

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

BIG WAY, INC. t/a Valley Green Inn

Defendant.

CIVIL ACTION NO.

05-CV-4217

JOYCE FISHEL

Plaintiff,

vs.

JURY TRIAL DEMANDED

BIG WAY, INC. t/a Valley Green Inn,
Valley Green Road at Wissahickon Creek
Philadelphia, Pennsylvania 19128

and

MR. JACK OTT
c/o Valley Green Inn,
Valley Green Road at Wissahickon Creek
Philadelphia, Pennsylvania 19128

and

MR. SHING DAN
c/o Valley Green Inn,
Valley Green Road at Wissahickon Creek
Philadelphia, Pennsylvania 19128

and

MR. KEN SWOPE
c/o Valley Green Inn,
Valley Green Road at Wissahickon Creek
Philadelphia, Pennsylvania 19128

Defendants.

**PLAINTIFF JOYCE FISHEL'S
AMENDED COMPLAINT**

I. PRELIMINARY STATEMENT

1. Plaintiff Joyce Fishel, a former employee of Big Way, Inc. t/a Valley Green Inn, was forced to resign after she was discriminated against on the basis of her gender and she and others were subjected to a sexually hostile work environment by defendants Big Way, Inc.; executive manager and co-owner Mr. Jack Ott; kitchen manager Mr. Shing Dan; and floor manager Mr. Ken Swope. Moreover, after Ms. Fishel was forced to resign, Big Way, Inc. and Mr. Jack Ott withheld wages from Ms. Fishel that she had earned. As a result of the hostile, discriminatory and illegal conduct of defendants in violation of The Equal Pay Act, 29 U.S.C. § 206 (d); Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"); the Pennsylvania Human Relations Act, as amended, 43 P.S. § 951 et seq. ("PHRA"); and the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, et seq., Ms. Fishel seeks compensatory and liquidated damages and any other statutory relief which is available to her under federal law and state law.

II. PARTIES

2. Plaintiff, Ms. Joyce Fishel, is a citizen of the Commonwealth of Pennsylvania residing at 6024 Wayne Avenue, Apartment 1-B, Philadelphia, Pennsylvania 19144.

3. Ms. Fishel is female.

4. Defendant Big Way, Inc. is, upon information and belief, a Delaware corporation doing business at Valley Green Inn, Valley Green Road at Wissahickon Creek, Philadelphia, Pennsylvania 19128.

5. Big Way, Inc. operates a restaurant, a banquet facility, and a snack bar at the historic Valley Green Inn, which, upon information and belief, it leases from the Friends of the Wissahickon.

6. In this complaint, defendants Big Way, Inc. and Valley Green Inn will be use interchangeably.

7. At all times material hereto, defendant Big Way, Inc. employed more than fifteen (15) employees.

8. Defendant Mr. Jack Ott is a citizen of the Commonwealth of Pennsylvania, who, at all times relevant, was the executive manager of the Valley Green Inn and, based upon information and belief, co-owner of Big Way, Inc.

9. Defendant Mr. Shing Dan is a citizen of the Commonwealth of Pennsylvania, who, at all times relevant, was employed by Big Way, Inc. as the chef and kitchen manager of the Valley Green Inn.

10. Defendant Mr. Ken Swope is a citizen of the Commonwealth of Pennsylvania, who, at all times relevant, was employed by Big Way, Inc. as the floor manager at the Valley Green Inn.

11. At all times relevant, Big Way, Inc. acted by and through its authorized agents, servants, workmen and/or employees, acting within the course and scope of their employment and in furtherance of its business.

12. At all times relevant, Mr. Ott, Mr. Dan, and Mr. Swope had supervisory authority over Ms. Fishel and had the power to affect the terms and conditions of her employment.

III. JURISDICTION

13. The causes of action set forth herein arise under The Equal Pay Act, 29 U.S.C. § 206 (d); Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. (“Title VII”);

the Pennsylvania Human Relations Act, as amended, 43 P.S. § 951 et seq. (“PHRA”); and the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, et seq.

14. The District Court has jurisdiction over the causes of action set forth in counts I and II of this complaint pursuant to 29 U.S.C. § 216, 42 U.S.C. § 2000(e)-5(f)(1) and (3), and 28 U.S.C. § 1331. The District Court has supplemental jurisdiction over the causes of action set forth in counts III and IV of this complaint pursuant to 28 U.S.C. §1367.

15. Venue is proper under 28 U.S.C. § 1391(b) and (c).

16. On or about February 23, 2004, Ms. Fishel filed a charge with the Equal Employment Opportunity Commission (“EEOC”) alleging gender-based harassment and discrimination, which charge was then referred to the Pennsylvania Human Relations Commission (“PHRC”) for cross-filing.

17. On or about June 2, 2005 the EEOC issued a letter of determination finding probable cause to believe that Ms. Fishel had been sexually harassed and discriminated against on the basis of her gender while she was employed by defendant Big Way, Inc. A copy of the letter of determination is attached hereto, incorporated herein and marked as Exhibit “A.”

18. On August 9, 2005, the EEOC filed the above-captioned suit on behalf of Ms. Fishel and other similarly situated female employees under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991.

19. Ms. Fishel has fully complied with all administrative prerequisites for the commencement of this action.

IV. FACTUAL ALLEGATIONS

20. On or about July 25, 2002, defendant Big Way, Inc hired Ms. Fishel as a server at the historic Valley Green Inn, Philadelphia, Pennsylvania.

21. Ms. Fishel held the position of server from approximately July 25, 2002 until approximately February 2003.
22. In approximately February 2003, then floor manager, Teresa FitzPatrick, a female, resigned.
23. Mr. Ott promoted Ms. Fishel to floor manager.
24. Mr. Ott paid to Ms. Fishel the same weekly salary he had paid to Ms. FitzPatrick.
25. While Ms. Fishel was floor manager, Mr. Ott regularly ridiculed, insulted, and harassed her by, among other things:
 - a.) making sexual comments to her,
 - b.) yelling at her and belittling her in front of those she supervised,
 - c.) having sex in the attic of the Valley Green Inn while it was open for business and Ms. Fishel was working in the adjoining office,
 - d.) promoting Mr. Shing Dan to kitchen manager after Ms. Fishel complained to Mr. Ott about Mr. Dan's obnoxious and harassing behavior,
 - e.) rehiring over Ms. Fishel's objection a male bartender that had previously been fired by Ms. FitzPatrick for, among other things, inappropriate behavior toward female servers, and
 - f.) engaging in other unwelcome, gender-based harassment of Ms. Fishel.
26. Because of Mr. Ott's abusive and harassing behavior, Ms. Fishel was forced to resign from the position of floor manager and return to her previous position of server at the Inn, where she would have less direct day-to-day contact with Mr. Ott.
27. After Ms. Fishel resigned as floor manager, Mr. Ott promoted Mr. Ken Swope, a male server, to floor manager.

28. At the time of Mr. Swope's promotion to floor manager, Mr. Swope had little or no management experience.
29. The floor manager position held by Mr. Swope required substantially equal skill, effort, and responsibility as that held by Ms. Fishel.
30. Mr. Ott paid to Mr. Swope a salary of \$600.00 per week as floor manager - the same position for which he had paid Ms. Fishel a salary of \$300.00 per week.
31. Ms. Fishel's gender was a motivating and determinative factor in Big Way, Inc.'s treatment of her relative to the terms and conditions of her employment.
32. In approximately October 2003, Mr. Ott admonished an employee for raising her voice to Mr. Swope and stated, "This isn't Joyce or Teresa, you speak to him like he is Ken."
33. During the time that Ms. Fishel was employed by defendant Big Way, Inc., it did not have a policy against gender/sexual harassment or discrimination.
34. During the time that Ms. Fishel was employed by defendant Big Way, Inc., it did not post information for its employees regarding local, state or federal laws prohibiting discrimination and harassment, as required by law.
35. When Ms. Fishel returned to her position as server, she continued to be subjected to an environment that was hostile to women.
36. Regularly during Ms. Fishel's employment with Big Way, Inc. and increasingly once he was promoted by Mr. Ott to kitchen manager, Mr. Dan used vulgar language and engaged in sexual banter to harass Ms. Fishel and other female employees at the Inn, by among other things:
 - a) routinely referring to his penis as a "pickle jar,"
 - b) routinely bragging about the alleged size of his penis,
 - c) regularly talking about sex,

- d) having sex with a female server in the bathroom at the Inn and joking about it afterward,
- e) offering to pay a female server to see her breasts,
- f) loudly calling a female server a “lying bitch” in front of others, raising his arm to her face, and saying “I could hit you,” in response to her accidentally spilling a tray of gravies,
- g) questioning Ms. Fishel about her weight and quipping “have you gained weight or has your ass always looked that good,”
- h) withholding the meals of the servers, who were primarily female, when one of them voiced disagreement or opposition to his and Mr. Ken Swope’s comments that women are inferior to men and that men and women should not be treated equally,
- i) suggesting that Ms. Fishel was promiscuous with other employees at the Inn and joking to Ms. Fishel’s boyfriend that Mr. Dan and others had had sex with Ms. Fishel and had “done her,” and
- j) engaging in other unwelcome gender-based behaviors toward Ms. Fishel and other female servers.

37. After he was promoted to floor manager in approximately May, 2003, Mr. Ken Swope routinely harassed Ms. Fishel and other female servers by, among other things:

- a) referring to women as “feminazi,”
- b) regularly commenting that women are stupid and evil,
- c) regularly mentioning his love of vaginas,

- d) crudely stating to female employees the reason for another female server's absence from work and stating that she could not work because she was "bleeding too much,"
- e) stating to a female server, who had just been cursed at and almost physically assaulted by Mr. Shing Dan for accidentally spilling a tray of gravies, that she did not pay Mr. Dan "the respect he deserved" and insinuating to her that she deserved the treatment she received, and
- f) engaging in other unwelcome, gender-based harassment.

38. When Mr. Ott was notified of Mr. Dan's and Mr. Swope's harassing behavior, Mr. Ott failed to take reasonable and effective action to stop the harassment.

39. As executive manager of Valley Green Inn, Mr. Ott created an atmosphere where gender-based harassment was accepted and, at times, encouraged.

40. Mr. Ott allowed a poster of a scantily clad pinup girl to be placed in the kitchen of the Inn in full view of the staff.

41. When Mr. Swope was informed by a female server that Mr. Dan was mistreating and verbally abusing the servers, he failed to take reasonable and effective action to stop the harassment.

42. Because of the hostile environment created by Mr. Ott, Mr. Dan, and Mr. Swope at Valley Green Inn, Ms. Fishel was constructively discharged on January 17, 2004.

43. As a direct and proximate result of Big Way, Inc.'s hostile, discriminatory and unlawful conduct, Ms. Fishel has in the past incurred, and will in the future incur, a loss of earnings, loss of benefits, pain and suffering, embarrassment, humiliation, mental anguish, and loss of life's pleasures, the full extent of which is not known at this time.

44. Big Way, Inc.'s conduct, as set forth herein, was outrageous under the circumstances.

**COUNT I – THE EQUAL PAY ACT (29 U.S.C. § 206 (d))
(v. Big Way, Inc. t/a Valley Green Inn)**

45. Ms. Fishel incorporates herein by reference paragraphs 1 through 44 above, as if set forth in their entirety.

46. As floor manager, Ms. Fishel performed work under similar working conditions and requiring substantially equal skill, effort, and responsibility as that performed by Mr. Swope.

47. Big Way, Inc. does not have a merit system relative to established rates of pay, nor does it have a system which measures earnings by quantity or quality of production.

48. Defendant has intentionally, willfully, and with reckless indifference to federal law, compensated Ms. Fishel, a female, at wage rates substantially less than those paid to Mr. Swope, a male, for performing work which required equal skill, effort, and responsibility, in violation of the Equal Pay Act.

49. Big Way, Inc. by the above improper, discriminatory acts has violated The Equal Pay Act.

50. Said violations were intentional and willful.

51. As a direct and proximate result of Big Way, Inc.'s improper, discriminatory and unlawful conduct, Ms. Fishel has in the past incurred, and will in the future incur, a loss of earnings, loss of benefits, pain and suffering, embarrassment, humiliation, mental anguish, and loss of life's pleasures, the full extent of which is not known at this time.

52. No previous application was made for the relief requested herein.

**COUNT II – TITLE VII (42 U.S.C.A. § 2000e et seq.)
(v. Big Way, Inc. t/a Valley Green Inn)**

53. Ms. Fishel incorporates herein by reference paragraphs 1 through 52 above, as if set forth in their entirety.

54. Big Way, Inc. by the above hostile, discriminatory, and unlawful acts has violated Title VII.

55. Said violations were intentional and willful.

56. Said violations warrant the imposition of punitive damages.

57. As a direct and proximate result of Big Way, Inc.'s violations of Title VII, Ms. Fishel has sustained the injuries, damages and losses set forth herein and has incurred attorney's fees and costs.

58. Ms. Fishel is now suffering and will continue to suffer irreparable injuries and monetary damages as a result of defendant's discriminatory acts unless and until the Court grants the relief requested herein.

**COUNT III – PHRA (43 Pa.C.S. § 951 et seq.)
(v. Big Way, Inc. t/a Valley Green Inn and
Jack Ott, Shing Dan, and Kenneth Swope, individually)**

59. Ms. Fishel incorporates herein by reference paragraphs 1 through 58 above, as if set forth in their entirety.

60. Big Way, Inc. and Mr. Jack Ott, Mr. Shing Dan, and Mr. Ken Swope, by their own direct acts of sexual harassment and their failure to take action to prevent further harassment, have violated the PHRA.

61. Said violations were intentional and willful.

62. As a direct and proximate result of defendants' violations of the PHRA, Ms. Fishel has sustained the injuries, damages and losses set forth herein and has incurred attorney's fees and costs.

63. Ms. Fishel is now suffering and will continue to suffer irreparable injuries and monetary damages as a result of defendants' discriminatory acts unless and until the Court grants the relief requested herein.

COUNT IV – PENNSYLVANIA WAGE PAYMENT AND COLLECTION LAW
(43 P.S. 260.1, et seq.)
(v. Big Way, Inc. t/a Valley Green Inn and Jack Ott, individually)

64. Ms. Fishel incorporates herein by reference paragraphs 1 through 63 above, as if set forth in their entirety.

65. When Ms. Fishel was constructively discharged on January 17, 2004, she provided to Mr. Ott her current address so he could send her final paycheck to her.

66. Big Way, Inc. did not pay to plaintiff wages due to her for the period of January 1 through January 17, 2004.

67. Big Way, Inc. did not provide a W-2 to Ms. Fishel for wages she earned in 2004 while working at Valley Green Inn.

68. Said violations were intentional and willful.

69. As a direct and proximate result of defendants' violation of the Pennsylvania Wage Payment and Collection Law, Ms. Fishel has sustained damages and losses set forth herein and has incurred attorney's fees and costs.

RELIEF

WHEREFORE, Ms. Fishel respectfully requests this Court enter a judgment:

- (a) Declaring that the acts and practices of defendants complained of herein to be in violation of Title VII;
- (b) Declaring that the acts and practices of defendants complained of herein to be in violation of the PHRA;
- (c) Declaring that the actions of defendant Big Way, Inc. violate the Equal Pay Act;
- (d) Declaring that the actions of defendants Big Way, Inc. and Jack Ott violate the Pennsylvania Wage Payment and Collection Law;
- (e) Enjoining and restraining permanently the violations alleged herein;
- (f) Awarding compensatory damages to Ms. Fishel for emotional pain and suffering, inconvenience, mental anguish and loss of enjoyment of life, loss of earnings, and loss of other benefits that Ms. Fishel has sustained and will in the future sustain as a result of defendants' hostile, abusive and discriminatory treatment;
- (g) ordering Big Way, Inc. to pay to Ms. Fishel the difference between what she earned and what Mr. Swope was paid for performing the same job plus benefits;
- (h) awarding liquidated damages under the Equal Pay Act and back pay with interest;
- (i) awarding liquidated damages and her unpaid wages under the Pennsylvania Wage Payment and Collection Law;
- (e) Awarding punitive damages to Ms. Fishel;
- (f) Awarding to Ms. Fishel costs of this action, together with reasonable attorney's fees;

- (g) Awarding to Ms. Fishel such other damages which are appropriate under Title VII and the PHRA and,
- (h) Granting such other and further relief as this Court deems appropriate.

/s/

MICHELE M. ROVINSKY, ESQUIRE
Id. No. 66587

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Attorney for Plaintiff
Ms. Joyce Fishel

Dated: October 19, 2005