

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CIV.
v.)	
)	
RESTAURANT CONCEPTS II, LLC, d/b/a)	COMPLAINT
APPLEBEE'S NEIGHBORHOOD)	JURY TRIAL DEMAND
GRILL AND BAR)	
)	
Defendant.)	
_____)	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981 against Restaurant Concepts II, LLC, d/b/a Applebee's Neighborhood Grill and Bar ("Applebee's") to correct unlawful employment practices on the bases of sexual harassment and retaliation and to provide appropriate relief to a class of females who were adversely affected by such practices. The Commission alleges that Kimberly Beaty and a class of similarly situated females were subjected to sexual harassment by a coworker at Applebee's. The Commission further alleges that after Ms. Beaty reported the harassment to Applebee's management officials, she was terminated from employment in retaliation for making the complaints.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3); and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Mexico.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. Defendant Restaurant Concepts II, LLC, d/b/a Applebee's Neighborhood Grill and Bar (the "Employer"), a Georgia corporation, has continuously been doing business in the state of New Mexico and the city of Santa Fe and has at all relevant times had at least fifteen employees.

5. At all relevant times, Defendant Applebee's has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Kimberly Beaty (the “charging party”) filed a charge of discrimination with the Commission alleging that Applebee’s violated Title VII. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Charging Party Kimberly Beaty was employed at Applebee’s in Santa Fe, New Mexico as a Bartender from approximately February 2001 until approximately March 31, 2003.

8. Since approximately June 2002, Defendant Applebee’s has engaged in unlawful employment practices at its Santa Fe, New Mexico restaurant in violation of Section 703 (a) of Title VII, 42 U.S.C. § 2000e-2(a), including subjecting Kimberly Beaty and a class of female employees to a hostile work environment due to sexual harassment.

9. The sexual harassment to which Defendant Applebee’s subjected Kimberly Beaty and a class of female employees includes, but is not limited to:

- A) Unwelcome and inappropriate physical contact; and
- B) Unwelcome and inappropriate remarks of a sexual nature.

10. Since at least March 2003, Defendant Applebee’s has engaged in unlawful retaliatory conduct practices in violation of Section 704(a) and Title VII, 42 U.S.C. § 2000e-3(a) when it terminated Kimberly Beaty after she reported unlawful sexual harassment by another Bartender to management officials.

11. The effect of the practices complained of in paragraphs 8 through 10 above has been to deprive Kimberly Beaty and a class of similarly situated females of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, female, and because Kimberly

Beaty complained about the sexual harassment .

12. The unlawful employment practices complained of in paragraphs 8 through 10 above were intentional.

13. The unlawful employment practices complained of in paragraphs 8 through 10 above were done with malice or with reckless indifference to the federally protected rights of Kimberly Beaty and a class of female employees.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Applebee's, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in discrimination on the bases of sex or retaliation.

B. Order Defendant Applebee's to institute and carry out policies, practices, and programs which provide equal employment opportunities for females and anyone who complains about sexual harassment, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Applebee's to make whole Kimberly Beaty by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Applebee's to make whole Kimberly Beaty and a class of similarly situated females by providing compensation for past and future pecuniary losses resulting from the unlawful

employment practices described above in amounts to be determined at trial.

E. Order Defendant Applebee's to make whole Kimberly Beaty and a class of similarly situated females by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices described in paragraphs 8-10 above, including emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendant Applebee's to pay Kimberly Beaty and a class of similarly situated females punitive damages for its malicious and/or reckless conduct described in paragraphs 8-10 above in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY DEMAND

The Commission requests a trial by jury on all questions of fact raised by its complaint.

DATED this 23rd day of June 2004.

Respectfully submitted,

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