STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EC07WB-63382
REFERRAL NO. 17E 2013 00055

[redacted] and the
DIRECTOR OF THE NEW JERSEY
DIVISION ON CIVIL RIGHTS,

Complainants,

v.

GOLDEN GRANGE KENNELS, LLC
and JOSEPH MOSNER, Individually,

Respondents.

Administrative Action

FINDING OF PROBABLE CAUSE

The Director of the New Jersey Division on Civil Rights (DCR), pursuant to N.J.S.A. 10:5-14 and attendant procedural regulations, hereby finds that probable cause exists to believe that an unlawful discriminatory practice has occurred in this matter.

On October 15, 2012, [redacted] (Complainant[1]) filed a verified complaint with the DCR alleging that her former employer, Golden Grange Kennels, LLC (Golden Grange), and its owner, Joseph Mosner, subjected her to sexual harassment in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42. In particular, Complainant alleged that throughout her employment, Mosner made offensive sexual remarks culminating in an incident on October 5, 2012, when he asked her to "sleep over" and told her that he could "make her feel like a woman." Complainant alleged that Mosner's conduct was so severe or pervasive that she felt

[1] The DCR Director intervened as a complainant in this matter in the public interest pursuant to N.J.A.C. 13:4-2.2(e). However, for purposes of this finding, the term "Complainant" will refer only to [redacted]

forced to resign on October 9, 2012.

Respondents denied the allegations of discrimination. DCR investigated the allegations and invited the parties to submit evidence to support their positions. Following a review of the materials gathered and the governing legal standards, the Director now finds, for the purpose of this disposition only, as follows.

Respondent Golden Grange is a dog boarding, training, and grooming facility in Chesterfield, Burlington County, New Jersey. Complainant is a Croydon, Pennsylvania resident who worked at the facility from January 2012 until her resignation on October 9, 2012. She was assigned the afternoon/evening shift, which required her to close the facility at approximately 9 p.m.

In an interview with DCR, Complainant described situations where Mosner made inappropriate sexual comments in the workplace such as commenting on the breast size of a co-worker, D.R.[2] Complainant alleged that Mosner once led a sexual discussion regarding the term "glory hole" and directed the office manager, Dana Panacek, to look up the term on her mobile phone and relate the meaning to the other employees. Complainant stated that she became very uncomfortable when Panacek read aloud the sexual definition.

In an interview with DCR, Complainant stated that on October 5, 2012, at approximately 9 p.m., Mosner sexually propositioned her as she was leaving the facility at the end of her shift. Complainant said that she was alone, walking across the dark parking lot, when Mosner, whose home is adjacent to the facility, emerged from his house and descended the stairs toward her. She stated that he appeared to be intoxicated with red wine dripping from his chin, and had difficulty walking down the stairs.

Complainant alleged that Mosner asked her to come up to his house and that when she asked why, he replied, "You know why." Complainant alleged that he told her that if she came back with him, he could make her "feel like a woman." Complainant stated that she told him that she was in a committed relationship and not interested in him. She also reminded Mosner that he

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[2] A pseudonym is used to protect the privacy of the non-party employee.

was married. Complainant stated that Mosner responded that his wife was out of town, and that if Complainant came home with him, he would show her whether he and his wife had a "true marriage." She again refused, got into her car and drove away.

Complainant stated that after she left, Mosner called her on her cell phone and asked her to return. She stated that when she refused, he called her a "tease" and a "prude." After the conversation ended, he sent her a single-word text message: "boring." Complainant stated that she did not tell anyone what happened that night, but went home and cried.

The next day, October 6, 2012, Complainant reported to work as scheduled. She said that when she arrived, Mosner hurriedly drove over to her on his tractor. She said it appeared that he wanted to speak to her before she walked in. He asked her if she was "leaving her boring life to come to work" and asked her, "Why do I have a headache?" She assumed that he was referencing his text message from the previous night and the fact that he was hungover. Complainant stated that he appeared to notice that she was not engaged in the conversation and told her that she was "acting weird." Neither party attempted to discuss the previous evening's incident.

On October 7, 2012, Complainant worked until approximately 12:30 p.m. Mosner approached her during her shift and asked her why she was working on a Sunday, because she did not usually work on Sundays. Complainant said that it was their only interaction that day.

Complainant stated that after her shift ended, she decided to discuss the October 5, 2012, incident with her boyfriend, [redacted] After that conversation, she decided that she could not return to Golden Grange. She resigned on October 9, 2012, by sending a text message to Panacek. She stated that Panacek never asked her why she was quitting.

In his answer, Mosner denied sexually harassing Complainant or otherwise creating a hostile or abusive work environment. He acknowledged having a conversation with Complainant at the end of her shift on October 5, 2012. However, he described it as a brief conversation that lasted no more than two minutes. He stated that he was headed back to facility at the time to retrieve the cash receipts.

With regard to the subsequent interaction with Complainant, Mosner acknowledged greeting Complainant while driving his tractor on the grounds on October 6, 2012. Mosner said he did not see Complainant at work on October 7, 2012. Mosner stated that he called Panacek on October 9, 2012, at 10:30 a.m., and was told that Complainant resigned.

At the fact-finding conference, the investigator asked Mosner about discussing D.R.'s breast size. Mosner stated that he was considering buying tank tops for the female employees, and that it was obvious when D.R. tried on the tank top that she would be unable to wear it because she was too "healthy" for it and "could not keep everything in it."

During the fact-finding conference, Mosner reiterated that on October 5, 2012, he went to the facility at approximately 9 p.m., to get the cash receipts. He again denied Complainant's version of the parking lot conversation. In fact, he denied speaking with Complainant in the parking lot. He stated that if a conversation took place, it would have occurred inside the facility. He did not recall the specifics of any such conversation but stated that he usually engaged in small talk with his employees at the end of shifts to discuss expectations for the next day. Mosner said he did not recall the specifics of a subsequent telephone call with Complainant. He stated that their telephone conversation was likely brief. Mosner stated that he did not remember why he texted the word "boring" to Complainant but it was likely a follow-up to their conversation in the facility. When asked about Complainant's allegation that he called her a "prude" and "tease," he asked the investigator why he would call Complainant "two different things." Mosner confirmed that his wife was out of town on October 5, 2012, but denied being intoxicated that night. He denied drinking that night, and stated that he would never jeopardize his business's reputation by being intoxicated on the property. He stated that he only occasionally drank wine with dinner.

In response, Complainant stated that she saw Mosner intoxicated on at least ten different occasions at the kennel before October 5, 2012. She stated that she believed Mosner drank almost every day and was drunk at the time of the parking lot incident. She stated that she was aware the Mosner occasionally had drinks with Panacek at the Chesterfield Inn. The investigator

who conducted the fact-finding conference gave Mosner the opportunity to rebut Complainant's allegations regarding his drinking, but he declined to respond.

The investigator conducted a field visit to Golden Grange and confirmed that Mosner's home is on the same complex and next to the kennel facility. From Mosner's home, the investigator was able to clearly see the entrance to the kennel. The investigator conducted interviews with several of Respondent's current and former employees. The three current employees interviewed (Panacek, Joanna Maker, and Melanie Wisniewski) stated they did not believe that Mosner would have approached and propositioned Complainant. The investigator questioned the current employees about the alleged sexual conversation by Mosner about a "glory hole." The employees had different opinions of who began the conversation, but all confirmed that it occurred and that Mosner participated in it.

D.R., who is no longer working for Golden Grange, told the investigator that she was not surprised to hear of the allegations of sexual harassment. D.R. stated that Mosner would say inappropriate things in the workplace but none of the employees ever confronted him about it. She described Mosner as having a "macho attitude" and acting as if he was "entitled to something." She stated that he had an "above-the-law" mentality because he formerly worked as a police officer. D.R. stated that she believed Complainant "one hundred percent." She stated that she saw Mosner visit Golden Grange after he had been drinking. She stated that Mosner contacted her right after the October 5 incident and asked her if Complainant had said anything to her. D.R. said that at that point, Complainant had not talked to her, and she reported as much to Mosner. However, D.R. said a few days later, Complainant called her and relayed what happened in the parking lot. D.R. stated that Complainant knew D.R. would be taking over her afternoon/evening shift and wanted to warn her about Mosner's sexual advances.

Another former employee, M.P., stated that she was not surprised to hear of the allegations of sexual harassment against Mosner. M.P. told the DCR investigator that Mosner had an "uncomfortable sense of humor." For example, M.P. stated that when she brought her brother to

the company Christmas party, Mosner told her that it was "kinky." She also found it odd that Mosner would tell the female employees about his fights with his wife.

The investigator interviewed Complainant's boyfriend, [redacted] who confirmed that Complainant told him about the October 5 incident a few days after it happened, and that he told Complainant that she should quit

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit a complainant's allegations of the verified complaint." N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe" that the LAD was violated and that the matter should proceed to hearing. Ibid., Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits, but merely an "initial culling-out process" whereby the DCR makes a preliminary determination of whether further DCR action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). If the Director determines there is probable cause, the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, that finding is a final agency order subject to review by the Appellate Division. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

Sexual harassment hostile work environment is a form of gender discrimination. See Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 607 (1993). In such cases, the issue is whether the conduct occurred because of gender, and whether a reasonable woman would find that the conduct is severe or pervasive enough to alter the conditions of employment and create an intimidating, hostile, or offensive working environment. Id. at 603. When examining such matters, courts focus on the conduct itself, not its effect upon the plaintiff or the workplace, and use a "reasonable person" standard. Cutler v. Dorn, 196 N.J. 419, 430-31 (2008). In other words, neither a plaintiff's "subjective response" to the harassment, nor the defendant's "subjective intent," is controlling as

to whether a hostile work environment claim exists. Ibid. Moreover, the New Jersey Supreme Court stated that in some circumstances, a single incident may be sufficient to create a hostile working environment. See Taylor v. Metzger, 152 N.J. 490, 501-02 (1998).

In this matter, the Director is satisfied that the weight of the evidence supports a reasonable suspicion that Complainant was subjected to a hostile work environment based on her gender. Complainant provided a detailed description of what occurred on the night at issue, including what appeared to be a follow-up telephone call and text message from Mosner. Mosner denied the allegations generally but offered no specifics as to what he discussed with Complainant that evening, and provided no explanation for why he called Complainant after she left the facility, or why he sent her a text message with the word, "boring." Although there were no witnesses to the incident, both D.R. and [redacted] stated that Complainant told them what occurred shortly after it happened. D.R. also corroborated Complainant's claim that Mosner would engage in inappropriate discussions of a sexual nature at the facility, and would appear at the facility after having been drinking. In determining the severity of the conduct, the Director must take into account the fact that Mosner is the owner of the facility and, therefore, his conduct "carries with it the power and authority of the office." Id. at 505. In cases where the harasser is the ultimate supervisor, a complainant's "dilemma [is] acute and insoluble. She [has] nowhere to turn." Ibid. Viewing the totality of circumstances, the conduct alleged to have occurred on October 5 could be sufficient in itself to constitute a hostile environment.

For those same reasons, including the fact that Mosner lives adjacent to the complex where Complainant worked alone in the evenings, the Director finds that Mosner's conduct could be considered "so intolerable that a reasonable person would be forced to resign rather than continue to endure it." Shepard v. Hunterdon Develop. Ctr., 174 N.J. 1, 28 (2002). Accordingly, the Director is satisfied that probable cause exists to credit Complainant's allegation that she was subjected to a constructive discharge.

WHEREFORE, it is on this 27th day of FEB, 2014, determined and found that PROBABLE CAUSE exists to credit the allegation of employment discrimination and constructive discharge, and it is further

ORDERED that the DCR Director hereby intervenes as a complainant pursuant to N.J.S.A. 13:4-2.2(e).

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS