

II. PARTIES

2. Plaintiff, Ms. Joyce Fishel, is a citizen of the Commonwealth of Pennsylvania residing at 6024 Wayne Avenue, Apartment 1-B, Philadelphia, Pennsylvania 19144.

3. Ms. Fishel is female.

4. Defendant Big Way, Inc. is, upon information and belief, a Delaware corporation doing business as Valley Green Inn, Valley Green Road at Wissahickon Creek, Philadelphia, Pennsylvania 19128.

5. In this complaint, defendants Big Way, Inc. and Valley Green Inn will be used interchangeably.

6. Defendant Big Way, Inc. operates a restaurant, a banquet facility, and a snack bar at the historic Valley Green Inn, which, upon information and belief, it leases from The Friends of the Wissahickon.

7. At all times material hereto, defendant Big Way, Inc. employed more than two (2) employees.

8. Defendant Jack Ott, a male, is a citizen of the Commonwealth of Pennsylvania, who, at all times relevant, was, based upon information and belief, co-owner of Big Way, Inc. and the general manager of the Valley Green Inn.

9. At all times relevant, defendant Big Way, Inc. acted by and through its authorized agents, servants, workmen and/or employees, acting within the course and scope of their employment and in furtherance of its business.

III. JURISDICTION

10. The causes of action set forth herein arise under The Equal Pay Act, 29 U.S.C. § 206 (d) and the Pennsylvania Wage and Collection Law, 43 P.S. § 260.1, et seq.

11. The District Court has jurisdiction over the causes of action set forth in this complaint pursuant to 29 U.S.C. § 216 and 28 U.S.C. §1331. The District Court has supplemental jurisdiction over the causes of action set forth in Count II pursuant to 28 U.S.C. §1367.

12. Venue is proper under 28 U.S.C. §1391(b) and (c).

IV. FACTUAL ALLEGATIONS

13. On or about July 25, 2002, defendant Big Way, Inc hired Ms. Fishel as a server at the historic Valley Green Inn, Philadelphia, Pennsylvania.

14. Ms. Fishel held the position of server from approximately July 25, 2002 until approximately February 2003.

15. In approximately February 2003, then floor manager, Teresa FitzPatrick, a female, resigned.

16. Mr. Ott promoted Ms. Fishel to floor manager.

17. Mr. Ott paid to Ms. Fishel the same weekly salary he had paid to Ms. FitzPatrick.

18. While Ms. Fishel was floor manager, Mr. Ott regularly ridiculed, insulted, and harassed her by, among other things:

- a.) Making sexual comments to her,
- b.) Yelling at her and belittling her in front of those she supervised,
- c.) Having sex in the attic of the Valley Green Inn while s. Fishel was working in the adjoining office and the Inn was open for business,
- d.) promoting Mr. Shing Dan to Chef/Kitchen Manager after Ms. Fishel complained to Mr. Ott about Mr. Dan's obnoxious and harassing behavior,

e.) rehiring, over Ms. Fishel's objection, a male bartender that had previously been fired by Ms. FitzPatrick for, among other things, inappropriate behavior toward female servers, and

f.) engaging in other unwelcome, gender-based harassment of Ms. Fishel.

19. Because of Mr. Ott's abusive and harassing behavior, Ms. Fishel was forced to resign or was constructively demoted from the position of floor manager.

20. Thereafter, in approximately May 2005, Ms. Fishel returned to her previous position of server at the Inn, where she would have less direct day-to-day contact with Mr. Ott.

21. After Ms. Fishel resigned as floor manager, Mr. Ott promoted another server Ken Swope, a male, to floor manager.

22. At the time of Mr. Swope's promotion to floor manager, Mr. Swope had little or no management experience.

23. The floor manager position held by Mr. Swope required substantially equal skill, effort, and responsibility as that held by Ms. Fishel.

24. Mr. Ott paid to Mr. Swope a salary of \$600.00 per week as floor manager - the same position for which he had paid Ms. Fishel a salary of \$300.00 per week.

25. Ms. Fishel's gender was a motivating and determinative factor in Big Way, Inc.'s treatment of her relative to the terms and conditions of her employment.

26. In approximately October 2003, Mr. Ott admonished an employee for raising her voice to Mr. Swope and stated, "This isn't Joyce or Teresa, you speak to him like he is Ken."

27. During the time that Ms. Fishel was employed by defendant Big Way, Inc., it did not have a policy against gender/sexual harassment or discrimination.

28. During the time that Ms. Fishel was employed by defendant, Big Way, Inc. did not post information for its employees regarding local, state or federal laws prohibiting discrimination and harassment, as required by law.

29. When plaintiff returned to her position as server, she continued to be subjected to an environment that was hostile to women.

30. Because of the hostile environment at Valley Green Inn, Ms. Fishel was constructively discharged on January 17, 2004.

**COUNT I – The Equal Pay Act (29 U.S.C. § 206 (d))
(v. Big Way, Inc. dba Valley Green Inn)**

31. Ms. Fishel incorporates herein by reference paragraphs 1 through 30 above, as if set forth in their entirety.

32. As floor manager, Ms. Fishel performed work under similar working conditions and requiring substantially equal skill, effort, and responsibility as that performed by Mr. Swope.

33. Big Way, Inc. does not have a merit system relative to established rates of pay, nor does it have a system which measures earnings by quantity or quality of production.

34. Defendant has intentionally, willfully, and with reckless indifference to federal law, compensated Ms. Fishel, a female, at wage rates substantially less than those paid to Mr. Swope, a male, for performing work which required equal skill, effort, and responsibility, in violation of the Equal Pay Act.

35. Big Way, Inc. by the above improper, discriminatory acts has violated The Equal Pay Act.

36. Said violations were intentional and willful.

37. As a direct and proximate result of Big Way, Inc.'s improper, discriminatory and unlawful conduct, Ms. Fishel has in the past incurred, and will in the future incur, a loss of earnings, loss of benefits, pain and suffering, embarrassment, humiliation, mental anguish, and loss of life's pleasures, the full extent of which is not known at this time.

38. No previous application was made for the relief requested herein.

**COUNT II – Pennsylvania Wage Payment and Collection Law
(43 P.S. 260.1, et seq.)
(v. Big Way, Inc. dba Valley Green Inn and Jack Ott, individually)**

39. Ms. Fishel incorporates herein by reference paragraphs 1 through 38 above, as if set forth in their entirety.

40. When Ms. Fishel was constructively discharged on January 17, 2004, she provided to Mr. Ott her current address so he could send her final paycheck to her.

41. Big Way, Inc. did not pay to plaintiff wages due to her for the period of January 1 through January 17, 2004.

42. Big Way, Inc. did not provide a W-2 to Ms. Fishel for wages she earned in 2004 while working at Valley Green Inn.

43. Said violations were intentional and willful.

44. As a direct and proximate result of defendants' violation of the Pennsylvania Wage Payment and Collection Law, Ms. Fishel has sustained damages and losses set forth herein and has incurred attorney's fees and costs.

RELIEF

WHEREFORE, Plaintiff respectfully requests this Court enter a judgment:

(a) declaring that the actions of defendant Big Way, Inc. violate the Equal Pay Act;

- (b) declare that the actions of defendants Big Way, Inc. and Jack Ott violate the Pennsylvania Wage Payment and Collection Law;
- (c) enjoining and restraining permanently the violations alleged herein;
- (d) ordering Big Way, Inc. to pay to Ms. Fishel the difference between what she earned and what Mr. Swope was paid for performing the same job plus benefits;
- (e) awarding liquidated damages under the Equal Pay Act and back pay with interest
- (f) awarding liquidated damages and her unpaid wages under the Pennsylvania Wage Payment and Collection Law;
- (g) awarding to Ms. Fishel costs of this action, together with reasonable attorney's fees; and
- (h) granting such other and further relief as this Court deems appropriate.

S/
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Dated: April 22, 2005