

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

MAYUMI BARDIOVSKY

Index No.

Plaintiff(s),

*Summons*

*-against-*

BYO CO. (USA), LTD. d/b/a EN JAPANESE BRASSERIE,  
REIKA YO, and ABE HIROKI

Date Index No. Purchased: June 19, 2017

Defendant(s).

To the above named Defendant(s)

BYO CO. (USA), LTD. d/b/a EN JAPANESE BRASSERIE  
REIKA YO  
ABE HIROKI  
435 Hudson Street, New York, NY 10014

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendants place of business  
which is located in New York County

Dated: New York, NY

June 19, 2017

JOSEPH & KIRSCHENBAUM LLP

by 

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**SUPREME COURT OF NEW YORK  
COUNTY OF NEW YORK**

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**MAYUMI BARDIOVSKY,**

**Plaintiff,**

**v.**

**BYO CO. (USA), LTD. d/b/a EN JAPANESE  
BRASSERIE, REIKA YO, and ABE  
HIROKI,**

**Defendants.**  
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**INDEX NO:**

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Mayumi Bardiovsky alleges as follows:

**NATURE OF CLAIM**

1. This case asserts employment discrimination claims under the New York City Human Rights Law, N.Y. Admin. Code §§ 8-101 *et seq.*

**JURISDICTION, VENUE, AND PARTIES**

2. Venue herein is proper as Defendants are residents and conduct business in New York County, and the unlawful practices occurred in this county.

3. BYO CO. (USA), LTD. owns and operates EN Japanese Brasserie (“EN”), a Japanese restaurant located at 435 Hudson Street, New York, New York.

4. At all times relevant to this action, EN has had more than four employees.

5. Defendant Reika Yo is an owner of EN. Defendant Yo has the power to hire and fire employees at EN.

6. Defendant Abe Hiroki is the executive chef at EN. Defendant Hiroki is a Japanese man who primarily speaks Japanese.

7. Plaintiff is a Japanese woman who speak Japanese and English. Plaintiff has worked at EN from approximately December 2009 to the present, with the exception of two to three months in 2013 or 2014. She began her employment as a runner and then became a server in 2010. In January 2017, Plaintiff became a manager.

#### FACTS

8. Throughout Plaintiff's employment at EN, Defendant Hiroki has created a sexually hostile work environment by directing inappropriate comments at Plaintiff and physically touching her. Defendant Hiroki has targeted Plaintiff because she is a Japanese woman.

9. Defendant Hiroki is a celebrity chef who has been featured in Martha Stewart publications and television shows. He occupies an important and powerful position at EN, and he has made it clear that he can have people who cross him fired.

10. Defendant Hiroki regularly made sexually suggestive comments to Plaintiff.

11. In front of male coworkers, Defendant Hiroki told Plaintiff to touch a vegetable that he said looked like a vibrator.

12. On multiple occasions and unprompted, Defendant Hiroki described to Plaintiff the type of pornography that he enjoys.

13. On one occasion, Defendant Hiroki began talking about masturbation in front of Plaintiff.

14. Defendant Hiroki asked Plaintiff what color her nipples are.
15. Defendant Hiroki repeatedly asked Plaintiff to send him picture of her in a swimsuit.
16. Defendant Hiroki repeatedly asked Plaintiff when she was going to divorce her husband and that he would marry her next.
17. On several occasions, Defendant Hiroki propositioned Plaintiff to sleep at his apartment.
18. Defendant Hiroki also told Plaintiff that the two of them should travel together without anyone else.
19. Defendant Hiroki also inappropriately commented on Plaintiff's appearance.
20. Defendant Hiroki made fun of Plaintiff's jaw line, saying that she had a type of jaw line considered unattractive in Japan. For several months he called her "ago," the Japanese word for "jaw," instead of calling her by her name.
21. This was typical behavior for Defendant Haroki, as he used derogatory, appearance-related words to refer to other Japanese women employees. He called another Japanese woman employed at EN "deppä," meaning "buck teeth."
22. Defendant Hiroki has also told Plaintiff that she is gaining weight and that he looks at her rear end.
23. Defendant Hiroki often commented on Plaintiff's general appearance, calling her pretty or cute.
24. Defendant Hiroki has typically made these inappropriate comments to Plaintiff in Japanese, which many EN employees do not speak. However, the current bar manager speaks



34. The next day, Defendant Yo and Ms. Togna tried to get Plaintiff to come into the office so Defendant Hiroki could “apologize” to her. She did not want to be in the same room as Defendant Hiroki the day after his outburst. In addition, an contrived apology would have been empty and insincere.

35. As a direct and proximate consequence of Defendants’ discriminatory conduct, Plaintiff has suffered and continues to suffer monetary damages, including but not limited to a loss of income, including future salary and company-sponsored benefits, and non-monetary damages including but not limited to humiliation and mental and physical pain and suffering.

36. Defendants engaged in the above-referenced act with reckless and callous disregard of Plaintiff’s statutory right to a workplace free of unlawful discrimination.

**FIRST CLAIM FOR RELIEF**  
**(New York City Human Rights Law (“NYCHRL”))**  
**N.Y. Admin. L. §§ 8-101 *et seq.* – Gender Discrimination)**

37. Plaintiff realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

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38. In violation of the NYCHRL, Defendants discriminated against Plaintiff on the basis of her gender.

39. As a direct and proximate consequence of Defendants’ discrimination, Plaintiff has suffered, and continues to suffer, substantial monetary damages, including, but not limited to, a loss of income, including future salary.

40. Defendants’ discrimination, Plaintiff has suffered, and continues to suffer, substantial non-monetary damages, including, but not limited to, emotional distress and physical pain and suffering.

41. Defendants' conduct was outrageous and malicious, was intended to injure, and was done with reckless indifference to Plaintiff's statutorily-protected civil rights.

42. As a result of Defendants' unlawful conduct, Plaintiff is entitled to compensatory damages, including but not limited to lost wages and damages for emotional distress, punitive damages, post-judgment interest, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

43. A copy of this complaint will be provided to the New York City Commission on Human Rights.

**WHEREFORE**, Plaintiff respectfully requests that this Court grant the following relief:

(a) Enter a declaratory judgment that the acts and practices of Defendants complained of herein are in violation of the laws of the State of New York.

(b) Enjoin and permanently restrain Defendants' violations of the laws of the State of New York.

(c) Direct Defendants to place Plaintiff in the position she would have occupied but for Defendants' discriminatory treatment of her as well as to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect Plaintiff's employment opportunities;

(d) Award Plaintiff monetary damages including, but not limited to, lost income, including past salary, future salary, and company-sponsored benefits, in an amount to be determined at trial, together with interest thereon from the time of the initial loss until satisfaction of judgment and post-judgment interest thereon;

(e) Award Plaintiff non-monetary damages including, but not limited to, compensation for her humiliation and emotional distress and suffering, in an amount to be

determined at trial, and punitive damages, together with interest thereon from the time of the initial loss until satisfaction of judgment as well as with post-judgment interest thereon;

(f) Award plaintiff the costs of this action, together with reasonable attorney's fees;

(g) Grant plaintiff such other and further relief this Court deems necessary and proper.


**JURY DEMAND**

Plaintiff demands trial by jury on all counts so triable.

Dated: New York, New York  
June 19, 2017

Respectfully submitted,

JOSEPH & KIRSCHENBAUM LLP

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