

NEW HAMPSHIRE HUMAN RIGHTS COMMISSION

Colleen Callahan

v.

K&G Restaurant, Inc., d/b/a The Red Blazer

ES(H)(R) 0217-03, 16DA300194

COMMISSION'S FINDINGS, RULINGS AND AWARD

A. Findings of Fact

1. K&G Restaurant, Inc., d/b/a The Red Blazer, was the employer of Colleen Callahan (herein "the Complainant"). The Complainant was nineteen (19) years of age when she began work. At all times relevant, the Complainant was an at-will employee, she was employed by The Red Blazer (hereinafter "the Respondent") from approximately September, 2000 through April, 2002, when she voluntarily terminated her employment to travel to Fiji. After traveling for approximately six (6) to seven (7) weeks, the Complainant requested and was given back her job at the Respondent.
2. During the time of the Complainant's employment, the Respondent did not have a written sexual harassment policy and did not provide sexual harassment training.
3. Kostas Karathanasis (hereinafter "Kostas") was a co-employee of the Complainant, who performed odd jobs and bartended. Kostas was the father of Respondent's principal manager and co-owner, Sarandis Karathanasis (hereinafter "Sarandis") and of a second co-owner. Kostas was not subject to regular supervision and appeared to set his own work schedule.
4. Kostas engaged in acts of physical sexual harassment against the Complainant and made comments of a sexual nature to her. These acts and gestures were unwelcome. Kostas

made demeaning, threatening and abusive comments, acts and gestures toward the Complainant and Karen Bradford.

5. A pre-printed poster that advised employees that sexual harassment was illegal and unacceptable in the workplace was posted. At all relevant times, the Complainant knew who her managers were and knew to whom she could make a report of sexual harassment or other workplace misconduct. Throughout her employment, the Complainant enjoyed a cordial, social relationship with Sarandis. The Complainant testified that she complained of sexual harassment to Sarandis and other managers while employed by the Respondent. Her testimony was not verified through witnesses, other than second-hand testimony elicited from the Complainant's mother and ex-boyfriend. The Complainant reported claims of sexual harassment and retaliation with Karen Bradford on April 15, 2003 in a filing with the New Hampshire Human Rights Commission. The filing was made three and one-half months after the Complainant last worked at the restaurant.
6. The Complainant objected to Kostas about his sexual and threatening acts and statements. Kostas failed to desist. Kostas' conduct created a hostile working environment for a reasonable person in the claimant's position as a wait person and occasional bartender. The harassment occurred in areas of the restaurant that were visible to its owners and managers. The owners and/or managers of the Respondent knew or reasonably should have known that some of the sexual and threatening acts occurred. The Respondent failed to take remedial action to protect the Complainant from Kostas, perhaps due to the familial relationship between Kostas and two of the co-owners. The Respondent did act promptly and appropriately in response to the Complainant's report of being harassed in the lower pub by a patron in that the Respondent moved the Complainant to another work

station and arranged to hire another employee to oversee operations in the lower pub area of the restaurant.

Susannah and Maggie Luzano were not the victims of sexual harassment at The Red Blazer.

The Complainant voluntarily terminated her employment at The Red Blazer on December 31, 2002 when she walked off the job before the scheduled end of her work shift on New Year's Eve. The decision to terminate her employment may have been in relationship to comments and/or statements made to her by Pedro Godoi, a co-owner and chef. That interaction is unrelated to any claim of sexual harassment or retaliation.

B. Rulings of Law

9. Kostas engaged in verbal and non-verbal and/or physical conduct of a sexual nature against the Complainant within the meaning of RSA 354-A:7(V). This conduct was equated to discrimination based upon sex within the meaning of RSA 354-A:7(I).
10. The sexual harassment and discrimination of the Complainant by Kostas created an offensive environment for the Complainant within the meaning of RSA 354-A:7(V)(c). The Respondent knew or should have known of the sexual harassment and discrimination and failed to take prompt appropriate remedial action within the meaning of HUM 403.02(e). The Respondent did not engage in a retaliatory conduct within the meaning of RSA 354-A:19. The Respondent did not cause the Complainant to be constructively terminated from her employment.

C. Damages

11. The Complainant has the burden of proving each and every element of her claim and of her entitlement to damages in a reasonably certain amount. The Complaint filed by Karen Bradford is not before this hearing panel for determination.
12. The Complainant has proven by the probabilities that she suffered emotional damage directly as a result of sexual harassing conduct that occurred at The Red Blazer while she was employed by the Respondent. The Complainant, however, has not proven by the probabilities that she is entitled to be compensated for lost wages, nor the cost of counseling expenses. The Respondent is entitled to relief for the emotional harm suffered between the Spring of 2002 and December 31, 2002 in the amount of Four Thousand (\$4,000.00) Dollars.
13. The parties' Request for Findings of Fact and Rulings of Law that are inconsistent with the above are hereby denied.
14. Claimant's counsel, within twenty (20) days, may file a motion seeking reasonable attorney's fees commensurate with the award and those findings in support thereof. Respondent's counsel shall have ten (10) days to object. The Panel will promptly rule on the request for attorney's fees but hopes that counsel may resolve such without the necessity of an Order.

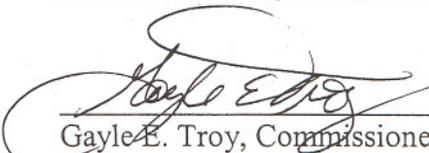
April 20, 2006
Date

4/21/06
Date

26 April 2006
Date


Kenneth C. Brown, Chairman


Laura D. Simoes, Commissioner


Gayle E. Troy, Commissioner

NEW HAMPSHIRE HUMAN RIGHTS COMMISSION

Colleen Callahan

v.

K&G Restaurant, Inc., d/b/a The Red Blazer

ES(H)(R) 0217-03, 16DA300194

**ORDER RE: COMPLAINANT'S PETITION FOR AN
AWARD OF ATTORNEYS FEES AND COSTS**

MOTION GRANTED, IN PART. The Commission Panel, in its discretion, awards the Complainant attorneys fees in the amount of Twelve Thousand and 00/100ths (\$12,000.00) Dollars, plus Three Thousand Six Hundred and 00/100ths (\$3,600.00) in out-of-pocket costs for a total of Fifteen Thousand and 00/10ths (\$15,600.00) Dollars.

The Panel is cognizant of the fact that the award of attorneys fees and costs in many instances makes it feasible for complainants to process claims that would not otherwise be brought. The vindication of civil and constitutional rights cannot be valued solely in monetary terms. Thus, as here, when the Complainant has successfully prosecuted elements of her claim the award of attorneys fees and costs is justified.

The Respondent is ordered to pay Fifteen Thousand Six Hundred and 00/100ths (\$15,600.00) Dollars in fees and out-of-pocket expenses as well as the underlying Four Thousand and 00/100ths (\$4,000.0) Dollars award to the Complainant.

So ordered.

Laura D. Simoes, Commissioner
Gayle E. Troy, Commissioner

June 26, 2006
Date

Kenneth C. Brown
Kenneth C. Brown, Panel Chairman

RECEIVED

JUN 28 2006

NH COMMISSION
FOR HUMAN RIGHTS