

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MEKHALA SOFSKY,

Complainant,

COMPLAINT

-against-

DOUGHNUT PLANT, INC. and
DOUGHNUT PLANT, NYC, LLC,

Respondent.

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Plaintiff, MEKHALA SOFSKY, by and through her attorneys, WHITE, RICOTTA & MARKS, P.C., complaining of Defendants herein, alleges, upon knowledge as to herself and her own actions, and upon information and belief as to all other matters, as follows:

PARTIES

1. At all times hereinafter mentioned, Plaintiff Mekhala Sofsky (“Sofsky”) was and still is a resident of the County of Queens, State of New York.
2. Defendant, Doughnut Plant, Inc. is corporation with a principal place of business at 379 Grand Street, New York, NY 10002.
3. Defendant, Doughnut Plant NYC, LLC, (collectively with Doughnut Plant, Inc. “Defendants” or “Doughnut Plant”), is corporation with a principal place of business at 379 Grand Street, New York, NY 10002.

FACTS

4. On or about February 15, 2011, Sofsky began her employment with Doughnut Plant as a barista at their 220 West 23rd Street, New York, New York location. At all times, Sofsky performed her duties in an acceptable manner.

5. On or about April, 2011 Sofsky was promoted to a supervisor position at Defendant's 220 West 23rd Street location.

6. On or about May, 2011, Defendants again promoted Sofsky to the position of store manager of the same location.

7. On or about February, 2012, KC Salazar ("Salazar"), Chief Operating Officer of Defendants, informed Sofsky that she would once again be promoted, and would now be managing both the 220 West 23rd Street location and the grand reopening of the 379 Grand Street Location.

8. On or about March 24, 2012, Sofsky received an email from Salazar commending Sofsky's work performance in managing both locations and praising her work quality.

9. During Sofsky's time as a manager, Defendants' never gave her a minimum number of hours to be worked. They merely expressed to her that she needed to work until her responsibilities were completed, which is what she did.

10. Beginning in or about June 2012, became pregnant.

11. On or about June 14, 2012, Sofsky was once again promoted by Defendants based upon her job performance to the position of Personnel Manager for the company, including both store locations and the bakery. She also retained the duties of being manager for both stores.

12. On or about July, 2012, Sofsky notified Mark Israel ("Israel"), Defendants' owner, and KC Salazar, that she was pregnant. She also explained to them that she was suffering from extreme morning sickness.

13. Israel's first response was that he did not think Sofsky would want to come back to work after having her baby. Sofsky informed Defendants that she would, in fact, be returning to work after having her baby and Israel replied that she should really stay home with her baby.

14. On or about August 13, 2012, Defendants' management met for a meeting to review company financials. At this meeting Salazar repeatedly referred to needing to hire two individual long-term employees to manage the Chelsea and Grand Street location, effectively taking over Sofsky's job responsibilities. Sofsky expressed confusion as to why they were discussing a replacement for her when she expressly planned on returning to work after the birth of her child. Sofsky also expressed concern at this meeting that she felt she was being pushed out by management because of her pregnancy.

15. On or about August, 2012, as a result of her morning sickness, Sofsky informed Israel and Salazar that she would no longer be able to work 40 hours a week. However, she still performed all of her job duties in a timely and acceptable fashion.

16. On or about August, 2012, Respondent's changed Sofsky from an exempt salaried employee to an hourly employee, even though her job duties and responsibilities did not change.

17. On or about August, 2012, Sofsky discussed with Israel and Salazar the need for an additional manager at the Chelsea location, as a previous assistant manager had quit. At this time Sofsky was managing both locations as well as working as Personnel Manager. Respondent informed Sofsky at this time that they were dissatisfied with her work performance, that she was to return to work at only the Chelsea location, and that she would no longer be the Personnel Manager. Sofsky expressed confusion as she had previously received only commendations and promotions for her work performance, and had received no negative feedback or reviews during her time in the Personnel Manager position. Similarly situated employees who were not pregnant were not demoted suddenly after lengthy professional success with no further explanation.

18. On or about September 28, 2012 Sofsky's father-in-law passed away. She informed respondent of this and was told by Israel to take the time to be with her family. Throughout her time away Sofsky repeatedly had to respond to texts and emails regarding work at the Grand Street location.

19. On or about October 7, 2012, Sofsky complained to (“Salazar”), Chief Operating Officer for Respondents, that because Respondents moved all of the cleaning equipment and the sinks from the kitchen in Respondents’ Chelsea location, there was no viable way to clean the kitchen properly. Sofsky never received a response to her email.

20. On or about October 9, 2012, Salazar emailed Sofsky complaining that the kitchen in Respondents’ Chelsea location was not properly cleaned, despite Sofsky raising that issue just two (2) days before.

21. On or about October 9, 2012, Salazar reprimanded Sofsky for their being insufficient supplies at Respondent’s Grand Street location, despite the fact that she was no longer working in that store since her August demotion.

22. In or about late October, 2012, Sofsky advised Salazar that for several weeks they had not sold any iced tea. She then asked whether they should continue to brew any given the lack of sales. Sofsky did not receive any response. Similarly situated managers who were not pregnant received prompt responses when seeks guidance on work related issues.

23. Throughout the month of October, Sofsky repeatedly emailed requesting more direction on her role and informing them that she has sent management repeated emails about issues with the operations of the stores, and has received no response.

24. On or about October 24, 2012, Salazar emailed Sofsky to complain about a mess in the basement at the Chelsea location and threatened her with discipline. There had never been any problem with this before and Sofsky was not informed of this issue previous to this email.

25. On November 2, 2012, Sofsky spoke with Salazar, Marketing Manager Jeffrey Magness ("Magness"), Bakery Supervisor Javier (last name unknown), and Israel, regarding problems with the staff due to Superstorm Sandy. Everyone agreed that as a result the Chelsea location would open the next day an hour later than usual. The next day, Israel called Sofsky to complain that she had opened the store an hour later, despite agreeing to it the day before. Similarly situated employees who were not pregnant, were not threatened with discipline for following previously agreed upon directives.

26. On or about November 29, 2012 Salazar changed Sofsky's job description to mandate that she work 40 hours a week. No hour requirement or specific schedule had previously been in Sofsky's job description. Similarly situated store managers and assistant managers who were not pregnant were not required to work 40 hours per week.

27. On or about November 7, 2012 Salazar emailed Sofsky to reprimand her for issues with the iced tea supply. Sofsky had drawn this to Respondents attention three weeks prior in an email, and received no response.

28. On or about November 7, 2012, Sofsky sent a detailed email to Israel and Salazar expressing concern over feelings of being “managed out.” She once again asked for guidance on this issue, and advice as to how this may be avoided going forward.

29. On or about November 7, 2012, Salazar criticized Sofsky for not “committing over forty (40) hours,” to Respondents and for having to work “around [Sofsky’s] schedule,” despite the fact that Sofsky was working five (5) days a week and was performing all of the duties asked of her. He responded to none of the issues or concerns that Sofsky had raised in her previous email asking for guidance.

30. Throughout the time period October 17 through December 4, 2012, Sofsky communicated through several text messages to Salazar to arrange weekly meetings on the status of the business. Salazar failed to show up to several of these meetings without explanation, or simply informed Sofsky that “something came up.” Sofsky often waited hours past the set meeting time waiting for Salazar.

31. In or about November 2012, Salazar told Dustin Santiago (“Santiago”), an employee of Respondents, that they were looking for a new store manager for the Chelsea location, and that the situation with Sofsky was “delicate.” Respondent also asked Santiago repeatedly detailed questions about Sofsky’s work performance, what he felt she was “doing wrong”, and offered Santiago a raise in pay.

32. On or about December 6, 2012, Sofsky asked Salazar about her rights under the

Family Medical Leave Act (“FMLA”) as a result of her pregnancy. Salazar did not respond to this email.

33. On or about December 11, 2012, one (1) of the scheduled early shift staff failed to appear at the Chelsea location. Despite the circumstances being entirely out of Sofsky’s control, Salazar reprimanded her for failure to properly staff the location.

34. At the same time, Salazar reprimanded Sofsky because some of the employees did not know that the store was offering a special doughnut. However, Sofsky sent emails to all of the staff regarding these doughnuts. Similarly situated employees who were not pregnant were not disciplined for issues completely outside of their control.

35. On or about December 16, 2012, Sofsky again asked Salazar about her rights under the FMLA. While Salazar tersely responded, he failed to answer any of her questions or provide the most basic information.

36. On or about December 16, 2012, Sofsky also notified Salazar that her last day before taking leave due to her pregnancy would be January 3, 2013.

37. On or about December 18, 2012, Salazar sent a staff-wide email stating that all hourly employees were to clock in and out for all hours, even hours performed outside the store. This required Sofsky to adjust her time card to reflect the hours performed outside the store as well as time spent traveling between stores. Sofsky, as the employee

who most performed work outside of the stores, or spent time traveling between stores was substantially more affected by this policy than any other employee.

38. On or about December 20, 2012, just four (4) days after advising Defendants of her leave date, Salazar told Sofsky that she was being demoted to Supervisor effective the first day of her maternity leave, in front of four (4) other employees. When Sofsky complained that the demotion was discriminatory based upon her pregnancy, Salazar told her that he would simply demote her sooner then.

39. Later that same day, Salazar issued two (2) written warnings to Sofsky alleging that she was not available to her staff in her off hours from November 21 through November 25 (despite the fact that Sofsky was on vacation in West Virginia for her baby shower). In fact, Sofsky was available to her staff at this time and called into the store daily to check-in.

40. On or about December 20, 2012 Salazar issued a second warning to Sofsky, alleging that Sofsky failed to properly lock the front door of the Chelsea location on November 21. This was a result of policy that had recently changed due to complications from Hurricane Sandy, during which time the store was without power, disabling their magnetic lock system. This required Sofsky to manually locking the bolt lock, and have keys made for all staff members. Sofsky had emailed Salazar about needing to have keys made previously and received no response. The door, however, at this time was locking securely once power was returned to the store after Hurricane Sandy, and was properly

locked on the day in question.

41. Despite the fact that these allegations were deemed significant enough to warrant “final warnings” (the first two (2) warnings that Sofsky received throughout her employment with Respondents) Salazar did not mention these issues or take any action for nearly a month and finally did so only four (4) days after Sofsky gave Respondents her leave date. Similarly situated employees who were not pregnant were not given “final warning letters,” without a basis.

42. On or about December 20, 2012, Sofsky emailed Israel complaining of the discriminatory and harassing treatment that she was being subjected to. Israel responded by asking Sofsky to “work something out” with Salazar, despite the fact that Salazar was the one discriminating against Sofsky.

43. On or about December 21, 2012, Salazar also issued to Sofsky a “Letter of Demotion and Downgrading,” demoting Sofsky to the title of shift supervisor, decreasing her pay from \$50,000 a year to \$14.00 an hour, reducing her yearly bonus from \$1,000 to \$250, and eliminating her vacation and sick leave time, effective the first day of her maternity leave. Throughout this letter, Salazar made false allegations against Sofsky. Salazar accused Sofsky of theft of services because she adjusted her time card. However, Sofsky had done so in response to a policy change from management that all hourly employees were to adjust their timesheets to reflect work performed outside of the store. As Sofsky had previously been traveling between two locations as well as acting as

Personnel Manager, her adjustments were significant. While Sofsky often adjusted her time card for this reason, no one objected throughout the course of her employment until she gave her maternity leave date. Sofsky complained to Salazar that he was discriminating against her due to her pregnancy. Similarly situated employees who were not pregnant were not demoted absent proper cause.

44. When Sofsky objected to Israel's request that she "resolve" her being discriminated against by Salazar with Salazar and requested to meet with Israel to discuss this, Israel accused her of making threats against Defendants and refused to have any further communication with Sofsky.

45. On or about December 24, 2012, Salazar admonished Sofsky for failing to provide Respondents with the employee's hours worked for payroll prior to the end of business that day. However, as part of Sofsky's demotion she was no longer responsible for submitting the hours to payroll.

46. On or about January 3, 2013, Sofsky received an email from Magness stating that he wanted to meet with Sofsky and Salazar to discuss the complaints of discrimination that Sofsky had raised.

47. On or about January 9, 2013, Salazar emailed Sofsky to inform her that she would be receiving a \$250 bonus in the mail along with her demotion letter.

48. On or about January 13, 2013, Salazar advised Sofsky that upon her return from maternity leave she would no longer have any of her previous health insurance, vacation or sick day benefits, and if she wished to continue on Respondents' health insurance during her maternity leave, she needed to pay 20% of the costs. Similarly situated employees who were not on maternity leave did not have their health benefits cancelled without reason.

49. On or about March 24, 2013 Respondent contacted Sofsky to ask when she would be returning from maternity leave. This was the only communication Sofsky had with her employer regarding this issue during her leave, and no previous date for return had been set.

50. On or about April 5, 2013, Sofsky, through her attorney, sent a letter to Respondents, demanding that their discriminatory and retaliatory conduct against Sofsky cease.

51. On or about April 10, 2013, Defendants terminated Sofsky without cause.

52. Based on the foregoing, Sofsky has been subjected to adverse employment actions, a hostile work environment, and/or an atmosphere of adverse employment actions by Defendants due to pregnancy, and/or in retaliation for her complaints of discrimination in violation of the New York State Executive Law, the Human Rights Law, §290, *et seq.*, the New York City Administrative Code Title 8, and any other cause of action which can be inferred from the facts set forth herein.

**AS A FIRST CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

53. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

54. The Administrative Code of City of NY § 8-107 [1] provides that "It shall be an unlawful discriminatory practice: "(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

55. As described above, Defendants have taken adverse employment actions against Plaintiff, including termination, and subjected her to discrimination based upon her pregnancy and a hostile work environment in violation of New York City Administrative Code Title 8.

**AS A SECOND CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

56. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

57. The New York City Administrative Code Title 8, §8-107(1)(e) provides that it shall

be unlawful discriminatory practice: "For an employer . . . to discharge . . . or otherwise discriminate against any person because such person has opposed any practices forbidden under this chapter. . . "

58. As detailed above, Defendants violated New York City Administrative Code Title 8 by subjecting Sofsky to retaliation due to her complaints of discrimination, including, but not limited to her retaliatory termination.

**AS A THIRD CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

59. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

60. Under New York City Administrative Code Title 8-107(13), the employer (Doughnut Plant) is subject to liability for discriminatory conduct by it's employee, agent or independent contractor, as:

- a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.
- b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:(1) the employee or agent exercised managerial or supervisory responsibility; or (2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

(3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

61. As described above, Defendants' actions are in violation of New York City Administrative Code Title 8-107(13).

**AS A FOURTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW**

62. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

63. Executive Law § 296 provides that "1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

64. As described above, Defendants have taken adverse employment actions against Plaintiff, including terminating and maintaining an atmosphere of adverse actions, which were motivated, in part, upon Plaintiff's pregnancy, and/or her opposition to discriminatory practices, in violation of the New York State Executive Law § 296.

AS A FIFTH CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW

65. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

66. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice:

"For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because [s]he has opposed any practices forbidden under this article."

67. As detailed above, Defendants have taken adverse employment actions against Plaintiff, maintained an atmosphere of adverse actions, in retaliation for her complaints of discrimination, in violation of the New York State Executive Law § 296.

WHEREFORE, Plaintiff demands judgment against Defendants, where applicable, for all compensatory, emotional, and physical damages, lost pay, front pay, reinstatement, injunctive relief, and any other damages permitted by law. Plaintiff demands a trial by jury.

Dated: Jackson Heights, New York
December 19, 2014

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