainant's testimony was simply not credible, particularly in the light of the testimony of her own witness Armstrong, who contradicted her own public hearing testimony

and that of Complainant in her interview with Division investigator Turbush, a disinterested third party. Complainant failed to establish a prima facie case of unlawful sexual harassment. Respondent Benjamin's denial of harassing behavior and speech was credible. This claim is dismissed.

Human Rights Law § 296.7 makes it an "unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate against any person" who has opposed discriminatory practices. To make out a prima facie case of retaliation, a complainant must show that (1) she engaged in activity protected by the Human Rights Law, (2) the respondent was aware that the complainant participated in the protected activity, (3) she suffered an adverse employment action, and (4) there is a causal connection between the protected activity and the adverse employment action. *See Adeniran v. State of New York*, 106 A.D. 3d 844, 965 N.Y.S.2d 163 (2d Dept. 2013).

In the retaliation context, an adverse employment action is one which "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Mejia v. Roosevelt Is. Med. Assoc.*, 31 Misc.3d 1206 (A), 927 N.Y.S.2d 817 (Table) (Sup. Ct. N.Y. Co. 2011), *aff'd*, 95 A.D. 3d 570, 944 N.Y.S.2d 521 (1st Dept. 2012), *lv. to appeal dismissed*, 20 N.Y.3d 1045, 961 N.Y.S.2d 374 (2013), citing *Burlington Northern & Santa Fe Railway Co. v. White*, 543 U.S. 53, 68 (2006).

If a complainant makes out a prima facie case of retaliation, the burden shifts to the respondent to articulate a legitimate, independent, and non-discriminatory reason for its actions. If the respondent does so, the complainant must show that the reasons presented by the respondent were merely a pretext for discrimination. *Adeniran* at 845, 965 N.Y.S.2d at 165.

In the instant case, Respondents terminated Complainant's employment shortly after

Respondents became aware that she had filed the instant complaint. Causation can be presumed in the absence of a showing of retaliatory animus if there is sufficient temporal proximity between the protected activity and the adverse employment action. *Treglia v. Town of Manlius*, 313 F.3d 713, 720 (2d Cir. 2002). Complainant has established a prima facie case of retaliation.

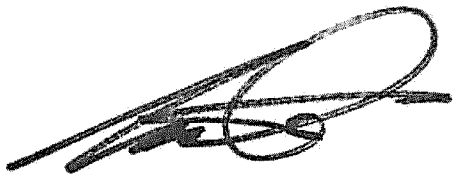
Respondents demonstrated a legitimate, independent, and non-discriminatory reason for their termination of Complainant's employment. Before Complainant filed her complaint, Respondent Benjamin had received numerous complaints from staff about Complainant's insubordination, refusal to perform tasks assigned to her by the office manager, and rude, even belligerent, treatment of her fellow employees and Respondents' clients. Complainant's own witness Armstrong supported these concerns in her statement to the Division investigator, and Complainant herself admitted that she had expected to lose her job in March, when Respondent finally terminated her employment. Complainant did not rebut Respondents' proof in this regard, and this claim is dismissed.

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 the complaint be, and hereby is, dismissed.

DATED: December 22, 2023
Bronx, New York



Michael T. Groben
Administrative Law Judge