

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

UNITED STATES
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and

LORENA PIÑON and LORETTA GRADO,

Intervenors,

v.

Civil Action No. 05-cv-1048

UNIVERSITY OF PHOENIX, INC.,

Defendant.

COMPLAINT OF INTERVENOR LORETTA GRADO

NATURE OF THE ACTION

1. Intervening Plaintiff Loretta Grado brings this action against her former employer, Defendant University of Phoenix, Inc., for declaratory judgment, permanent injunctive relief, and compensatory and punitive damages for Defendant's discrimination against her on the basis of sex and its retaliation for her opposition to the discriminatory treatment. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended by 42 U.S.C. § 1981a ("Title VII") and New Mexico common law.

2. On July 1, 2003, Ms. Grado began work as a Student Services Coordinator at the University of Phoenix, Santa Teresa Campus. The Campus Director, Manny Ortiz—the highest ranking official on the campus—immediately began an unrelenting campaign of sexual harassment of Ms. Grado. On numerous occasions, Ortiz propositioned Ms. Grado for sex, suggesting that they meet in secluded areas and “party.” Ortiz tried to grope Ms. Grado, regularly ran his hands through her hair, and constantly made lewd sexual comments to her. On one occasion, Ortiz physically pinned Ms. Grado against a wall and forcibly kissed her. Ortiz’s harassment was constant and continued for months.

3. Ortiz’s harassment was accompanied with suggestions that he would ensure that Ms. Grado would get promoted and “move up” in the company if she submitted to his sexual advances. Ms. Grado consistently rejected Ortiz’s unwelcome harassment and regularly made complaints to her supervisor and other University officials. Because Ms. Grado resisted Ortiz’s advances and reported his conduct, he prevented her from being promoted to a Financial Aid Counselor position for which she applied and was qualified. Ortiz instead promoted a less-qualified applicant.

4. When Ms. Grado reported Ortiz’s conduct to her supervisors, they told Ms. Grado not to worry and indicated that they had learned to accept the fact that Ortiz regularly harassed female employees. Despite Ms. Grado’s frequent complaints about Ortiz’s conduct, the University took no actions against him or made any efforts to stop his harassment. Finally, after the University of Phoenix’s human resources department commenced an investigation of various allegations of Ortiz violating University of

Phoenix policies, the University of Phoenix terminated Mr. Ortiz—approximately six months after Ms. Grado began reporting his sexual harassment.

5. On March 16, 2003, Ms. Grado filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). Upon investigating Ms. Grado's complaint, the EEOC found that Ms. Grado and other female employees "were subjected to unwelcome comments and conduct by management level employees which created a sexually hostile work environment." EEOC Determination (attached as Exhibit A). The EEOC further determined that "it is more likely than not that Charging Party was not selected for promotion to the Financial Aid Counselor position because of her rejection of the Campus Director's sexual advances and/or because she otherwise opposed practices made unlawful by Title VII." Exhibit A.

6. Defendant, by and through its officials and employees, maintained a hostile working environment, took adverse employment actions against Ms. Grado for her refusal to submit to Ortiz's sexual advances, and retaliated against Ms. Grado for her complaints of discrimination. These actions violate Title VII's protections against discrimination on the basis of sex and New Mexico common law.

PARTIES

7. Intervening Plaintiff Loretta Grado is a woman. Ms. Grado is a United States citizen and a resident of the State of Texas. From July 2003 to May 2004, Ms. Grado was employed by the University of Phoenix as a Student Services Coordinator at the Santa Teresa Campus located at 1270 Country Club Road, Santa Teresa, New Mexico 88008.

8. Defendant University of Phoenix, Inc., an institution of higher education, is incorporated in Arizona and offers education for working adults through the Internet and classes at its 170 campuses, including University of Phoenix-Santa Teresa, New Mexico. At all relevant times, University of Phoenix, Inc. had more than 500 employees.

JURISDICTION AND VENUE

9. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), 1367, and 42 U.S.C. § 2000e-5(f).

10. Venue is proper in this District pursuant to 42 U.S.C. § 2000e(5)(f)(3) and 28 U.S.C. § 1391(b) because the claims arise, and a substantial portion of the relevant events occurred, in this District.

FACTUAL ALLEGATIONS

A. Ms. Grado's Employment at the University of Phoenix

11. Loretta Grado is a twenty-nine year old woman living in El Paso with her two children, a seven-year-old son and a five-year-old daughter. Ms. Grado majored in Business Management at the University of Phoenix and obtained a certification in Human Resources. Ms. Grado is currently employed as a property manager by Investment Builders, Inc. where she manages nine properties, overseeing all aspects of the operation and maintenance of the properties.

12. In July 2003, Ms. Grado was hired as a Student Services Coordinator by the University of Phoenix at its Santa Teresa campus. The University of Phoenix is the largest private university in North America, with over 230,000 students and 17,000

faculty and staff members. The University offers higher education for working adults through the Internet and at its numerous campuses throughout the country.

13. As a Student Services Coordinator, Ms. Grado's duties included conducting new student orientations, administering CLEP tests for students, and creating the student information database. Ms. Grado's annual salary was approximately \$19,000. Ms. Grado was directly supervised by Brian Russo, the Academic Counseling Manager. Manny Ortiz, as the Campus Director, was the highest ranking University employee on the campus and supervised all of the Santa Teresa campus employees, including Ms. Grado and her immediate supervisors. Ortiz was supervised by the University's Regional Vice President, Randy Lichtenfield.

B. Sexual Harassment Directed At Ms. Grado

14. Manny Ortiz's harassment of Ms. Grado began immediately after she started work. In the first few months of her employment, Ortiz would, for no work-related or any other apparent legitimate reason, regularly summon Ms. Grado into his office, call her on the phone up to ten times a day, or visit her cubicle. During these contacts, Ortiz would engage in inappropriate behavior such as showing Ms. Grado his high school yearbook to demonstrate that he was "good looking" and asking her, "don't you think so?"

15. Approximately three months after Ms. Grado started work, Ortiz's sexual advances became more overt. Ortiz told Ms. Grado that he heard about her divorce and wondered whether she liked to "party." Ms. Grado said that she did not understand his

question, and Ortiz explained that partying would include “kissing,” “touching,” “making each other feel good,” and “having sex.”

16. Ortiz invited Ms. Grado to “party” with him and then explained that since he was married, he had to “party” during the day. Ms. Grado rejected his proposition, and as she got up to leave, Ortiz said that his door was “always open” if she ever wanted to “party.”

17. Over the next several months, Ortiz frequently would suggest that he and Ms. Grado meet at unoccupied locations so they could have sex. On one occasion, Ortiz offered to pay for a hotel room during a company retreat. Ortiz would regularly try to grope Ms. Grado or run his hands through her hair. Ortiz would constantly make lewd comments about her physical appearance. He would often say that her clothing showed off her “curves” and would often make suggestive noises such as “mm mm mm” and “wow” behind her as she walked. Ortiz asked her whether she “craved” him and whether she was lonely and wanted someone to “hold” and “caress” her.

18. In November 2003, Ortiz called Ms. Grado into his office and asked her whether she was dating. He then asked her, “Why don’t you give me a chance?” She asked him what it would take for him to stop. He said, “Damn it, you will give in. You want to move up, don’t you?” When Ms. Grado rejected his advance, Ortiz cursed at her and threatened her not to “fuck” with him. As Ms. Grado got up to leave, he blocked the door, pinned her against the wall, and forcibly kissed her. Ms. Grado pushed him away and left his office in tears.

19. At one point early in her employment, Ms. Grado was told by Russo that she should wear a short skirt in a video that Manny Ortiz was organizing because she had been voted as one of the female employees with the “best legs.” Ortiz organized the video supposedly to boost morale among employees and had himself filmed flirting with Ms. Grado and another female employee. The video, which described Ortiz as the office’s “leader” who “oozes charm,” was later shown to campus employees.

20. Ortiz’s harassment was frequently accompanied with promises that he would give Ms. Grado benefits if she accepted his sexual advances and had a relationship with him. Ortiz repeatedly told Ms. Grado that she was “management material” and that he could help her “go far” in the company.

21. Ortiz told Ms. Grado that he would recommend her for a Financial Aid Counselor position, which would have increased her salary approximately one and a half times. Ortiz stressed that the salary increase would boost her finances as a single mother and said that Ms. Grado would owe him big for the recommendation.

22. Ortiz knew his harassment of Ms. Grado was inappropriate and when he suspected that she was making complaints about his conduct, he asked another employee to review an office surveillance tape for footage that might show his sexual harassment. Ortiz also asked the other employee to report any comments Ms. Grado made about Ortiz. Ortiz told the other employee that if he did not do these tasks for Ortiz, he would be fired.

23. Ortiz's harassment of Ms. Grado was unwelcome and Ms. Grado constantly and consistently rejected his advances. Nonetheless, the harassment continued unabated through the time Ortiz left the campus in February 2004. Even after he left employment with the University of Phoenix, Ortiz would return to the campus, sit in his car outside the office, and watch Ms. Grado leave. Ortiz even followed Ms. Grado on one occasion as she drove to work from home.

24. Ms. Grado was not alone in being harassed by Ortiz. Ms. Grado was told by another female employee that Ortiz had propositioned her while she was going through her divorce and that he had sexually harassed other female employees.

C. Ms. Grado's Regular Reports and Complaints Regarding Ortiz's Harassment

25. Soon after Ortiz began harassing her, Ms. Grado reported his conduct to her supervisor, Brian Russo. Ms. Grado first informed Russo of Ortiz's harassment in August 2003. Russo responded that Ortiz was harmless. Ms. Grado continued to regularly complain about Ortiz's harassment to Russo, but Russo merely told her to ignore Ortiz.

26. When Ms. Grado specifically reported to Russo that Ortiz had asked her to "party," including asking her to have sex with him, Russo responded, "Welcome to Manny's world." Russo told Ms. Grado that she had done nothing wrong and that he would take care of the situation, asking her to go back to work.

27. When Ms. Grado reported Ortiz's conduct to Operations Manager Pamela Snow, who supervised Russo, she acknowledged that Ortiz had "done this for a very long time" but merely told Ms. Grado to keep doing her job and "hope that he gets the picture." In February 2004, Ms. Grado filed a written complaint with the Human Resources department regarding Ortiz's harassment. She received no response, and the Human Resources department never investigated her complaint.

28. Defendant took no disciplinary or other action against Ortiz for his harassment of Ms. Grado and other female employees and made no effort to stop his harassment until the University of Phoenix Human Resources department commenced an investigation regarding allegations of Ortiz's misconduct made by other employees.

D. Ortiz's Retaliatory Refusal to Allow Ms. Grado to be Promoted

29. Because Ms. Grado rejected Ortiz's advances and in retaliation for Ms. Grado's complaints about his sexual harassment, Ortiz prevented her from being promoted. Ms. Grado submitted an application for the position of Financial Aid Counselor to the Finance Manager, Jaime Armendariz. The Financial Aid Counselor position would have paid an annual salary of between \$26,000 to \$28,000. Financial Aid Counselors were frequently promoted to Academic Counselor positions.

30. Ms. Grado was well-qualified for the Financial Aid Counselor position, having experience in retail and office management, which included managing finances. In addition, despite Ortiz's harassment, Ms. Grado had performed her duties as a Program Specialist in an exemplary fashion. At the time, Ms. Grado was attending school with a Business Management major. Ms. Grado interviewed for the position and Armendariz

told Ms. Grado's supervisor that she did very well in the interviews and that she would get the Financial Aid Counselor position.

31. Ortiz, however, blocked her promotion and Berlinda Hernandez was hired as Financial Aid Counselor. Upon information and belief, Ms. Hernandez was a less-qualified applicant than Ms. Grado. When Ms. Grado asked Russo why she had not been hired, Russo said, referring to Ortiz, "you know who made the decision."

E. Ms. Grado's Commencement of EEOC Proceedings

32. On March 16, 2004, Ms. Grado filed a Charge of Discrimination with the EEOC, alleging that Defendant discriminated against her, by and through its employees and agents, by engaging in *quid pro quo* sexual harassment, maintaining a hostile working environment on the basis of sex, and retaliating against her. The EEOC conducted an investigation of Ms. Grado's allegations and on March 29, 2005 issued a determination in Ms. Grado's favor. The EEOC concluded, in part:

Evidence obtained during the investigation revealed that the Charging Party and other female employees of Respondent were subjected to unwelcome comments and conduct by management level employees which created a sexually hostile work environment at the Santa Teresa campus. Evidence also reveals Respondent failed to take reasonable steps to prevent and correct the harassment of Charging Party and others. Also, Respondent failed to take prompt and appropriate corrective actions upon receipt of Charging Party's complaints of harassment.

Exhibit A.

33. The EEOC further determined that "it is more likely than not that Charging Party was not selected for promotion to the Financial Aid Counselor position because of her rejection of the Campus Director's sexual advances and/ or because she otherwise opposed practices made unlawful by Title VII." Exhibit A.

34. After unsuccessful attempts to conciliate the matter, the EEOC filed this action on September 30, 2005.

F. The University of Phoenix's Responsibility for Ortiz's Sexual Harassment

35. At all times relevant, Ortiz, Russo, and Snow were acting within the scope of their employment as employees, agents and/or representatives of the University of Phoenix. The discriminatory actions described above were carried out (a) at the direction of and with the consent, encouragement, knowledge, and ratification of the University of Phoenix; (b) under University of Phoenix's authority, control, and supervision; and/or (c) within the scope of the employee's employment.

36. The University of Phoenix knew or reasonably should have known that some harm might be caused by the acts or omissions of Ortiz, who was entrusted with a high-ranking supervisory position.

37. Ortiz's actions, as set forth above, constitute extreme and outrageous conduct and were willful, wanton and malicious, and were undertaken with reckless disregard for Ms. Grado's rights. Ortiz was aided in accomplishing the illegal conduct set forth above by the existence of the agency relationship with the University of Phoenix.

38. Defendant's actions, as described above, were a series of separate but related acts that amounts to a continuing violation of 42 U.S.C. § 2000e *et seq.* and New Mexico common law.

INJURY TO MS. GRADO

39. Ms. Grado's ability to work was hampered by the constant need to deflect Ortiz's unwelcome and flagrant sexual advances. Ms. Grado was forced to work in an atmosphere of intimidation and humiliation and feared for her and her children's safety.

40. As a result of Ortiz's offensive advances and the hostile work environment, Ms. Grado suffered extreme and severe emotional distress, humiliation, sleeplessness, and constant nightmares. She became increasingly despondent and feared for her safety. Ortiz's advances toward Ms. Grado had become general knowledge in the office, including with Ortiz's wife who worked in the same office. As a result, Ms. Grado was subjected to public scrutiny at work and forced to endure disrespectful remarks from coworkers.

41. Due to the constant emotional stress, Ms. Grado took a leave of absence in February 2004. The hostile work environment that Ms. Grado had to endure at the Santa Teresa campus and the other illegal conduct directed at Ms. Grado created difficult and intolerable working conditions that caused her to resign in May 2004. After resigning, Ms. Grado was able to obtain a position with the Border Fair Housing and Economic Justice Center in El Paso, as a Fair Housing Specialist. In November 2005, the Fair Housing Specialist position was eliminated because of funding cuts and Ms. Grado was unemployed until January 30, 2006.

42. As a result of University of Phoenix's discriminatory conduct, Ms. Grado suffered, and will in the future suffer, irreparable loss and injury including, but not

limited to, economic loss, humiliation, embarrassment, emotional distress, and a deprivation of her right to equal employment opportunity.

43. Ms. Grado was disadvantaged in her career because she was not promoted and received a lower salary while at the University of Phoenix and in subsequent positions.

COUNT I

Title VII

44. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

45. As described above, Defendant's actions, including those by and through its employees and agents, subjected Ms. Grado to differential terms and conditions of employment because of her sex through *quid pro quo* harassment and a hostile working environment, in violation of Ms. Grado's right to equal opportunity under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

46. As described above, Defendant's actions, including those by and through its employees and agents, were in retaliation for Ms. Grado's opposition to, and complaints about, discriminatory employment practices, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

COUNT II

Negligent Supervision

47. Paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. As described above, Defendant's actions, including those by and through its employees and agents, constituted negligent supervision or retention of Ortiz, who was Defendant's entrusted employee, after it knew or reasonably should have known that some harm might be caused by Ortiz's acts or omissions and also that Ortiz's acts or omissions harmed Plaintiff.

COUNT III

Intentional Infliction of Emotional Distress

49. Paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. As described above, Defendant's extreme and outrageous conduct, including conduct by and through its employees and agents, intentionally and/or recklessly caused Plaintiff extreme and severe emotional distress.

COUNT IV

Breach of Implied Contract

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. As described above, Defendant's actions, including those by and through its employees and agents, made working conditions objectively so intolerable for Ms. Grado, that a reasonable person would be compelled to resign. Defendant's constructive discharge of Ms. Grado breached an implied contract of employment. Defendant, by and through its policies and procedures and by and through statements of its employees and agents, has made direct or indirect references that termination of Ms. Grado would be only for just cause and/or has established procedures for termination with particular procedures.

PRAYER FOR RELIEF

Wherefore, Ms. Grado requests that this Court enter judgment in her favor and award her the following relief:

(1) Declare that the actions of Defendant described above constituted discrimination on the basis of sex and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* and New Mexico common law;

(2) Order injunctive relief requiring Defendant to provide sexual harassment training and a sexual harassment policy to all management and employees;

(3) Award Ms. Grado all lost salary, bonuses, commissions, and benefits that she would have received had Defendant not engaged in unlawful discrimination and retaliation, including appropriate back pay and front pay;

(4) Award Ms. Grado compensatory damages in an amount to be determined at trial for her loss and injury including, but not limited to, economic loss, humiliation, embarrassment, emotional distress, and deprivation of her right to equal employment opportunity regardless of her sex;

(5) Award Ms. Grado punitive damages in an amount to be determined at trial that would punish Defendant for its willful, wanton, and reckless conduct and that would effectively deter Defendant from engaging in similar conduct in the future;

(6) Award Ms. Grado prejudgment interest;

(7) Award Ms. Grado reasonable attorneys' fees and costs incurred in this action and the administrative claims that preceded it; and

(8) Award such other relief as the Court deems appropriate and just.

JURY DEMAND

Plaintiff requests trial by jury as to all issues in this case.

Dated: May 26, 2006

Respectfully submitted,

RELMAN
1225

W
(202)
(202)

Reed N. Colfax
Myrna Perez
& ASSOCIATES, PLLC
19th St., N.W.
Suite 600
Washington, D.C. 20036
728-1888
728-0848 (fax)