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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civ. Case No.

FILED
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DENA KOLOGY,

Plaintiff Demands a
Trial by Jury

U.S. DISTRICT COURT
OF NEW YORK

Plaintiff,

-against-

COMPLAINT

MY SPACE NYC CORP. and
GUY HOCHMAN, individually,

GLASSER, J.

Defendants.

LEVY, M.J.

Plaintiff, DENA KOLOGY, by her attorneys, DEREK SMITH LAW GROUP PLLC, hereby complains of Defendants upon information and belief as follows:

NATURE OF THE CASE

1. Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C § 2000e et. Seq. ("Title VII"), and to remedy violations of the laws of the State of New York, based upon diversity and the supplemental jurisdiction of this Court pursuant to Gibb, 38 U.S. 715 (1966) and 28 U.S.C. § 1367, seeking relief and damages to redress the injuries Plaintiff has suffered as a result of being sexually harassed, discriminated and retaliated against by her former employer on the basis of gender, discrimination and retaliation inflicted upon Plaintiff by Defendants.
2. Jurisdiction of this Court is proper under 42 U.S.C. § 2000e-5(f)(3), and 28 U.S.C. §§ 1331 and 1343.

3. The Court has supplemental jurisdiction over the claims of Plaintiff brought under state law pursuant to 28 U.S.C. § 1367.

JURISDICTION AND VENUE

4. This case involves a question of Federal Law.
5. Venue is proper in this district based upon the fact that that Defendants reside in New York State, County of Kings within the Eastern District of New York; and all of the events or omissions giving rise to the claim occurred within the Eastern District of New York.
6. On or about September 26, 2014 Plaintiff filed a charge with the EEOC alleging sexual harassment, and retaliation as set forth herein.
7. On or about March 20, 2015 the EEOC issued a Right to Sue Letter.
8. This action was commenced within 90 days of receipt of that Right to Sue Letter.
9. This action is also properly brought in Federal Court in that it involves a question of federal law, Title VII of the Civil Rights Act of 1964.

PARTIES

10. Plaintiff is an individual woman who resides in the State of New York, County of Kings.
11. Plaintiff was hired by Defendants.
12. Defendant MY SPACE NYC CORP. is in the business of providing real estate services to the public.
13. At all times material, Defendant MY SPACE NYC CORP. (herein after referred to as "MY SPACE") is a domestic business corporation duly existing by virtue of the laws of the State of New York.

14. At all times material, Defendants' employee GUY HOCHMAN (herein after referred to as "HOCHMAN" was and is an individual residing in the State of New York.
15. At all times material, Defendants' employee HOCHMAN was and is an owner and employee of Defendant MY SPACE.
16. At all times material, Plaintiff was and employee of Defendants, jointly and `severally.
17. All times material, Defendants' employee HOCHMAN was and is the owner of Defendant MYSPACE and was Plaintiff's superior.

MATERIAL FACTS

18. In or around April, 2009 Plaintiff began her employment with Defendant MY SPACE NYC CORP.
19. Approximately one year later, Plaintiff was promoted to management and was asked to build a team of real estate agents to work with Plaintiff.
20. Immediately, Plaintiff began recruiting and training agents, working approximately 40-60 hours per week, six days a week.
21. Throughout Plaintiff's employment with Defendants, Plaintiff was subjected to numerous discriminatory acts and a hostile work environment.
22. By way of example, Defendant's employee HOCHMAN would tell Plaintiff to use her looks and physical appearance with landlords to entice them to list with Defendant MY SPACE.
23. Shortly after Plaintiff was promoted, in or around 2010, Defendants' employee and owner decided to open a second MY SPACE location in Bushwick, Brooklyn and asked Plaintiff to manage the new location. Plaintiff accepted the offer and assisted Defendants' employee HOCHMAN in the installation and design of the office.

24. Defendants' employee HOCHMAN was a mentor to Plaintiff and commented frequently on wanting to help Plaintiff grow because Plaintiff was helping Defendant HOCHMAN's company grow rapidly, and treated it as if it was Plaintiff's own. Defendants' employee HOCHMAN promised Plaintiff "that he wouldn't rest until Plaintiff was making \$120k a year" and was very fatherly in his affection, treating Plaintiff as a "kid" that he was shaping.
25. In or around April or May 2011, the Bushwick, Brooklyn location opened. Plaintiff was given a base salary of \$2,000 per month to "run the office." Plaintiff worked hard and long for Defendants.
26. Plaintiff, working in the real estate industry, had always expressed her own desire to invest. Defendants' employee and owner HOCHMAN offered to assist Plaintiff in purchasing a property. Plaintiff purchased her first property.
27. Shortly after purchasing the property, Plaintiff got married. Defendants' employee HOCHMAN commented to Plaintiff's mother at the wedding "Today she married her husband, when she buys that house she marries me and my business."
28. In or around July, 2013, Defendants' employee and owner HOCHMAN began to act differently towards Plaintiff.
29. By way of example only, Defendants' employee HOCHMAN began to monitor Plaintiff's food consumption and would tell Plaintiff that "I think about you every morning at the gym, you inspire me to keep going." Defendants' employee HOCHMAN then told Plaintiff "I hope I'm not just another "creepy" guy to you."
30. Around this same time, Plaintiff's husband was working for Defendants as well. Plaintiff's marriage was deteriorating due to personal issues. Defendant's employee and owner

HOCHMAN approached Plaintiff, told Plaintiff she deserved better and encouraged Plaintiff to leave her marriage.

31. Plaintiff felt that Defendants' employee HOCHMAN mistakenly thought Plaintiff's marriage troubles were due to Defendant, and lines between Plaintiff and HOCHMAN became extremely blurry.

32. Daily comments regarding Plaintiff's clothes were made. In particular, Plaintiff had purchased a new dress and wore it to the office. Defendants' employee HOCHMAN said "That new dress is driving me crazy. I know it's new because I know every dress in your wardrobe."

33. Comments and behavior escalated and became worse.

34. Plaintiff was going through a divorce, and therefore needed her job. Plaintiff endured Defendant HOCHMAN's constant negative attention, trying to focus on work but it added intense stress to an already overwhelmingly stressful situation for Plaintiff.

35. On one occasion, Defendant HOCHMAN took Plaintiff with him to negotiate an advertising contract with the Barclay Center and made Plaintiff have a drink with him after the meeting and told Plaintiff about the first time he felt something for her and that Plaintiff was the "kind of woman" Defendant HOCHMAN was looking for and alluded to leaving his marriage. Defendant HOCHMAN took Plaintiff to lunch at his insistence and told Plaintiff that he was interested in her sexually and at the end of the meal offered to take her shopping. She refused.

36. On another occasion, Defendant HOCHMAN pulled Plaintiff into the back room of the office and told Plaintiff "If you choose me, I will make you a rich woman and you would never have to worry about money. Plaintiff told Defendant "I'm not that type of girl who is

looking for a handout or a man to supply me with things. I'm not afraid of hard work and I can make my own money.”

37. In early January 2014, Defendant HOCHMAN asked to meet with Plaintiff to discuss business over a drink. Defendant HOCHMAN revealed that he and his partners were splitting and that he would be sole owner of Defendant MY SPACE. Defendant said it was because he did not have free control of the spending and said once the split was complete, Defendant had several offers he wanted to make to Plaintiff. One offer was to include Plaintiff in investing opportunities in properties with Defendant and his new partner. The second offer was to be a partner with Defendant HOCHMAN in a new office location. At the meeting, Plaintiff asked Defendant HOCHMAN where he saw her in 5 years with the company. She also let him know that the position and the hours Plaintiff was working were not the lifestyle she was looking in the future. Plaintiff told Defendant that she was looking to work smarter, not harder and that if Defendant expected Plaintiff to continue managing a team this large and being available 24/7, Plaintiff was not interested in that long term. Defendant HOCHMAN promised to think it over and see where he saw Plaintiff moving as the company grew. Defendant told Plaintiff that her office was making a profit of anywhere between \$20-40k monthly and that Defendant had plans for the 4th location to do even better and wanted Plaintiff to be a part of it. Again, Defendant spoke of his sexual and emotional feelings towards Plaintiff. Plaintiff explained to Defendant that sometimes the feelings of excitement of building a business can be mistaken for a crush but assured him he would “get over it.” On the way back to the office while the two of them were driving, Defendant HOCHMAN pulled the car over and attempted to kiss Plaintiff. Plaintiff rejected the advance and told Defendant that she had no interest in coming between a marriage and three

kids and wasn't interested. She said that any woman who was interested, Defendant should run away from. When Plaintiff and Defendant got back to the office, Defendant insisted he would close up the office and that Plaintiff should go home.

38. The relationship between Plaintiff and Defendant became worse.

39. After a large account's holiday party, Michelle (co-worker at Defendant MY SPACE) jokingly showed Plaintiff pictures Defendant HOCHMAN had been sending to her from the gym, also claiming she was his motivation. Defendant HOCHMAN started acting hostile towards Plaintiff in the office. Defendant told PLAINTIFF that he was moving his family (wife and three kids) to Israel and that he would start commuting back and forth so Defendant needed Plaintiff now more than ever to be his eyes and ears at the office. After a particularly hostile session of Plaintiff and HOCHMAN meeting with agents to assess performances (Defendant refused to look Plaintiff in the eye, spoke over Plaintiff and huffed and puffed at Plaintiff's comments with agents, at one point putting his hand up to silence Plaintiff). Defendant pulled Plaintiff into the back room and told her that her attitude was poor. Plaintiff explained that things were awkward in this hostile work environment and that Defendant HOCHMAN was acting horribly rude and Plaintiff was just trying to do my job. Defendant, again apologized for his behavior. Defendant HOCHMAN also stated that just once he wanted Plaintiff to "chase" him. Plaintiff again stated that she was not that type of girl and that the office was no place for emotion and Plaintiff was just trying to do her job. At that time, Plaintiff specifically asked if her job performance was suffering and Defendant answered, "No, it's your lack of enthusiasm that is upsetting."

40. Defendant HOCHMAN told Plaintiff and all senior management that he wanted to open the 4th office that Defendant had discussed with Plaintiff privately and told his employees that

they we would need to contribute \$17k and help Defendant run the office but that they would make a share of the office income. The share was never discussed even though Defendant asked for details. Defendant HOCHMAN called Plaintiff and pitched to her the idea and begged Plaintiff. However, Plaintiff reiterated that she was not interested in managing in the same fashion and that she was currently managing as a “partner.” Defendant wanted Plaintiff to promise to be in her same position for three more years. Defendant set a time to meet to discuss the details of the “partnership” and admittedly cancelled the scheduled meeting twice. Then after yet another trip to Israel, Defendant came back to meet for the 3rd scheduled meeting and angrily told Plaintiff because she was not enthusiastic and her attitude wasn’t right, the deal was off the table. Defendant asked that if she decided to leave that she give Defendant ample notice. Plaintiff agreed and told Defendant that she was not in a position to leave any time soon and would respect Defendant’s business and make sure to treat it with respect and plenty of notice.

41. No sooner than Defendant and Plaintiff’s falling out, Defendant HOCHMAN moved Michelle (Co-worker at MY SPACE) out of Plaintiff’s office and into the main office location in Crown Heights.

42. Plaintiff began to hear rumors that Michelle (co-worker) and Defendant HOCHMAN were in a relationship and Michelle began to make certain that Plaintiff knew saying “I’m seeing the OBGYN and his diagnosis: Too much sex.” Plaintiff was also told by Michelle (co-worker) “We are just like the “Real housewives. You’re divorced. Ewa’s married (referring to another co-worker) and I’m the mistress.

43. However, he was increasingly hostile (not looking Plaintiff in the eyes, brushing off what she said at meetings, ignoring her feedback) and also began to overly criticize Plaintiff's office statistics.
44. On or about August 15th, 2014, the Wednesday after Plaintiff's two scheduled days off, Defendant HOCHMAN returned from one of his week long trips to Israel, texted Plaintiff to meet him at a coffee shop and proceeded to tell Plaintiff "It isn't working out."
45. Defendant HOCHMAN then he hugged Plaintiff, smelled her hair and said, "I wanted to smell you one last time."
46. On or about August 16, 2014, Plaintiff and Defendant HOCHMAN met to discuss a severance package for Plaintiff. Defendant HOCHMAN stated that he would get back to Plaintiff with a final offer. Defendant HOCHMAN never contacted Plaintiff.
47. These actions made Plaintiff realizing how terrible and emotionally scarring this experience has been towards her and how Plaintiff's work had been disregarded because Plaintiff refused to sleep with Defendant HOCHMAN.
48. On or around August 15, 2014, Plaintiff was wrongfully terminated.
49. Plaintiff was clearly retaliated against for refusing Guy HOCHMAN's sexual advances.
50. Plaintiff was and is suffering extreme levels of stress both mental and physical.
51. Plaintiff is experiencing severe anxiety and depression due to the discriminatory unprofessional, degrading, condescending and hostile treatment towards Plaintiff by Defendant.
52. The above are just some of the examples of unlawful and discriminatory conduct to which Defendants subjected Plaintiff.

53. As a result of the acts and conduct complained of herein, Plaintiff will suffer the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails.

54. Plaintiff will also suffer future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

55. As Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands Punitive Damages as against Defendant.

56. Plaintiff seeks back and front pay, all lost wages and earning capacity, punitive damages, damages for emotional distress and attorney's fees.

AS AND FOR A FIRST CAUSE OF ACTION
DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendant)

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

58. Title VII states in relevant part as follows:

(a) Employer practices:

It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;

59. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, for relief based upon the unlawful employment practices of the above-named Defendants. Plaintiff complains of

Defendants' violation of Title VII's prohibition against discrimination in employment based, in whole or in part, upon an employee's sex.

60. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e et seq., by terminating and otherwise discriminating against Plaintiff as set forth herein.

**AS A SECOND CAUSE OF ACTION
FOR DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendant)**

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

62. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer: "(1) to . . . discriminate against any of his employees . . . because she has opposed any practice made an unlawful employment practice by this subchapter, or because she has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

63. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e seq. by discriminating against Plaintiff with respect to the terms, conditions or privileges of employment because of her opposition to the unlawful employment practices of Defendants.

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

64. 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.

65. 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."

66. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(l)(a) by creating and maintaining discriminatory working conditions, and otherwise discriminating against the Plaintiff as set forth herein.

**ASA FOURTH CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

67. 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.

68. The New York City Administrative Code Title 8, §8-107(l)(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..."

69. Each of the Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(l)(e) by discriminating against the Plaintiff because of Plaintiff's opposition to the unlawful employment practices of Plaintiff's employer.

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

70. 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.
71. New York City Administrative Code Title 8-107(19) Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.
72. Defendants violated the section cited herein as set forth.

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

73. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
74. The New York City Administrative Code Title 8, §8-107(6) provides that it shall be unlawful discriminatory practice: "For any person to aid, abet, incite, compel; or coerce the doing of any of the acts forbidden under this chapter, or attempt to do so."
75. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(6) by aiding, abetting, inciting, compelling and coercing the above discriminatory, unlawful and retaliatory conduct.

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

76. 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.

77. New York City Administrative Code Title 8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor.

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.

78. Defendants violated the section cited herein as set forth.

**AS AN EIGHTH CAUSE OF ACTION FOR
DISCRIMINATION UNDER STATE LAW**

79. 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."

80. Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff as set forth herein.

81. Plaintiff hereby make a claim against Defendants under all of the applicable paragraphs of Executive Law Section 296.

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

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

83. 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."

84. Defendants engaged in an unlawful discriminatory practice by discharging, retaliating, and otherwise discriminating against the Plaintiff because of Plaintiff's opposition to the unlawful employment practices of Plaintiff's employer.

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

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

86. New York State Executive Law §296(6) provides that it shall be an unlawful discriminatory practice:

"For any person to aid, abet, incite, compel or coerce the doing of any acts forbidden under this article, or attempt to do so."

87. Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive Law §296(6) by aiding, abetting, inciting, compelling and coercing the discriminatory conduct.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendants jointly and severally for all available damages including but not limited to emotional distress, lost wages, back pay, front pay, punitive damages, statutory damages, attorney's fees, costs,

medical expenses, interest and all other damages as are just and proper to remedy Defendants' unlawful employment practices.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: New York, New York
May 21, 2015

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