

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----x
DAVID RODRIGUEZ,

Plaintiff,

16 CV 5736

v.

COMPLAINT

HIGHGATE HOTELS L.P.,

Defendant.
-----x

Plaintiff David Rodriguez, by his counsel, The Harman Firm, LLP, alleges for his Complaint against Defendant Highgate Hotels L.P. as follows:

PRELIMINARY STATEMENT

1. Plaintiff David Rodriguez (“Plaintiff” or “Mr. Rodriguez”) seeks damages and costs against Defendant Highgate Hotels L.P. (“Defendant” or “Highgate”) for discriminating against him in terms, conditions and privileges of employment and ultimately terminating his employment because of his gender (male) and sexual orientation (heterosexual), in violation of New York City Human Rights Law (“NYCHRL”), N.Y. Admin. Code §§ 8-101 to 14-151.

2. Plaintiff also seeks damages and costs against Defendant for negligent retention and supervision, in violation of the New York State common law.

JURISDICTION AND VENUE

3. Pursuant to 28 U.S.C. §1332, this Court has jurisdiction over Plaintiff’s claims, as the matter in controversy exceeds \$75,000 and is between citizens of different states:

- a. Plaintiff is a citizen of the State of New York.
- b. Upon information and belief, Defendant is a citizen of the State of Delaware, as it is a corporation organized under the laws of the State of Delaware, and a

citizen of the State of Texas, as its principal place of business is located in the State of Texas.

4. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the United States District Court for the Southern District of New York, as a substantial part of the events giving rise to these claims occurred within this District.

TRIAL BY JURY

5. Plaintiff respectfully requests a trial before a jury.

PARTIES

6. Plaintiff, at all times relevant hereto, was and is a resident of Kings County in the State of New York.

7. Upon information and belief, at all times relevant hereto, Defendant was and is a limited partnership organized under the laws of the State of Delaware with its principal place of business located in the State of Texas. Defendant is a real estate investment and hospitality management company which operates hotels throughout the United States and abroad, including the Marriott Marquis located at 1535 Broadway, New York, NY 10036 (the “Marquis”).

STATEMENT OF FACTS

8. In and around May 2015, Highgate hired Mr. Rodriguez as a Front Office Manager for the Marquis.

9. Mr. Rodriguez was hired by Fatena Williams, who was at that time the Director of Front Office at the Marquis.

10. When Ms. Williams hired Mr. Rodriguez, she informed him that several previous managers at the Marquis had neglected to enforce Highgate’s corporate policies and procedures

and had instead set their own policies regarding management of the front office. Ms. Williams encouraged Mr. Rodriguez to be strict in his enforcement of Highgate policy.

11. As a Front Office Manager, Mr. Rodriguez was responsible for enforcing Highgate's corporate Standard Operating Procedures ("SOPs").

12. Highgate SOPs included, among other things, policies forbidding employees from using their personal phones during work hours, requiring employees to give notice to supervisors before taking breaks, and requiring employees to remain at their assigned stations.

13. In and around December 2015, Michelle Alvarez, a Front Desk Agent at the Marquis, and her union delegate, Cherian Robinson, became upset by Mr. Rodriguez's enforcement of Highgate SOPs.

14. Ms. Alvarez consistently violated Highgate SOPs: she was frequently on her personal phone at work, and she repeatedly took breaks without notifying Mr. Rodriguez.

15. In December 2015, John Sinclair, a Hotel Manager at Highgate, approved Ms. Alvarez to stay in the hotel for the night after her completion of a double shift.

16. Mr. Rodriguez reserved a room for Ms. Alvarez in the Highgate room booking system.

17. Ms. Alvarez, against Mr. Rodriguez's previous directive, entered the Highgate room booking system and assigned herself to a room that Mr. Rodriguez had reserved for a priority guest. Upon information and belief, previous managers had tolerated this conduct.

18. Upon his discovery of Ms. Alvarez's rule breaking, Mr. Rodriguez informed Ms. Alvarez that she was to stay in the room originally assigned to her and that she was required to follow Highgate's policies and his directives.

19. Mr. Rodriguez reported Ms. Alvarez's rule breaking to his supervisor, but Ms. Alvarez was never disciplined.

20. After this incident, Ms. Alvarez and Ms. Robinson launched a campaign to have Mr. Rodriguez terminated.

21. Ms. Alvarez and Ms. Robinson openly and notoriously stated that they would "do whatever it took to remove [Mr. Rodriguez] from his position at the hotel." Many of Highgate's employees heard these statements, including Front Desk Agents Analise Rodriguez and Malia Ibrocevic.

22. In and around January 2016, Ms. Alvarez and Ms. Robinson started a rumor that Mr. Rodriguez had left his wife to be in a romantic relationship with Vanessa Fondeur, Front Desk Agent at Highgate.

23. On information and belief, Ms. Alvarez and Ms. Robinson, in an effort to have Mr. Rodriguez terminated, reported to the Highgate Human Resources ("HR") Department that Mr. Rodriguez and Ms. Fondeur were romantically involved.

24. On or about February 26, 2016, when Mr. Rodriguez attempted to check his email after his shift, he discovered that his Highgate email account was not functioning properly.

25. On or about February 27, 2016, Mr. Rodriguez reported to work and again attempted to log on to his Highgate email account; however, he was not able to log on to his Highgate email or to his desktop.

26. Mr. Rodriguez immediately called Mr. Sinclair, who informed Mr. Rodriguez that HR had locked him out of the Highgate database because he was "under investigation." Mr. Sinclair did not give Mr. Rodriguez any explanation for the HR investigation or what the investigation would involve.

27. On or about February 28, 2016, Mr. Rodriguez took a personal day.

28. On or about February 29, 2016, Mr. Rodriguez was called in to work a double shift, but he still could not access the Highgate database, making it nearly impossible to work.

29. Later that day, Karen Sutera, Highgate's Director of HR, called Mr. Rodriguez into her office to share with him the details of her "investigation." Mr. Rodriguez was never interviewed as part of any purported investigation.

30. Ms. Sutera alleged that Highgate had found nude photographs of Ms. Fondeur on Mr. Rodriguez's Highgate email account and sexually explicit messages between Mr. Rodriguez and Ms. Fondeur on Mr. Rodriguez's personal phone.

31. Mr. Rodriguez was outraged that Highgate might have taken and searched his personal property without his knowledge, and he vehemently denied the existence of any nude photographs or sexually explicit messages, as none were ever created, let alone sent.

32. Mr. Rodriguez denied having any sexual or romantic relationship with Ms. Fondeur. He informed Ms. Sutera that he and Ms. Fondeur were colleagues and nothing more.

33. Ms. Sutera did not show Mr. Rodriguez any of the purported photographs or messages, as, since they did not exist, she could not do so.

34. Regardless, Highgate suspended Mr. Rodriguez pending the investigation.

35. Mr. Rodriguez did not have a sexual or romantic relationship with Ms. Fondeur. However, even if he and Ms. Fondeur had been in a sexual or romantic relationship, having such a relationship with a co-worker does not violate any Highgate policy.

36. In fact, Lyonnell Hernandez (male), Front Desk Supervisor at Highgate, and Daniel Metzger (male), Operations Manager at Highgate, had a clandestine romantic relationship while employed at Highgate. Mr. Hernandez was Mr. Metzger's supervisor.

37. When Highgate learned of Mr. Hernandez and Mr. Metzger's relationship, Highgate employees gave them both lavish presents in excess of \$1,000 in celebration.

38. No Highgate employee ever disciplined either Mr. Hernandez or Mr. Metzger for their relationship.

39. On March 9, 2016, Highgate terminated Mr. Rodriguez, purportedly because Highgate did not trust that Mr. Rodriguez would "be able to pass moral judgment and be able to make good decisions" since he did not take "seriously" Highgate's baseless investigation regarding his alleged relationship with Ms. Fondeur – a relationship that he denied having, of which Highgate did not show any evidence, and which did not violate any Highgate rule.

40. Highgate did not discipline or terminate any other employee accused of having a relationship with a coworker: not the same-sex couple, nor Ms. Fondeur.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Gender Discrimination in Violation of the NYCHRL

41. Plaintiff hereby realleges and incorporates each and every allegation contained in paragraphs 1 through 40 with the same force as though separately alleged herein.

42. The NYCHRL mandates that no employer discriminate against an employee in compensation or in terms, conditions or privileges of employment on the basis of gender.

43. Defendant discriminated against Plaintiff because he is a heterosexual man; Defendant created restrictive rules solely for him and terminated him based on those rules, which did not apply to women or to homosexual men.

44. As a direct and proximate consequence of Defendant's gender discrimination, Plaintiff has suffered, and continues to suffer, substantial monetary damages, including, but not limited to, loss of income, including past and future salary, and non-monetary damages,

including, but not limited to, emotional distress and suffering, all in amounts to be determined at trial.

45. Defendant's discriminatory treatment of Plaintiff was willful and in reckless disregard of Plaintiff's rights under the NYCHRL, due to which Plaintiff is entitled to an award of punitive damages against Defendant.

SECOND CAUSE OF ACTION
Sexual Orientation Discrimination in Violation of the NYCHRL

46. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 45 with the same force as though separately alleged herein.

47. The NYCHRL prohibits employers from, among other things, terminating an employee because of his or her sexual orientation.

48. Defendant discriminated against Plaintiff because he is heterosexual, in violation of the NYCHRL.

49. Defendant treated Plaintiff less well than homosexual employees and terminated him because of his sexual orientation.

50. As a direct and proximate consequence of Defendant's sexual orientation discrimination, Plaintiff has suffered, and continues to suffer, substantial monetary damages, including, but not limited to, loss of income, including past and future salary, and non-monetary damages, including, but not limited to, emotional distress and suffering, all in amounts to be determined at trial.

51. Defendant's discriminatory treatment of Plaintiff was willful and in reckless disregard of Plaintiff's rights under the NYCHRL, due to which Plaintiff is entitled to an award of punitive damages against Defendant.

THIRD CAUSE OF ACTION
Negligent Retention and Supervision in Violation of the New York State Common Law

52. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 51 with the same force as though separately alleged herein.

53. At all times relevant hereto, Ms. Alvarez and Ms. Robinson were employees of Defendant.

54. Ms. Alvarez and Ms. Robinson openly sabotaged Plaintiff's career by making slanderous and defamatory statements about Plaintiff to the Highgate HR Department.

55. Defendant was aware that Ms. Alvarez and Ms. Robinson had the propensity to harass Plaintiff, as Ms. Alvarez and Ms. Robinson openly discussed a plan to have Plaintiff's employment terminated.

56. Defendant had a duty to provide a safe work environment and properly supervise its employees.

57. Defendant breached that duty when it failed to discipline Ms. Alvarez and Ms. Robinson for their slanderous and defamatory statements about Plaintiff.

58. Instead, Defendant summarily terminated Plaintiff's employment, relying in part upon those slanderous and defamatory statements.

59. As a result of his termination, Plaintiff has suffered, and continues to suffer, substantial losses, including, but not limited to, lost wages, emotional distress injuries, attorneys' fees, and other costs and expenses, all in amounts to be determined at trial.

Request for Relief

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. For the first claim, actual damages to be determined at trial, but in no event less than \$250,000;
- B. For the second claim, actual damages to be determined at trial, but in no event less than \$400,000; and
- C. For the third claim, actual damages to be determined at trial, but in no event less than \$100,000;
- D. An award of compensatory, assumed, and punitive damages;
- E. Pre-judgment and post-judgment interest;
- F. Attorneys' fees and costs; and
- G. For such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 19, 2016

By: 
Walker G. Harman, Jr. [WH-8044]
Edgar M. Rivera [ER-1378]
THE HARMAN FIRM, LLP
220 Fifth Avenue, Suite 900
New York, NY 10001
(212) 425-2600
wharman@theharmanfirm.com
erivera@theharmanfirm.com
Attorneys for Plaintiff