
Wolbert v. Stylianos
Cite as 9 *N.J.A.R.* 392

EILEEN WOLBERT,
Complainant,
v.
STYLIANOS, INC., t/a
BLACKWOOD DINER,
ANTHONY STYLIANOS,
Respondents.

Initial Decision: November 15, 1985

Final Agency Decision: December 18, 1985

Approved for Publication by the Director of the Division on Civil
Rights, Pamela S. Poff: March 19, 1987

SYNOPSIS

Complainant contended that she had been unlawfully discriminated against by respondent on the basis of sex in that she was sexually harassed by Anthony Stylianos, its owner. The administrative law judge assigned to the case determined that Anthony Stylianos had subjected the complainant to a substantially discriminatory work environment by his words and conduct. The administrative law judge found that Anthony Stylianos used his position as owner/supervisor to subject complainant to unwelcome sexual advances and that her refusal thereof caused complainant to be assigned duties not assigned other waitresses and eventually resulted in her constructive discharge. The administrative law judge concluded that such sexual harassment in the workplace is prohibited by the Law Against Discrimination and that complainant carried her ultimate burden of persuasion. The administrative law judge awarded monetary damages for pain and suffering and out-of-pocket expenses.

Upon review, this initial decision was accepted by the Division on Civil Rights.

Nancy Kaplen Miller, Deputy Attorney General, for complainant
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)
Dante J. Romanini, Esq., for respondents (Kozlov, Seaton &
Romanini, attorneys)

McKEOWN, ALJ:

Eileen Wolbert filed a Verified Complaint with the Division on Civil Rights on January 8, 1982 alleging that her employer, Blackwood Diner and Tony "Doe," last name then being fictitious, violated her rights under the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-4 and *N.J.S.A.* 10:5-12(a) in that she was discharged from her employment as waitress after having refused sexual advances from the owner, fictitious Tony Doe. By amendment to the Verified Complaint executed by the Director of the Division on Civil Rights, the named respondents were specified to be Stylianos, Inc., t/a Blackwood Diner and Anthony Stylianos, its owner. Complainant contends she was continually sexually harassed by Anthony Stylianos because of her sex. On December 9, 1983, the Director of the Division returned a Finding of Probable Cause to credit complainant's allegations. On February 26, 1985, the matter was transferred to the Office of Administrative Law as a contested case under the provisions of *N.J.S.A.* 52:14F-1 *et seq.*

FACTS

It is noted that at the hearing complainant was the sole witness to testify under oath. Neither Anthony Stylianos nor anyone associated with Blackwood Diner testified at the conclusion of complainant's case-in-chief. Nonetheless, respondents' counsel was present throughout the hearing. In the absence of contrary evidence, the following facts are found to be established by a preponderance of credible evidence based upon the testimony of complainant and upon an unrefuted affidavit executed by Arlene Mathews, formerly employed at the diner between March 1981 through May 1981 as a hostess/cashier.

Complainant, who has been a waitress for several restaurants for the past 21 years, applied for employment as a waitress with the Blackwood Diner in or about August 1981. At that time, complainant had a child who was still in attendance at a local public school. Complainant was seeking employment which would allow her to work during the same hours her child was in school so that she could be home at approximately 3:00 P.M. when her child returned from school.

After complainant made application to the Blackwood Diner for a position as a waitress, she talked with either Anthony Stylianos, a named respondent, or his brother and co-owner of the diner, John Stylianos, not a named respondent herein, on three different occasions

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to arrange suitable hours to meet the need of the diner to have a full complement of waitresses on duty and to meet her need of being home at 3:00 P.M. for her child. It was agreed that complainant would work from 9:00 A.M. through 2:00 P.M., several days a week although from time to time complainant would work to 3:00 P.M. Having reached agreement as to hours, complainant began employment with the Blackwood Diner as a waitress.

Complainant's employment continued until about the second week of January 1982 when, shortly after complainant refused Anthony Stylianos' request to go to a motel with him and shortly after she rejected several other overtures from Anthony of a sexual nature which shall be discussed later, she reported to work and found another waitress in her place. Anthony Stylianos told complainant to go home. Complainant was told the following day by an agent of Anthony that if her services as a waitress were needed by the Blackwood Diner she would be so advised. Complainant was not called back to her employment.

During the course of her four month employment at the Blackwood Diner complainant recalled, in her words, the "terrible relationship" she had with Anthony Stylianos. Complainant explained that Anthony would stare at her body; that he was "overly friendly" towards her; and, that he made unwelcome sexual remarks to her while she was engaged in her duties as a waitress. Anthony told her on several occasions he "likes the way you walk," "you have a nice swing," in addition to continuously staring at her body. When Anthony asked her if she would accompany him to a motel, complainant responded in the negative and told Anthony that she was married. On other occasions, while Anthony was staring at her body his eye would catch complainant's eye and he would "wiggle his tongue." Finally, complainant testified that on at least one occasion Anthony Stylianos assaulted her by "grabbing" her derriere. Complainant told Anthony that if he ever touched her again he would be sorry.

Complainant explained that she could not quit the employment because she needed those precise hours together with the money she was earning. A final incident occurred in regard to a customary practice of the Blackwood Diner to allow waitresses on duty to take breaks in order to have meals. On one occasion, complainant asked Anthony if she could take a break to have something to eat to which Anthony directly responded to her "eat my balls."

Complainant complained of Anthony's conduct to his brother John Stylianos who, according to complainant, is "in charge" of the

Blackwood Diner and she knows that Anthony took orders from John. John agreed to talk to Anthony and, according to complainant, Anthony's conduct dramatically changed thereafter for a total period of two days. Anthony then proceeded to give her "dirty looks," screamed at her, made her wash dishes which no other waitress was expected to do, and also required her to clean out the refrigerator which was a duty never before assigned to a waitress.

Complainant explained that the day she reported for work in or about the second week of January 1982, Anthony told her she was to have been on duty New Year's Eve. At hearing, complainant denied her hours required her to be on duty New Year's Eve and, it is noted, this testimony is unrefuted in the record before me. Following Anthony's exclamation to complainant that she was to have been on duty New Year's Eve, he then told her to go home and to get out of the diner.

According to the affidavit of Arlene Mathews, complainant was not the only female employee at Blackwood Diner who suffered indignities from the conduct and words of Anthony Stylianos. Ms. Mathews attests as follows:

1. I am over the age of 18 years.
2. From March, 1981 until May 1981, I worked at Blackwood Diner as a hostess/cashier.
3. I worked the day shift from 10 A.M. until 2 P.M. and the evening shift from 4 P.M. to 7 P.M.
4. John and Tony [Anthony] Stylianos were my supervisors.
5. When I would go into the kitchen for ice, Tony Stylianos and the cook would whistle at me and ask me to go to the casino in Atlantic City with them. They would invite me to stay overnight with them in a hotel at the casino.
6. Tony Stylianos and the cook would make comments to me such as "you would be so good in bed" and "I would like to have you in bed." After saying these things Tony and the cook would laugh and gesture as to the shape of my body with their hands.
7. These types of sexual advances were made to me every day that I worked at Blackwood Diner.

Complainant, as the result of the conduct of Anthony Stylianos towards her in regard to his words and actions, made her very nervous, sick to her stomach with stomach aches, she suffered double vision and she experienced nightmares. It should be noted that at the same time complainant's husband was suffering from terminal cancer. Complainant did consult with a physician on one occasion for her health and she received medication to sleep at night and spent \$22 for a

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prescription. She would have returned on more occasions to the physician had she had sufficient finances to do so but because of limited finances and the illness of her husband, together with the fact she was then not employed, she could not afford return visits to the physician.

When complainant's employment ceased at the Blackwood Diner, she became a hostess for another diner in the immediate area on a full time basis. Between the two jobs, complainant did not lose any pay and, consequently, no relief for back pay can be awarded here. Complainant is presently employed as an attendance officer at a local public school district and, on occasion, she returns to the restaurant where she began as a hostess to be a substitute waitress. Finally, it should be noted that complainant's husband has since passed away.

FINDINGS

Notwithstanding that the foregoing testimony of complainant together with the affidavit of Ms. Mathews, establish the described words and conduct of Anthony Stylianos to be fact, I specifically find as fact that Anthony Stylianos, either co-owner of Blackwood Diner or as the supervisor in the employ of Blackwood Diner, subjected complainant to a substantial discriminatory work environment by his words and conduct to complainant as described above. Anthony Stylianos used his position as supervisor or co-owner, and both positions are considered interchangeable here, to subject complainant to unwelcome sexual advances or favors when he invited complainant to accompany him to a motel, and when he exclaimed to complainant "eat my balls," and other verbal and physical communications of a sexual nature to complainant in the form of staring at complainant's body and grabbing her derriere. I **FIND** the sexual demands made by Anthony Stylianos upon complainant to submit to unwelcome sexual activity and her refusal thereof, to be the basis upon which Stylianos caused complainant to be assigned duties not otherwise assigned waitresses. These duties included the washing of dishes and cleaning out refrigerators imposed upon her by Anthony Stylianos. The final indignity occurred when complainant reported to work early January 1982 and discovered another waitress in her place. That act, absent evidence to the contrary, constitutes a constructive discharge of employment solely on the basis of complainant's refusal to submit to the sexual advances of Anthony Stylianos.

LAW

The New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 *et seq.*, provides at *N.J.S.A.* 10:5-12, in part, as follows:

It shall be an unlawful employment practice, or as the case may be, an unlawful discrimination:

- (a) For an employer, because of the . . . sex . . . of any individual . . . to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. . . .

The legislative intent, purpose, and design of the Law Against Discrimination is to eradicate employment discrimination due to sex or any other invidious classification. *Peper v. Princeton University Board of Trustees*, 77 *N.J.* 55, 80 (1978). The Blackwood Diner, as an employer, is governed by the terms of the Law Against Discrimination by the very definition of the term "employer" at *N.J.S.A.* 10:5-5.

It is recognized that the New Jersey Law Against Discrimination does not use the term "sexual harassment" as a prohibited activity, the basis upon which this complaint has been brought, but the absence of the term does not constitute sexual harassment as a lawful activity. The law, a remedial measure, must be liberally and broadly construed to effectuate its purpose of eradicating unlawful discrimination in this State. *Anderson v. Exxon Co.*, 89 *N.J.* 483, 495 (1982). On prior occasions sexual harassment has been recognized as being a form of unlawful discrimination prohibited by the Law Against Discrimination. *See, Roberts, et al. v. Keansburg Bd. of Ed.*, 5 *N.J.A.R.* 208, 246 (1983); *Vasto v. Vornado, Inc.*, 8 *N.J.A.R.* 481 (1983). In fact, *Senate Bill 2694*, if approved, would specifically define sexual harassment as prohibited discrimination because of sex. Nonetheless, sexual harassment in the workplace is presently not permitted by the Law Against Discrimination; rather, the law is intent upon eradicating unlawful discrimination solely because of sex from the workplace.

There is no doubt that complainant met her burden of persuasion by a preponderance of credible evidence and successfully made out a prima facie case of unlawful discrimination against Anthony Stylianos and the Blackwood Diner. Complainant's prima facie case has not been rebutted by Anthony Stylianos or Blackwood Diner. Consequently, I **CONCLUDE** that complainant has carried her ultimate burden of persuasion to establish that she has been sexually harassed by Anthony Stylianos and as such complainant has established she has been subjected to unlawful discrimination in the terms and conditions of employment by Anthony Stylianos and by the

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Blackwood Diner and that the unlawful sexual harassment which she resisted in the termination of her employment. At hearing, counsel for respondents noted that while Anthony Stylianos may have committed an unlawful discriminatory act against complainant, there is no evidence to demonstrate that his brother, John, nor Blackwood Diner as a separate entity committed any unlawful acts against her. While it is true that there is no evidence to show John Stylianos engaged in unlawful conduct in regard to complainant or complainant's employment, Blackwood Diner is as liable to complainant as is Anthony Stylianos upon the doctrine of *respondeat superior*. In *Snell v. Murray*, 117 N.J. Super. 268, 272 (Law Div. 1971), *aff'd*, 121 N.J. Super. 215 (App. Div. 1972), *respondeat superior* was defined as follows:

The doctrine of *respondeat superior* is a maxim of common law founded upon principle that a duty rests upon every man, in the management of his own affairs, whether by himself or his servant or agent, to conduct them in such a manner as to not cause injury to another, and if he fails to do so, he shall answer for damage.

In this case, while it is unclear whether Anthony Stylianos is in partnership with his brother John as owner of Blackwood Diner, it is clear Anthony was in at least a supervisory position over complainant at the direction of John. Thus, Anthony Stylianos is liable for his own unlawful conduct towards complainant as is Blackwood Diner. Complainant's proofs demonstrate that while she suffered no loss of wages because of the unlawful discriminatory conduct inflicted upon her by Anthony Stylianos for she immediately secured alternate employment, the evidence does demonstrate she has suffered the indignity of being subjected to sexual harassment solely because she is female. Anthony determined to harass her solely because of her sex. Such conduct by any objective standard is egregious, obnoxious, and may not be tolerated in a State that considers itself to be in the vanguard of eliminating discrimination from our society. The proofs here demonstrate that Anthony Stylianos considered complainant not as an employee who is to be treated with common courtesy but as an object who, as part of her duties, was to be scorned, ridiculed, humiliated and embarrassed. It is noted that during the period of time Anthony Stylianos was engaging in his scurrilous conduct towards complainant, her family was torn apart because of the terminal illness of her husband and their father. It is of no moment that Anthony Stylianos may or may not have been aware of the personal tragedy then confronting complainant for the mere fact he engaged in his

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tasteless and unlawful conduct renders him liable for the emotional harm he inflicted upon complainant even if such emotional harm was compounded by her personal family tragedy. No one should be subjected to the abuse heaped upon complainant by Anthony Stylianos.

Accordingly, given the facts and circumstances of this case, complainant, I **FIND**, is entitled to damages for pain, humiliation, and suffering. Complainant is also entitled to the out-of-pocket expense of \$22 she expended for her visit to the physician following the conduct of Anthony Stylianos. In my view, a fair amount for pain, humiliation and suffering caused complainant as the direct result of the unlawful conduct of Anthony Stylianos as her supervisor in her employment is \$7,500. Accordingly, Anthony Stylianos and Blackwood Diner, are declared jointly liable to Eileen Wolbert in the amount of \$7,500 for the pain, humiliation and suffering inflicted upon her by Anthony Stylianos. In addition, Anthony Stylianos and the Blackwood Diner are jointly liable to Eileen Wolbert in the amount of \$22 for the out-of-pocket expense necessary for the medication prescribed for her by her physician. It is therefore **ORDERED** that a check in the amount of \$7,500 and a separate check in the amount of \$22 be immediately forwarded to the Division on Civil Rights by Anthony Stylianos and the Blackwood Diner, as joint respondents, for subsequent transfer of such amounts by the Division to Eileen Wolbert.

**FINAL DECISION BY THE DIRECTOR OF THE
DIVISION ON CIVIL RIGHTS, PAMELA S. POFF:**

WHEREAS, Eileen Wolbert filed a verified complaint with the Division on Civil Rights, alleging that respondents violated her rights under the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-4 and *N.J.S.A.* 10:5-12(a), by subjecting her to sexual harassment and subsequently dismissing her; and

WHEREAS, in answer to the complaint respondents (Stylianos, Inc., t/a Blackwood Diner and Anthony Stylianos) denied discriminating against complainant, contending that her work performance was below standard and that she was not discharged, but that she left on her own; and

WHEREAS, the Division on Civil Rights conducted an investigation and on December 9, 1983 a finding that "probable cause exists to credit the allegations of the complaint" was made by the Director of the Division; and

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WHEREAS, on February 26, 1985 the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*; and

WHEREAS, a prehearing conference was held on April 30, 1985 before the administrative law judge, where the issues were framed resulting in a prehearing order being issued on that same date; and

WHEREAS, on September 30, 1985 a plenary hearing was held before the administrative law judge which resulted in the initial decision being issued on November 15, 1985 and received by the Division on that same date; and

WHEREAS, copies of the initial decision were served on all parties, wherein the parties were advised that they could submit written exceptions, objections and replies to the Director within ten days after receipt of the initial decision; and

WHEREAS, the Director observes that no exceptions were filed by either party.

Having given careful and independent consideration to the record submitted by the Office of Administrative Law in this matter, I concur in the decision recommended by Judge McKeown and hereby adopt it as my Findings of Fact and Conclusions of Law, and make the same a part of this Order as though they were set forth in full herein.

The nature of the complainant's charge is that between August 1981 and January 1982, her employer, respondent Anthony Stylianos, continually sexually harassed her while she was working as a waitress at the Blackwood Diner. This harassment, she contends, took place in the form of suggestive comments, lewd gestures, requests for sexual favors and an instance of bodily assault, all of which was clearly unwelcomed.

Complainant contends that after she complained about the harassment to the diner's co-owner, John Stylianos, respondent Anthony Stylianos proceeded to antagonize her further, assigning her duties not usually given to waitresses, and finally, in or about the second week of January, replacing her with another waitress. Respondent told her she was replaced because she was supposed to have worked on New Year's Eve. Complainant contends she had not been scheduled to work at night on New Year's Eve and in fact, had made an earlier agreement with respondent that she would only be required to work during the daytime.

Furthermore, complainant alleges that because of respondent's conduct, she suffered from stomachaches, double vision and experienced nightmares, which caused her to visit a physician and to

be prescribed medication. She contends respondent's behavior aggravated her problems at home where her husband was afflicted with terminal cancer.

Although respondents were not present at the hearing, they were represented by an attorney and addressed the complainant's charges in a set of partially-answered and unsigned interrogatories. Respondents deny the charges and contend that complainant was lazy, could not handle the workload and was assigned the duties not normally given to waitresses only to "justify her continuing employment." Respondents contend that complainant was scheduled to work on New Year's Eve, because there would be an increase in business that night and she had the least amount of seniority.

In adopting the administrative law judge's decision, the Director notes that respondents filed no exceptions and did not attend the hearing. (Although an attorney was present to represent them). Therefore the Director cannot find any basis upon which to disagree with the administrative law judge's finding that complainant's testimony was credible, and her charges valid and that Arlene Mathews' affidavit which described respondents' similarly sexually offensive behavior toward her, was unrefuted. In his initial decision, the administrative law judge states, "There is no doubt that complainant met her burden of persuasion by a preponderance of credible evidence and successfully made out a prima facie case of unlawful discrimination. . . . Complainant's prima facie case has not been rebutted by Anthony Stylianos or Blackwood Diner."

In applying the *McDonnell-Douglas* analysis to this case, it is undisputed that respondents failed to testify in this matter, and therefore, proffered no legitimate reasons for their conduct as required in *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, (1981). By footnote, the Court stated:

An articulation not admitted into evidence will not suffice. Thus, the defendant cannot meet its burden merely through an answer to the complaint or by argument of counsel.

450 U.S. at 255, fn.9.

As pointed out *supra*, the respondents failed to testify at hearing, therefore, they simply cannot be deemed to have met their burden.

In conclusion, the Director strongly concurs with the administrative law judge's opinion that respondents' behavior was "egregious, obnoxious, and may not be tolerated in a state that considers itself to be in the vanguard of eliminating discrimination from our society." and that:

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The proofs here demonstrate that Anthony Stylianos considered complainant . . . as an object who, as part of her duties, was to be scorned, ridiculed, humiliated and embarrassed. It is noted that during the period of time Anthony Stylianos was engaging in his scurrilous conduct towards complainant, her family was torn apart because of the terminal illness of her husband and their father [T]he mere fact he engaged in his tasteless and unlawful conduct renders him liable for emotional harm he inflicted upon complainant even if such emotional harm was compounded by her personal family tragedy. No one should be subjected to the abuse heaped upon complainant by Anthony Stylianos.

Accordingly, it is on this 18th day of December 1985 **ORDERED** that:

1. Respondents Stylianos, Inc., t/a Blackwood Diner, and Anthony Stylianos shall cease and desist from the doing of any act prohibited by the New Jersey Law Against Discrimination as set forth under *N.J.S.A.* 10:5-1 *et seq.*
2. The respondents Anthony Stylianos and the Blackwood Diner are jointly liable and shall pay the complainant the sum of \$7,500 for the pain, humiliation and suffering inflicted upon her as the result of illegal discrimination.
3. The respondents shall also pay the complainant the sum of \$22, in a separate check for the out-of-pocket expense necessary for the medication prescribed for her by her physician.
4. The two checks shall be made payable to Eileen Wolbert in the amount mentioned hereinabove and forwarded to the Division on Civil Rights, 1100 Raymond Boulevard, Room 400, Newark, New Jersey for transmittal to the complainant within 30 days after receipt of the within Order.
5. If the above mentioned checks are not received within 30 days after receipt of this Order, interest will run from the date of this Order at 12 percent, or such other amounts designated by the Court Rules during the pendency of this case.
6. Jurisdiction is retained by the Division on Civil Rights to observe and require compliance and to issue Supplemental Orders, if necessary to insure compliance with the foregoing provisions of this Order.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.