

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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EQUAL EMPLOYMENT OPPORTUNITY :  
COMMISSION :  
v. :  
BGS TELEMARKETING, INC. :

Civil Action No. 03-2175  
ALBANY, MOORE  
CLERK U.S. DISTRICT COURT  
DEPUTY

MEMORANDUM

Before the Court is Defendant's Motion to Dismiss, or in the Alternative, to Compel Mandatory Conciliation. Paper No. 9. The motion is fully briefed. Upon a review of the pleadings and the applicable case law, the Court determines that no hearing is necessary and that the motion should be denied.

The Equal Employment Opportunity Commission brings this action alleging that Defendant maintained a sexually hostile environment in its workplace and that it retaliated against at least one female employee for raising complaints about that environment. The suit is filed on behalf of ten named female employees or former employees, as well as other unnamed female employees. Defendant has moved to dismiss the complaint on the ground that the EEOC "failed to participate in any realistic conciliation process . . . and therefore denied Defendant a realistic opportunity to resolve the issues between the parties." Motion at 1. Defendant also complains that the Complaint lacks specificity. Neither argument has merit.

The EEOC investigation was initiated when Grace Hughey, a

former employee of Defendant, filed a formal complaint. Hughey alleged that her second line supervisor, Clayton Mills, made inappropriate sexual comments to her and other female employees. She also stated that when she complained about his conduct, she was fired. On February 13, 2002, the EEOC issued a Letter of Determination in which it concluded that "[t]he evidence revealed that [Hughey] and her female co-workers were indeed subjected to sexual harassment, a sexually hostile work environment, and that [Defendant] failed to take immediate and appropriate action." Def.'s Exh. A. Furthermore, the EEOC found that Hughey's discharge on the grounds of poor work performance was pretextual and that the real motivation was retaliation for complaining about sexual harassment.

On February 21, 2002, the EEOC sent a letter to Defendant detailing the remedial actions that it believed to be appropriate. These actions included training for employees and supervisors, the posting of appropriate information, the development of an effective complaint procedure, and the payment of "up to \$50,000" in compensatory and punitive damages to each identified class member, in addition to a back pay award for Hughey. Def.'s Exh. B. Defendant was instructed to respond to this letter by March 4, 2002, if it was willing to enter into a conciliation agreement.

On March 20, 2002, Defendant sent a response indicating its willing to agree to each of the non-monetary remedial measures, but offered nothing by way of compensatory or exemplary damages. Def.'s Exh. C. On April 8, 2002, the EEOC responded, stating that its position was that monetary relief for Hughey and the identified class members must be a part of any conciliation agreement. Def.'s Exh. D. The EEOC warned that if Defendant was "unwilling to provide an amount for monetary relief for [Hughey] and the identified class members, then it will be determined that efforts to conciliate this charge have been unsuccessful and the case will be referred to this office's Legal Unit to determine whether EEOC will bring a civil action in Federal District Court." Id.

On April 17, 2002, Defendant replied, stating that it was willing to pay a lump sum of \$5000 as compensatory damages, to be distributed in any manner desired by the EEOC. Def.'s Exh. E. On May 8, 2002, the EEOC sent a letter rejecting that offer, and indicating that it considered further conciliation efforts "futile and non-productive." Def.'s Exh. F. The EEOC then filed the instant action on July 16, 2002.

"Before bringing suit, the EEOC must make a good faith effort to conciliate the claim." E.E.O.C. v. Keco Industries, Inc. 748 F.2d 1097, 1102 (6<sup>th</sup> Cir. 1984). This Court's review of


the conciliation process, however, is quite limited. "The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency created to administer and enforce our employment discrimination laws and is beyond judicial review." Id.

The Court finds that the EEOC made a sincere and reasonable effort to negotiate in good faith, thereby fulfilling its obligations. In response to the EEOC's finding of a hostile workplace and the retaliatory discharge of one of its employees, Defendant initially offered no monetary compensation, whatsoever. Defendant came back a second time with what could, in the context of the EEOC's findings, be considered nothing more than a nominal offer. The Court cannot conclude that it was an abuse of discretion for the EEOC to conclude at that point that any further negotiations would be futile.

The Court also rejects Defendant's argument that the Complaint lacks sufficient specificity in its allegations. The Supreme Court recently clarified the degree of detail that must be included in a complaint of discrimination. Swierkiewicz v. Sorema N. A., 122 S. Ct. 992 (2002). As with any other plaintiff in a civil action, a plaintiff bringing a claim of discrimination must simply give a short and plain statement of the claim showing

that he is entitled to relief. 122 S. Ct. at 995. This, the EEOC has done.

A separate order will issue.

  
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William M. Nickerson  
Senior United States District Judge

Dated: February 5 , 2003