

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

KELLEY D.F. HARDWICK,

Plaintiff,

-against-

NATIONAL BASKETBALL ASSOCIATION,
DAVID STERN, individually and as the former
commissioner of NATIONAL BASKETBALL
ASSOCIATION, and JAMES CAWLEY, individually
and as a former employee of NATIONAL
BASKETBALL ASSOCIATION,

Defendants.

Index No. **153557/12**

**VERIFIED SECOND
AMENDED COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff Kelley D.F. Hardwick ("Plaintiff" or "Mrs. Hardwick"), by and through her attorneys, Newman Ferrara LLP, as and for her Second Amended Complaint, alleges upon knowledge, information, and/or belief as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for employment discrimination against Defendants, National Basketball Association, Inc. ("NBA"), David Stern ("Stern"), and James Cawley ("Cawley") under the New York State Human Right Law ("NYHRL"), N.Y. Executive Law § 296 *et seq.* and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Administrative Code § 8-107 *et seq.*, and seeks monetary and injunctive relief, disbursements, costs, and fees.

2. In October 2009, during a trip to Russia with the USA Basketball ("USAB") Women's Senior National Team, Geno Auriemma ("Auriemma") stalked, assaulted, and battered Plaintiff by following her to her room, grabbing her about the arm and attempting to forcibly kiss

7. However, after the filing a Complaint, initiating this instant action and naming Auriemma as a defendant, Stern, Cawley and/or the NBA decided to send Plaintiff to the Olympic Games; but in retaliation for Plaintiff's Complaint, assigned her to significantly diminished material responsibilities and subjected her to a hostile work environment, including, but not limited to, a verbal assault by Auriemma and other acts and statements by him designed to intimidate Plaintiff and retaliate against her for bringing this action against Auriemma and the other Defendants herein.

8. As a result of the hostile work environment created, condoned, or acquiesced in by the Defendants, Plaintiff was constructively discharged on February 28, 2014, as the conditions under which she was forced to work became increasingly intolerable.

9. In sum, this action alleges that because the Plaintiff had the temerity to fend off an attempted sexual advance by Auriemma, she was relieved of her long term duties maintaining security for the Women's National Basketball Association ("WNBA") players traveling with USAB, and she was the victim of a corporate culture of gender discrimination to such an extent that she was subjected to a flagrant and persistent glass ceiling with regard to her regular employment with the NBA.

10. These conditions were so blatant, obvious, and known to the NBA, that Stern, Commissioner of the NBA during all times relevant to the allegations made herein, personally knew of the retaliatory and hostile repercussions Plaintiff faced, and failed to intervene, correct, or prevent this harm to Plaintiff.

11. The NBA maintained and continues to maintain a discriminatory workplace where Plaintiff was continually denied promotions based on her gender. Plaintiff alleges further that the NBA, through certain individuals, engaged in gender discrimination by assigning

Defendants

15. Defendant NBA is an integrated business enterprise that is organized as a joint venture with its principal place of business at 645 Fifth Avenue, New York, New York, 10022.

16. Defendant David Stern, a white male, was the Commissioner of Defendant NBA. Stern was the chief executive officer of Defendant NBA. As such he was Plaintiff's ultimate supervisor.

17. At all times relevant hereto, Defendant James Cawley, a white male, was a Senior Vice President of Security at the NBA and was Plaintiff's direct supervisor.

FACTUAL ALLEGATIONS

18. In November of 2002, Mrs. Hardwick began her employment in the NBA's Security Department (the "Security Department") as a Senior Security Manager. However, she had applied for a position as Director in the Security Department. The position had never been held by less than the title of Director. Upon her hire, Plaintiff was informed by the Senior Vice President of Security for the NBA, Bernard Tolbert ("Tolbert"), that although she would perform all the functions of a Director, she would have the title of Senior Manager. While Plaintiff performed the functions of a Director, she was paid the salary of a Senior Manager.

19. At all times relevant to the Complaint, Mrs. Hardwick was the only female manager in the Department.

20. Upon her hire, Mrs. Hardwick was responsible for the supervision of facility security for 645 Fifth Avenue, the NBA's corporate office, various NBA assignments and the WNBA. Plaintiff was, however, denied numerous employment opportunities that were made available to her male counterparts who performed similar functions for the NBA Security Department. Moreover, the facilities security assignment was reassigned to a male colleague

Games. Mrs. Hardwick had more years of experience with providing security to teams sponsored by USAB than any of her male counterparts and was the most senior of the basketball managers.

26. Despite her numerous accomplishments with the NBA Development League, NBA and WNBA, Plaintiff had not received a promotion since 2005.

27. In October 2009, Plaintiff traveled with the Women's Senior National Team to Yekaterinburg, Russia for an Invitational Tournament. Plaintiff was responsible for providing security oversight for the WNBA players who played for the Women's Senior National Team. Also on the trip was Auriemma. Plaintiff had never met Auriemma previously.

28. On or about the evening of October 9, 2009, Plaintiff and her staff person, Rachel Shannon, an African-American female, were in the lounge of the hotel where the team was staying. Auriemma, uninvited, approached the two women, sat at their table, and engaged them in conversation. Auriemma stated that his parents were poor Italian immigrants, and that he did not grow up wealthy, and could "relate to inner city blacks." During the unwelcomed conversation, Auriemma made a number of inappropriate comments that increasingly made Plaintiff and Ms. Shannon uncomfortable.

29. Eventually, Plaintiff and Ms. Shannon left the lounge and headed toward the elevators to return to their rooms. Once they were on the elevator, Auriemma appeared and stuck his hand in the door to access the same elevator. Ms. Shannon exited at her floor.

30. Upon reaching her floor, Plaintiff exited the elevator and proceeded to walk towards her room. Auriemma exited the elevator as well and, unbeknownst to Plaintiff, was following her to her room. As Plaintiff put her key into the door, Auriemma approached her from behind, took hold of her left arm, and, as she turned, he forcibly tried to kiss her on her

45. On or about March 29, 2012, Plaintiff received a call from NBA Senior Vice President and General Counsel, Neal Stern, advising her that he had heard that she had reported an incident that occurred in Russia with Auriemma. She advised Neal Stern about the incident and her belief that Auriemma was seeking to exact punishment on her for refusing his sexual advances and to avoid further interaction with her. The Plaintiff further provided him with a list of witnesses who could corroborate her version of events. He told the Plaintiff that he would investigate the incident.

46. It should be noted that the Senior Vice President of Human Resources was an African American female, who is normally tasked with conducting investigations of this nature; however, at no time since Mrs. Hardwick's second notification to the NBA about Auriemma's unwelcome sexual advance was she contacted by this Senior Vice President, nor was she involved in the investigation.

47. On or about April 26, 2012, Neal Stern contacted Plaintiff and advised her that he had concluded his investigation and had determined that the decision by USAB had nothing to do with her complaint regarding Auriemma. She inquired as to whether he spoke to Auriemma to ask him about her allegations. Incredibly, Neal Stern would not tell her who he interviewed but confirmed that he had not spoken with Auriemma or many of the other witnesses she had provided him.

48. On June 11, 2012, Plaintiff filed a Complaint in this action wherein she alleged that Auriemma, USAB, and the NBA had violated the Human Rights Laws of New York State and New York City. The filing of the lawsuit resulted in significant media exposure of the allegations of the Complaint.

Plaintiff. When Plaintiff passed Auriemma in the lobby of the hotel, he stated, "We're gonna see who is gonna win." This was a direct reference to her lawsuit and a threat.

70. On October 12, 2012, Plaintiff was called into a meeting at the NBA offices in New York City by Cawley, to which, unbeknownst to her, Chandler had been invited as well. Prior to filing her lawsuit, Chandler had never attended meetings with Cawley and Plaintiff.

71. During the meeting Cawley, while referencing what had transpired in London, stated, "If you hadn't contacted your lawyers and ask to be removed from working with Geno you would have had more options."

72. Cawley's statement was a threat that because Plaintiff had exercised her rights to be free from a hostile work environment she was going to have less options during her continued employment by the NBA. Cawley's statement was also retaliation for Plaintiff bringing to the attention of her superiors the fact that Cawley had assigned her to work with Auriemma and condoned the hostile treatment of Plaintiff by Auriemma.

73. Auriemma's actions aforesaid were intended by him to retaliate against Plaintiff and to adversely affect Plaintiff's employment by the NBA, whether in New York City, New York State or elsewhere. Cawley and Tooley conspired with Auriemma to achieve that result and/or aided and abetted to achieve that result.

74. Auriemma's actions and campaign of vindictiveness, retaliation and hostility, and Tooley's and Cawley's complicity therein, negatively affected Plaintiff's employment at the NBA.

75. By the NBA's actions and/or inactions it has ratified, acquiesced in and/or condoned the conduct of Auriemma, Tooley and Cawley; thereby creating or maintaining a hostile work environment and retaliating against Plaintiff.

102. On February 16, 2014, while off duty, Plaintiff attended the All-Star Game and sat in a courtside seat for which she had a ticket. Cawley approached Plaintiff, while seated and verbally abused and embarrassed her for sitting in what he stated was a "celebrity seat." Plaintiff informed Cawley that she received the ticket legitimately and was not in violation of any NBA Policy.

103. During the game, Cawley continued the pattern of harassment by sending several threatening emails directing that the Plaintiff vacate her seat.

104. As a result of the environment created by Cawley, the retaliatory actions aforesaid, the termination warning memo previously issued on December 19, 2013, and Defendant Stern's failure to take any actions to address same, Plaintiff was unable to perform her job at the NBA as a result of the hostility.

105. Due to the stress created by Mrs. Hardwick's hostile work environment, she fainted in the office on two separate occasions. During one of the two occurrences, an ambulance was called.

106. On February 17, 2014, while still out of town and on assignment and performing essential job functions for the NBA, Plaintiff tendered her resignation, effective February 28, 2014. Cawley accepted her resignation the same date, but in retaliation, immediately cut off Plaintiff's email and voicemail accounts and directed her to not return to the corporate office. In so doing, Cawley's actions created a hardship which made it difficult for Plaintiff to successfully complete her assigned job functions following the All Star Game.

107. As a result of the continuous and systematic pattern and practice of disparate treatment, harassment, hostile work environment, retaliatory actions for Plaintiff's filing of the instant litigation, and the failure of Defendant Stern and the NBA to remedy or rectify Plaintiff's

142. As a result of the Defendants' wrongful actions complained of herein, Plaintiff has suffered monetary damages and damages for mental anguish in the form of humiliation, embarrassment, and emotional distress.

Seventh Cause of Action

Violation of New York State Human Rights Law for Constructive Discharge

143. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

144. Plaintiff has been discriminated against by Defendants on the basis of her gender in violation of § 296 of the New York State Human Rights Law by the conduct described in this complaint, which collectively resulted in the constructive discharge of Plaintiff's employment, including by deliberately and discriminatorily creating working conditions so intolerable that any reasonable person in Plaintiff's position would have felt compelled to resign, as Plaintiff felt compelled to do, and did, on or about February 19, 2014.

145. The NBA condoned, ratified, and acquiesced in the foregoing conduct of its employees, and the terms and conditions of employment and is responsible under the doctrine of *respondeat superior* for the discriminatory acts of its employees, including, but not limited to, Defendant Stern, Defendant Cawley, Tolbert, Chandler, and Neal Stern.

146. As a proximate result of Defendants' discrimination, Plaintiff has suffered substantial damages, including but not limited to lost past and future wages and other benefits of her employment.

147. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, anguish, and other incidental and consequential damages and expenses.

Eighth Cause of Action

Violation of New York City Human Rights Law for Constructive Discharge

148. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

149. Plaintiff has been discriminated against by Defendants on the basis of her gender in violation of § 8-107(1)(a) of the New York City Human Rights Law, by the conduct described in this complaint, which collectively resulted in the constructive discharge of Plaintiff's employment, including deliberately and discriminatorily creating working conditions so intolerable that any reasonable person in Plaintiff's position would have felt compelled to resign, as Plaintiff felt compelled to do, and did, on or about February 19, 2014.

150. The NBA condoned, ratified, and acquiesced in the foregoing conduct of its employees and the terms and conditions of employment, and is responsible under the doctrine of *respondeat superior* for the discriminatory acts of its employees, including, but not limited to, Defendant Stern, Defendant Cawley, Tolbert, Chandler, and Neal Stern.

151. As a result of Defendants' discrimination, Plaintiff has suffered substantial damages, including but not limited to lost past and future wages and other benefits of her employment.

152. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer emotional distress, severe and lasting embarrassment, humiliation, anguish, and other incidental and consequential damages and expenses.

DAMAGES

110. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

111. The actions of the Defendants, and each of them, were committed intentionally, wantonly, and with malice, warranting the imposition of punitive damages.

112. As a result of the actions of the Defendants, and each of them, Plaintiff has suffered emotional distress, humiliation, degradation, and loss of income and the benefits of employment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

- A. Compensatory damages;
- B. An award of back pay;
- C. An award of front pay;
- D. Punitive damages;
- E. Costs, disbursements, expert fees and attorneys' fees;
- F. Any and all other injunctive and equitable relief that the Court deems just and proper.