

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
AMANDA HARPER,

Complainants

v.

Docket No. 14-BEM-02015

Z2A ENTERPRISES, INC. d/b/a
HALF TIME SPORTS BAR & GRILL
and ADHAM AL ABDULLAH,

Respondents

Appearances: Mark D. Donovan, Esq. for Complainant

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On July 16, 2014, Complainant Amanda Harper filed a complaint of discrimination against Respondents Z2A Enterprises, d/b/a Half Time Sports Bar & Grill, and Adham Al Abdullah the General Manager. Complainant alleged that she was the victim of sexual harassment perpetrated by Adham Al Abdullah, the General Manager of the restaurant, and that she was constructively discharged from her employment in violation of M.G.L. c.151B ss. 4(16A), (4A) and (5) as a result of being subjected to a sexually hostile work environment. The Investigating Commissioner found probable cause to credit the allegations of the complaint and conciliation attempts were unsuccessful. Respondent failed to respond to Complainant's discovery requests for admissions. Respondents and their counsel of record were duly notified

of a pre-hearing conference to be held on June 1, 2016, and did not appear at the pre-hearing conference. Respondents and counsel of record were duly notified by certified mail at their last known address¹ of the public hearing to be held on July 19, 2016. Respondents did not appear at the Hearing on July 19, 2016 either in person or through counsel and an Order of Entry of Default was noted on the record pursuant to 804 CMR 1.21(8(a)). A default hearing was conducted pursuant to 804 CMR 1.21(8)(b). Subsequent to the Hearing, on July 19th, written notice of the Entry of Default was sent to Respondents. Respondents did not file a petition to remove the default. Complainant testified at the default hearing regarding the alleged harassment and damages. Having considered the testimony of Complainant at the default hearing, her complaint, which is part of the administrative record, and Complainant's request for admissions which went answered and were deemed admitted, (see Ex. C-2) I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Amanda Harper, was hired to work for Half-Time Sports Bar and Grill, a restaurant in Fall River, MA in November of 2013 to oversee the operation of the kitchen as a kitchen manager and cook. She had worked for the previous restaurant at that location called Entourage, whose owners recommended her to the owner of Respondent restaurant. Complainant's duties included hiring and scheduling staff, ordering inventory, cooking, food preparation, cleaning the kitchen area, conducting inventory, and managing linens.

2. Z2A Enterprises, Inc. does business as the Half Time Sports Bar and Grill. Alex G. Nasrawi is listed as the President, Secretary and Resident Agent of Z2A Enterprises, Inc. Complainant testified that Nasrawi was the owner of the restaurant. Ziad Nasrallah is listed as

¹ Notice by certified mail was also sent to Alex Nasrawi as Respondent's designated registered agent in MA.

the Treasurer of Z2A Enterprises. When Nasrawi purchased the restaurant, he installed Ziad Nasrallah, as the General Manager. Nasrallah interviewed and hired Complainant. In March of 2014, Nasrawi fired Nasrallah and hired Respondent Adham Abdullah as General Manager. Abdullah was put in charge of the daily operations of the restaurant, and over-saw the wait staff and bartenders. He was responsible for orders, invoices, paying the bills, the cash drawers and making deposits. Abdullah was Complainant's immediate supervisor, as well as overseeing other employees. Abdullah was in the restaurant from opening until closing every day and most matters were handled by him. Abdullah reported to Nasrawi who, according to Complainant, came to the restaurant only on Friday and Saturday nights to socialize with friends.

3. Complainant observed that Abdullah's management style was not very people friendly. She observed him on a number of occasions have altercations with the waitresses and he would tell them to "shut the f---k up and get back to work."

4. On April 26, 2014, Complainant was working in her kitchen where there was a window to the dining room and bar area. Abdullah was sitting in the bar area with two customers who she knew. One was a vendor from whom she ordered all her seafood. Abdullah asked her to make him something to eat, which she did. When she brought his food to the bar Abdullah told Complainant he was going to put honey on "it" so she could "suck his d---k." When she walked away from the window, he proceeded from the bar to the kitchen and said to Complainant in front of other employees who worked for her, "What you don't like honey? I can put sugar on it and we can go in the walk-in," while grabbing at his pants. She learned later from a kitchen employee, Rui DeOliveira, that Abdullah actually unzipped his zipper, but she did not see this. DeOliveira submitted an affidavit attesting to what he witnessed and it was admitted into evidence. (Ex. C-1) Complainant told Abdullah that he needed to leave the kitchen and that he

could not talk to her like that. She also told him that his behavior was sexual harassment and that she was not going to tolerate it. In response, Abdullah laughed and walked away. She stated that DeOliveira and his brother Ricardo, who was also a kitchen employee, were both shocked by Abdullah's behavior.

5. Later that same day, Complainant had to go to the back of the building where the dry storage and freezers are located to get some product. She had to walk by Abdullah's office to get to that area. As she walked by his office, he was walking out and proceeded to accompany her down the hall and slapped her on the behind. She asked him what he thought he was doing and told him never to touch her. He proceeded to laugh at her.

6. On April 30, 2014, Complainant was in the kitchen with Ricardo DeOliveira going over the schedule and the order for a private party. Abdullah walked into the kitchen and started pinching her stomach. She said, "What are doing, don't touch me," and moved behind Ricardo. She told Abdullah his behavior was sexual harassment and that he could not do that. Ricardo then told Abdullah if he didn't leave the kitchen they were going to have problems stating, "If I lose Amanda, you're going to lose me." Abdullah then left the kitchen.

7. On May 3, 2014, Complainant was working at one of the night clubs that was part of the facility. She testified that the front part of the facility was a restaurant and there were three night clubs in the back that were all connected from the inside. The night club facility was known as club Jewel and was also owned by Nasrawi under the umbrella of Z2A Enterprises. The night clubs operated on Friday and Saturday nights and Complainant worked the cash register. She testified that she had known the club manager for years and he asked her to work a register because he trusted her. On the night in question, there were two cash registers set up for two different entries to separate clubs. Abdullah came up to Complainant and asked her where the

girl manning the other register was, because there was a register full of cash with no one sitting there. When Complainant stated that she didn't know, he slapped her across the face, turned and walked away. She stated that he slapped her hard enough to make her want to slap him back but she was not about to make a scene since there were other people around. Instead she just sat there in shock, thinking to herself, "did he really just do that," while he just walked away.

8. The following day there was a private party at the restaurant that Complainant had been preparing for. She went in to work and did the set up and the cooking for the party. Later she called the restaurant to check that the clients were satisfied. She was at home later that day with her children when Abdullah called her and accused her of stealing a pan of rice from the restaurant to give to the party. The dish was on the original food order for the party, but apparently was not on the food list that Abdullah was given. Complainant went to the restaurant to show Abdullah that it was on the original booking for the party and that's why she gave it to the customer. She asked Abdullah incredulously, "you're going to accuse me of stealing a \$7 worth of ingredients from the restaurant?" In response, Abdullah told her to "shut the f---k up," and told her all she was good for was "sucking d---k." She did not respond, but took the key to the restaurant off her key ring, put it on his desk, turned around and walked out. This was her way of stating she quit.

9. Complainant did not tell the owner Nasrawi about this because the employees were told when Abdullah was hired that he was Nasrawi's wife's cousin, and because Nasrawi was never at the restaurant to take a complaint. Complainant stated that Nasrawi would come into the restaurant at 9:30 at night with a group of friends to show off his restaurant and eat dinner and was not there to discuss business with anyone.

10. Complainant testified that she felt she could not continue working at the restaurant. She felt absolutely humiliated and embarrassed by Abdullah's conduct and had never been made to feel that way before. Besides feeling humiliated and embarrassed, Complainant worked with all men and felt that none of them would ever again respect her in the business. She was particularly distressed by Abdullah speaking to her in front of the male employees she supervised because she felt that if she continued to take such abuse, none of her employees would ever listen to or respect her again. Complainant cried when she talked about the fact that she had no choice but to leave her employment. She stated that she could not continue to walk past Abdullah's office every time she needed to get product in the storage room and risk being abused by him. She did not want to put herself in the position of being cornered by him again and was afraid of getting into a situation she could not get out of without having a physical altercation with Abdullah. She stated she would have "beat the crap out of him" to get away if she had to, but she is not that kind of person, and would not want to put herself in that situation. Complainant felt Abdullah left her no choice but to leave her job, since he had accosted her physically three times, was physically and verbally abusive to her in front of other people and "was beating her down." She stated that she could not handle it any longer. Complainant had two children at home and did not want the workplace hostility to spill over into her home life, stating she did not want to "bring that home to her children." Complainant testified that what happened to her was "horrible," that she has been a cook since she was eighteen years of age and is about to be forty and has never been treated so abusively. She stated that Abdullah treated other employees with similar disrespect, even after she told him he was not in Dubai any longer, but in America, and could not treat people with such disrespect and sexually harass them in the workplace. She stated that he ignored her admonishment. Complainant still feels the sting of how she was

treated in her former job even though she felt safe in her next job, where she made it clear up front that she expected to be treated with respect, and would not tolerate being harassed, something she would not have felt compelled to do, but for her mistreatment by Respondents.

11. Complainant was earning \$15 per hour while working at Respondents. She netted approximately \$500 per week. She testified that it took her approximately three months to find other employment as a cook. Complainant is seeking approximately \$6000 for the three months she was out of work. She testified that she believes Respondent's business is now closed.

III. CONCLUSIONS OF LAW

A. Hostile Work Environment

General Laws, Chapter 151B, §4, paragraph 1, prohibits sexual harassment² and gender based harassment in the workplace. *Ramsdell v. Western Bus Lines, Inc.*, 415 Mass. 673, 677 (1993). General Laws, Chapter 151B, §4, paragraph 16A, also prohibits sexual harassment in employment. *Doucimo v. S & S Corporation*, 22 MDLR 82 (2000).

To establish liability for a hostile work environment based on sexual harassment, Complainant must show by a preponderance of the evidence that: (1) she was subjected to unwelcome verbal or physical conduct that was sexual in nature; (2) the unwelcome verbal or physical conduct was sufficiently severe or pervasive to alter the terms or conditions of her employment and create an abusive working environment; (3) the harassment was carried out by an owner, manager, or someone in a supervisory relationship at Respondent. *Kelley v. Plymouth*

² Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or sexually offensive work environment." College-Town Division of Interco v. Massachusetts Commission Against Discrimination, 400 Mass. 156, 165 (1987).

County Sheriff's Department, et. al., 22 MDLR 208 (2000); *Beldo v. University of Massachusetts*, 20 MDLR 111 (1998). Complainant must demonstrate that her work environment was pervaded by gender-based or sexual harassment that posed a barrier to her full participation in the workplace. *College-Town, Division of Interco v. Massachusetts Commission of Discrimination*, 400 Mass. 156, 162 (1987). If Complainant establishes by credible evidence that Respondents sexually harassed her or that she was targeted because of her gender, she can prove prohibited sex discrimination under G. L. c. 151B in addition to sexual harassment. See e.g., *Brown v. Phoenix and Foxwood*, 22 MDLR 160 (2000) (repeated derogatory comments regarding the complainant's gender constituted unwelcome or harassing conduct). The unwelcome conduct must be both subjectively objectively offensive from the perspective of a reasonable person in the complainant's position. This "objective" reasonable person standard has been interpreted to mean that the evidence of sexual harassment is to be considered from the "view of a reasonable person in the plaintiff's position." *Muzzy v. Cahillane Motors, Inc.*, 434 Mass. 409, 411-412 (2001); *College-Town Division of Interco v. Massachusetts Commission Against Discrimination*, 400 Mass. at 162; *Ramsdell v. Western Bus Lines, Inc.*, 415 Mass. at 677-678, quoting *Gnerre v. Massachusetts Comm'n Against Discrimination*, 402 Mass. 502, 507 (1988).

In this case, Complainant proffered unrebutted evidence of both sexual and gender based harassment. Complainant has established that she was sexually harassed, and subjected to a hostile work environment based on her gender, by the conduct of her immediate supervisor, Respondent Abdullah, in his capacity as the General Manager of Respondent restaurant. Although the incidents of harassment occurred over a relatively short period of time, Abdullah's actions were sufficiently severe and pervasive to create a sexually hostile work environment for

Complainant. Abdullah engaged in extremely abusive and degrading behavior towards Complainant, which included physically assaulting her on at least three occasions, verbally abusing and humiliating her with sexual taunts and sexually suggestive comments in the presence of male customers and her male subordinates, ordering her to shut up with profane epithets, telling her she was only worthy of performing sexual acts, and finally falsely accusing her of stealing from Respondent. Complainant repeatedly refused to tolerate Abdullah's behavior, protested that it was unwelcome, and advised him it was against the law.

In addition to being subjectively offensive to Complainant, Abdullah's behavior by any objective standard would be considered outrageously offensive and demeaning to any reasonable person. Abdullah's conduct also targeted Complainant's gender. His abusive manner, derision of Complainant as a female, and slapping her across the face were actions particularly offensive to a female, and were especially disturbing to Complainant who operated in a male dominated work environment. Complainant justifiably feared that she would lose the respect of her male subordinates who witnessed such conduct. It is clear that Abdullah sought by his actions to demean Complainant as a woman and to diminish her position of authority in running the kitchen of the restaurant.

I conclude that Abdullah's conduct violated G.L. c. 151B and that he is individually liable for his unlawful actions. Individual liability is predicated upon G.L. c. 151B, s. 4(4A) which prohibits any person from interfering with an individual in the exercise of rights protected under c. 151B. *Woodason v. Town of Norton School Committee*, 25 MDLR 62, 64 (2003) (individual liability found against individual who has authority or duty to act on behalf of employer and has acted in deliberate disregard of an employee's rights). Respondent Abdullah

was the perpetrator of the acts of harassment against Complainant in deliberate disregard of Complainant's rights and, as such, is liable for his unlawful conduct.

Respondent Z2A Enterprises is also vicariously liable for the unlawful actions of its General Manager toward Complainant, notwithstanding that Complainant did not complain to the restaurant's owner, Nasrawi. Notice to management is not required to find liability against the employer since Abdullah was the General Manager at the restaurant, in charge of the daily operations, and Complainant's immediate supervisor. An employer is vicariously liable for unlawful harassment committed by a supervisor upon whom it confers authority. *See College-Town, supra.* at 165- 167. Thus, I find that Respondent Z2A Enterprises is liable for the actions of Abdullah in addition to Abdullah being individually liable for his actions, as the perpetrator of the harassment. *See Pico v. Town of Reading & Stamatis*, 38 MDLR 42, 47 (2016)

B. Constructive discharge

Complainant alleges that under such circumstances, she had no choice but to leave her employment and that she was constructively discharged. "A constructive discharge occurs when the employer's conduct effectively forces an employee to resign." *GTE Products Corp. v. Jefferson v. Stewart, et al.*, 421 Mass. 22, 33-34 (1995) A finding of constructive discharge is warranted when an employer makes working conditions so difficult as to be intolerable so that the employee feels compelled to quit. *Id.* at 34; *McKinley v. Boston Harbor Hotel*, 14 MDLR 1226, 1240 (1992). There must be a finding that the "working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." *GTE Products Corp., supra.* at 34 citing *Alicea Rosado v. Garcia Santiago*, 562 F. 2d 114, 119 (1st Cir. 1997) Complainant testified compellingly that her working conditions under Abdullah were intolerable and that she had no choice but to resign.

After numerous incidents of unwelcome and humiliating physical touching by Abdullah and being dressed down by him in the most profane and degrading manner, Complainant had no reasonable expectation that the situation would be remedied. She felt that she could not complain to the restaurant's owner Nasrawi because Abdullah was a family member and because Nasrawi was rarely in the restaurant except to socialize with friends and did not bother himself with the daily operations of the place. Given the egregious nature of Abdullah's behavior, Complainant could no longer tolerate working for Respondents and legitimately believed that she had no recourse but to quit. I find that she was constructively discharged.

IV. REMEDY

Upon a finding that Respondent has committed an unlawful act prohibited by the statute, the Commission is authorized to award damages to make the victims whole. G.L. c. 151B §5. This includes damages for, among other things, lost wages and emotional distress. *See Stonehill College v. MCAD*, 441 Mass. 549 (2004).

Complainant testified that she earned approximately \$500 per week working for Respondent and claimed some \$6000 in lost wages for the three-month period that she was unable to find alternative employment. Complainant sought employment during that time and because she was constructively discharged, she is entitled to \$6000 for lost wages.

Complainant is also entitled to damages for emotional distress caused by the egregious harassment she was subjected to. An award of emotional distress damages must rest on substantial evidence that it is causally-connected to the unlawful act of discrimination and must take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted

to mitigate the harm. *See Stonehill College, supra.* at 576. An award of damages may be based on Complainant's own credible testimony. *Id.*

Complainant gave compelling testimony about how distressed she was by Abdullah's demeaning and offensive comments, sexual suggestions, and physical abuse. She testified about how embarrassed and humiliated she was when he made gross sexual overtures to her in the presence of customers and her subordinates, and how shocked she was when he dared to slap her on the behind and later slap her across the face. Complainant was not a shrinking violet and she objected plainly and strenuously to being harassed. The fact that Complainant did not shrink from Abdullah's abusive behavior but instead protested his conduct as unlawful, does not diminish the emotional upset she experienced at being sexually demeaned and degraded and objectified as a woman. She felt very concerned that she would lose the respect of her male colleagues and subordinates and would lose face in the industry where she had been a cook since she was eighteen years old. Complainant testified that in her twenty-two years of working in restaurants, she had never been treated with such disrespect nor victimized in such a manner. The situation was so intolerable that Complainant felt she had no choice but to take a stand and to walk out. She stated it was significant that for the first time in her life she had to advise a prospective employer that she would not abide disrespectful treatment. Based on her credible testimony and demeanor, I conclude that Complainant suffered significant embarrassment, humiliation, anger, and emotional upset as a direct result of the workplace harassment she endured and find that she is entitled to damages for emotional distress in the amount of \$50,000.

V. ORDER

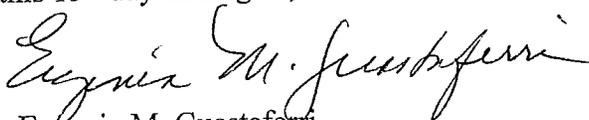
Based on the forgoing Findings of Fact and Conclusions of Law, Respondents are hereby

Ordered:

- 1) To cease and desist from any acts of sexual harassment and gender harassment in any restaurant business they own, manage or control.
- 2) To pay to Complainant, Amanda Harper, the sum of \$6000 in damages for lost wages, with interest thereon at the rate of 12% per annum from the date the complaint was filed until such time as payment is made, or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.
- 3) To pay to Complainant, Amanda Harper, the sum of \$50,000 in damages for emotional distress, with interest thereon at the rate of 12% per annum from the date the complaint was filed until such time as payment is made, or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission pursuant to 804 CMR 1.23. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order. Pursuant to §5 of c.151B, Complainant may file a Petition for attorney's fees.

So Ordered this 15th day of August, 2016.


Eugenia M. Guastaferrri
Hearing Officer