

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

CHRISTINE ROMERO,

Applicant in Intervention,

vs.

No. CV 02-01090 WJP/DJS

BELL GAS, INCORPORATED, A-X
PROPANE INC., CORTEZ GAS COMPANY,
BLACK GOLD ENERGY CORPORATION,
DB/A A-X EXPRESS MART AND CONOCO #155,
and RAYMUNDO HILDALGO, General
Manager of A-X EXPRESS MART AND
CONOCO #155,

Defendants.

COMPLAINT IN INTERVENTION

Plaintiff in intervention Christine Romero ("Romero") states as follows:

Parties, Jurisdiction & Venue:

1. Plaintiff in intervention Christine Romero, hereinafter referred to as Romero, is presently a resident of Truth or Consequences, New Mexico. She was a resident of Socorro, New Mexico and an employee of Defendant Bell Gas at all material times.
2. Plaintiff Equal Employment Opportunity Commission, hereinafter referred to as the Commission, is an agency of the United States of America, charged with the administration, interpretation and enforcement of Title VII.
3. Defendant Bell Gas Incorporated, A-X Propane Inc., Cortez Gas Company, Black Gold Energy Corporation, d/b/a A-X Express Mart and Conoco #155 hereinafter referred to as

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Raymundo Hidalgo
Raymundo Hidalgo
General Manager

“Defendant Bell Gas” or “Employer,” has continuously been doing business in the State of New Mexico, in a number of cities in New Mexico, including Socorro and Roswell, New Mexico, and is an employer of 15 or more employees, as defined by Title VII of the Civil Rights Act (42 U.S.C. §2000-e et seq.) as amended.

4. Defendant Raymond Hildalgo, hereinafter referred to as Hildalgo, was employed by Defendant Bell Gas Incorporated as the General Manager of A-X Express Mart and Conoco #155, in Socorro, New Mexico, and was acting in the scope of his employment at all material times.

5. This action arises under the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 (Title VII), 42 U.S.C. §2000-e, et seq.

6. The unlawful employment practices and other acts which give rise to this Complaint were committed in Socorro, New Mexico and are within the jurisdiction and venue of the United States District Court for the District of New Mexico.

7. Romero timely filed charges of discrimination with the Commission and has satisfied all conditions precedent to the filing of this action.

8. On July 26, 2001, upon completion of its investigation of Romero’s charges, the Commission issued a Determination that there was cause to conclude that Romero was sexually harassed and raped by her supervisor Raymond Hildalgo, then transferred and constructively discharged by Defendant Bell Gas in retaliation for reporting the sexual harassment and sexual assault by her supervisor.

Allegations Common To All Causes of Action:

9. In February 2000, Romero was employed by Defendant Bell Gas Incorporated at an AX Express Mart/Conoco station owed by Bell Gas Incorporated in Socorro, New Mexico.

10. Plaintiff Romero was twenty (20) years old and this was her first full time job.

11. Defendant Raymond Hildalgo, over fifty (50) years old, was the general manager of the propane station in Socorro, New Mexico. Plaintiff Romero had gone to high school with Defendant Hildalgo's son who also worked for Defendant Bell for a short time.

12. Plaintiff Romero was under the direct supervision and control of Defendant Bell's general manager, Defendant Hildalgo.

13. In 1991, Defendant Bell Gas Corporation had fired Hildalgo for time card fraud and/or for having an affair with his secretary, Lydia Aragon. The secretary, Lydia Aragon, was also fired. Hildalgo was re-hired by Defendants within a few years of his termination. Ms. Aragon was not re-hired by Defendant Bell Gas.

14. Defendant Hildalgo is rumored to have had numerous sexual relationships with female coworkers, in spite of the fact that he is married.

15. In June of 2000, Defendant Hildalgo began touching Plaintiff Romero inappropriately and speaking to her in a sexually explicit manner. A least one co-worker witnessed Defendant Hildalgo touching Plaintiff on monitor cameras.

16. Plaintiff Romero was frightened to complain of Defendant Hildalgo's sexually offensive behavior because she feared that if she complained she would lose her job.

17. Plaintiff Romero had witnessed the firing of another female employee, whom she believed had been intimately involved with Defendant Hildalgo, after Defendant Hildalgo called

that female employee a “bitch.”

18. Hildalgo’s sexually aggressive behavior towards Plaintiff continued through the months of June and July 2000.

19. On July 15, 2000, Defendant Hildalgo raped Plaintiff Romero on his desk in his office.

20. A few days following the rape, Plaintiff Romero complained of Hildalgo’s sexual assault to Assistant Manager, Texie Baggs, and then to the Office and Station Managers, Yvette Martinez and Debra Chittenden, and then to District Manager, Bryan Stegall.

21. Plaintiff reasonably feared continuing to work with Defendant Hildalgo.

22. District Manager Bryan Stegall told Plaintiff Romero that she could continue working for the company at a station in Truth or Consequences, New Mexico.

23. Plaintiff moved to Truth or Consequences, New Mexico, to secure continued employment with Defendant Bell Gas. She never received a call from Defendant Bell telling her when or where she could begin working for Defendant in Truth or Consequences, New Mexico. Plaintiff was without employment for a number of months.

COUNT I - HOSTILE WORKPLACE GENDER DISCRIMINATION & RETALIATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT
(AGAINST DEFENDANT BELL GAS)

24. The Plaintiff incorporates the preceding paragraphs by reference herein.

25. Plaintiff is within a protected class (female) and was treated differently by Defendant Bell Gas from male co-workers in the terms and conditions of her employment.

26. Defendant Bell Gas subjected Plaintiff Romero to a hostile work environment.

27. Plaintiff complained to Defendant Bell Gas, via her supervisors about verbal and sexual harassment because of her gender, female, by her immediate supervisor Defendant Raymond Hidalgo.

28. Because Plaintiff voiced her original complaint to her supervisors, then voiced her complaints regarding her treatment by Defendant Hidalgo to his supervisors, she was retaliated against by Defendant Bell Gas.

29. As a result of Defendant's sexual harassment and/or retaliation, Christine Romero was either discharged or constructively discharged by Defendant Bell Gas.

30. Such retaliation and sex discrimination is prohibited under the Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a) and Section 704(a) of Title VII, 42 U.S.C. §2000e-3(a).

31. Plaintiff was forced to move to a new location which created a hardship for her, and she was not able to work as she was not given the job position with Defendant Bell Gas that she was promised by their agent Bryan Stegall.

32. Plaintiff has suffered severe emotional distress, physical injury, and economic harm as a result of Defendant's violations of Title VII.

COUNT II - SEXUAL ASSAULT AND BATTERY
(AGAINST DEFENDANT HILDALGO and DEFENDANT BELL GAS)

33. Plaintiff restates each of the allegations in paragraphs 1 through 32 as if stated fully herein.

34. Hildalgos' sexual remarks and comments to Romero caused her to suffer fear and apprehension regarding Hidalgo's intended sexual action towards her.

35. Hildalgo's physical sexual acts were unwelcome and constituted a battery.

36. Hildalgo's actions were intentional, willful, wanton, obdurate, sexual, and in gross and reckless disregard of Plaintiffs' personal dignity and bodily integrity.

37. Defendant Bell Gas is vicariously liable for Hildalgo's actions under the doctrine of *respondeat superior*.

38. Defendant Hildalgo's actions proximately caused extreme emotional distress and personal injuries to Plaintiff.

COUNT III: NEW MEXICO TORTS:
Negligent Retention, Supervision and Training
(DEFENDANT BELL GAS)

39. Plaintiff Romero hereby incorporates into this cause of action paragraphs 1 through 38 of this complaint.

40. Defendant Bell Gas has a duty to refrain from hiring or retaining unfit employees.

41. Defendant Bell Gas has a duty to insure that its employees are properly trained and supervised, including their manager, Hildalgo.

42. Defendant Bell Gas had actual knowledge that manager Hildalgo was unfit to work for them because of his discriminatory attitude towards women, his sexually predatory behavior towards female employees, and his dishonest conduct in the workplace.

43. The discriminatory attitude of Defendant Hildalgo and the poor training of employees created a foreseeable risk of harm to female co-workers.

44. Defendant Bell Gas knew or should have known that Defendant Hildalgo behaved in an unfit manner, yet Defendant failed to properly supervise and train their employees in gender discrimination or retaliation.

45. Defendant Bell Gas had a duty to Plaintiff Romero because it knew that she was in a position of risk of injury as a result of their retention of Defendant Hildalgo.

46. Defendant Bell Gas failed to properly instruct its employees as to the proper method of performing their work including the legal rights of co-workers to be free from gender discrimination and retaliation in the workplace, and as a result of this failure Plaintiff Romero was injured.

47. Defendant's failures constituted gross negligence.

48. By the outrageous conduct described above, Defendant Bell breached its duty of care to Plaintiff Romero.

49. Defendant's actions were malicious, willful and done with disregard for Romero.

50. As a direct and proximate result of Defendant's breach of duty of care, Romero has suffered and will continue to suffer severe emotional distress and physical injury.

COUNT IV -RETALIATORY DISCHARGE in Violation of
Public Policy Pursuant to New Mexico Common Law
and the New Mexico Human Rights Act
(AGAINST DEFENDANT BELL GAS)

47. Plaintiff incorporates the preceding paragraphs as if fully reiterated herein.

48. Plaintiff Romero was terminated unlawfully pursuant to New Mexico law in that her termination was a violation of public policy and the New Mexico Human Rights Act. It is well-settled New Mexico law that retaliatory discharge for gender

discrimination contravenes New Mexico public policy.

49. The Defendant Bell Gas acted intentionally, maliciously, and with reckless disregard when they retaliated against Plaintiff based on her gender, female.
50. The actions of Defendant Bell caused Plaintiff Romero harm as described above.

**COUNT V: NEW MEXICO TORTS--Wrongful Termination/Breach of Implied
Contract/Promissory Estoppel
(AGAINST DEFENDANT BELL)**

51. Plaintiff incorporates the preceding paragraphs as if fully reiterated herein.
52. Defendant Bell promised Plaintiff Romero that she would have a work environment free from gender discrimination and retaliation. Defendant Bell promised Plaintiff Romero that she would be given an equal opportunity to advance within the company's ranks. Defendants denied Plaintiff Romero this opportunity.
71. Plaintiff Romero, was in fact, dismissed from her employment based upon her gender and in violation of public policy as codified in the Civil Rights Act and in the New Mexico Human Rights Act.
72. Prior to her wrongful termination Plaintiff Romero was forced to endure a hostile work environment and retaliation, based upon her gender in violation of public policy as codified in the Civil Rights Act and in the New Mexico Human Rights Act.
73. Defendant Bell failed to perform on its promise to employ Plaintiff in an environment free from retaliation and gender discrimination.

74. Defendant Bell Gas acted intentionally, maliciously, and with reckless disregard.

75. The actions of Defendant Bell has caused Plaintiff harm as described above.

COUNT VI-VIOLATIONS OF THE NEW MEXICO HUMAN RIGHTS ACT
(AGAINST DEFENDANT BELL GAS AND DEFENDANT HILDALGO)

76. Plaintiff restates each of the preceding allegations as if fully stated herein.

77. Plaintiff's employer, Defendant Bell Gas and her supervisor Defendant Hildalgo, have discriminated and retaliated against Plaintiff because of her gender, female.

78. Defendants conduct violates the Human Rights Act, NMSA Section 28-1-1 et seq. (including Section 28-1-7(A).

79. The actions of Defendant Bell and Defendant Hildalgo has caused Plaintiff harm as described above.

80. Pursuant to the New Mexico Human Rights Act, Plaintiff is entitled to recover her actual damages and attorneys' fees. See NMSA Section 28-1-13(D).

PRAYER FOR RELIEF

Plaintiff has suffered the following damages:

- a. Mental anguish.
- b. Humiliation, loss of enjoyment of life, and loss of self-esteem.
- c. Monetary damages, including loss wages and benefits.
- e. Because Defendants' conduct was willful, deliberate, and done with malice,

Plaintiff is entitled to punitive damages from the Defendants.

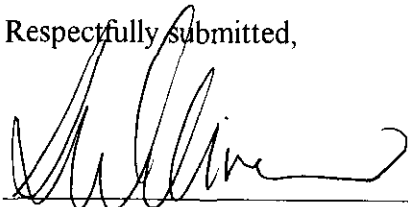
WHEREFORE, Plaintiff respectfully prays for the following relief:

1. For compensatory damages for physical and emotional damages;
2. For punitive damages in an amount sufficient to deter the type of tortious and statutorily prohibited conduct complained of herein;
3. For reasonable attorneys' fees and costs;
4. For pre-and post-judgment interest;
5. Issue a declaratory judgment declaring Defendant Bell Gas's conduct violated Plaintiff's rights under the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991;
6. Issue a permanent injunction enjoining Bell Gas from engaging in gender discrimination;
7. Issue a permanent injunction against Bell Gas to implement and enforce policies which provide equal employment opportunities for its employees and which eradicate the effects of its past discriminatory practices;
8. Issue Plaintiff an award of back pay and front pay against Bell Gas; and,
9. Award Plaintiff all other relief that is just, equitable and appropriate under the circumstances.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully submitted,



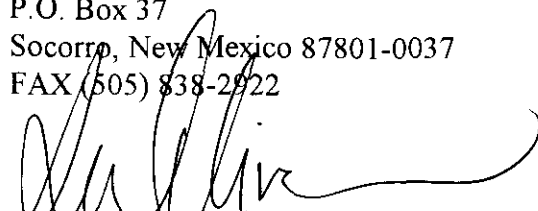
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I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed and sent via facsimile this 7th day of January, 2003 to counsel of record:

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