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U.S. DISTRICT COURT
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

CARNEGIE DELI, INC.

Defendant.

CIVIL ACTION NO. 04-3239
(JLL)

COMPLAINT
JURY TRIAL DEMAND

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 to correct unlawful employment practices that discriminate on the basis of sex and to provide appropriate relief to Norma E. Rivera and a class of female employees who were adversely affected by such practices. As articulated with greater particularity in paragraph 7 below, the Commission alleges that Ms. Rivera and other female employees were subjected to sexual harassment through regular, sexually explicit, insulting, and derogatory comments and conduct of a supervisor which created a sexually hostile and offensive work environment for them as females. The Commission alleges that although Ms. Rivera and the class of females objected to such offensive conduct, the sexual harassment did not stop. As a result of the sexually hostile work

environment, and Defendant's lack of response, Ms. Rivera was constructively discharged. Consequently, Ms. Rivera and a class of female employees suffered severe emotional distress and damages.

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 § 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)" ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the District of New Jersey.

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. § 2000(e)-5(f) (1) and (3).

4. At all relevant times, Defendant Employer, Carnegie Deli, Inc., has continuously been and is now doing business in Carlstadt, New Jersey and has continuously had at least fifteen (15) employees.

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

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, the Charging Party, Norma E. Rivera, filed a charge of employment discrimination with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least July, 1999, Defendant Employer has engaged in unlawful employment practices at its Carlstadt, New Jersey facility in violation of Section 703(a) (1) of Title VII, 42 U.S.C. § 2000e-2(a) (1), by subjecting Ms. Rivera, and a the class of female employees to a sexually hostile and abusive work environment when Defendant's Manager of Bakery, Carlos Cardenas, engaged in a continuing pattern of sexual harassment against Ms. Rivera and a class of female employees which was widespread, unwelcome, and uninvited. The offensive conduct includes, but is not limited to the following:

(a) Norma E. Rivera was employed by Defendant Employer as a Packer/Machine Operator from July 8, 1999 to June 6, 2003. She was born in Honduras and is a Spanish speaking immigrant.

(b) In 2003, she was directly supervised by Carlos Cardenas, the Manager of Bakery, who is Panamanian and also served as the liaison/translator for the vast majority of Spanish speaking immigrant laborers employed by Defendant.

(c) Beginning in April, 2003, Cardenas would constantly attempt to place his hands on her buttocks or brush his arm against her breasts. This normally occurred while she was carrying items in her hands or when she was bent over, picking up sacks of flour or sugar from the floor.

(d) In addition, Cardenas constantly followed Ms. Rivera and attempted to touch her body

inappropriately. He regularly addressed her as "Mula"¹ instead of calling her by name.

(e) On one occasion in May, 2003, Cardenas asked Ms. Rivera to accompany him upstairs to the inventory room located on the third floor to check the inventory. While upstairs alone with Ms. Rivera, Cardenas grabbed her hand and attempted to push her on top of the boxes piled on the floor, grabbing her breasts and asking her to engage in sexual relations with him. Although shaken, Ms. Rivera was able to escape his grasp and return to her work area.

(f) On another occasion, Ms. Rivera entered the restroom located in the basement near the dining area; when Ms. Rivera was about to close the door and place her jacket on the door hook, Cardenas pushed himself into the bathroom and pinned Ms. Rivera against the inside wall near the paper holder. Ms. Rivera screamed, pushed him aside, and managed to again escape his grasp.

(g) In response to Ms. Rivera's protests and objections, Cardenas responded by saying, "If you don't like it, the doors are open." Ms. Rivera did not formally complain to Respondent's upper management at that time for fear of termination or being subjected to greater retaliatory treatment. For example, Ms. Rivera alleges that in retaliation for her rejections, Cardenas assigned her to heavier, more difficult tasks as punishment.

(h) A class of female employees have been similarly subjected to inappropriate and unwelcome sexual advances, touching, groping, and other unwelcome sexual touching and comments by Defendant's Manager of Bakery, Carlos Cardenas, on a regular basis.

(i) The offensive conduct was pervasive and known to Defendant Employer's management. However, no corrective action was ever attempted.

(j) Defendant has no sexual harassment policy or complaint procedure.

¹"Mula" is Spanish for "mule."

(k) As a direct consequence of the sexually hostile work environment, and Defendant Employer's failure to take any corrective action, Ms. Rivera was constructively discharged on June 6, 2003.

8. The effect of the practices complained of in paragraph 7 above have been to deprive Ms. Rivera and a class of female employees of equal employment opportunities and otherwise adversely affect their status as employees because of their sex (female).

9. The acts complained of in paragraph 7 above were intentional.

10. The unlawful employment practices complained of in paragraph 7 above were done with malice or with reckless indifference to the federally protected rights of the Charging Party and a class of female employees.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in sexual harassment, constructive discharge, and any other employment practice which discriminates on the basis of sex.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for women, which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Ms. Rivera and a class of affected female employees 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, including but not limited to rightful-place reinstatement.

D. Order Defendant Employer to make whole Ms. Rivera and a class of affected female employees by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including but not limited to out-of-pocket losses in amounts to be determined at trial.

E. Order Defendant Employer to make whole Ms. Rivera and a class of affected female employees by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including pain and suffering, humiliation, embarrassment, and loss of life's pleasures, in amounts to be determined at trial.

F. Order Defendant Employer to pay Ms. Rivera and a class of female employees, punitive damages for its malicious and reckless conduct described in paragraph 7 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 TRIAL DEMAND

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

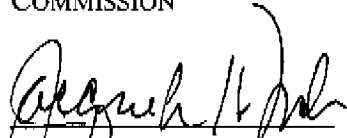
Respectfully submitted,

ERIC S. DREIBAND
General Counsel

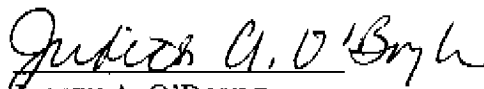
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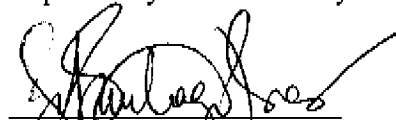
EQUAL EMPLOYMENT OPPORTUNITY
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