

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

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FERNANDA HERNANDEZ and JAILENE MORAZAN,

Index No. 160276/2022

Plaintiffs,

-against-

COMPLAINT

WEST END RESIDENCES HOUSING DEVELOPMENT
FUND COMPANY, INC. d/b/a Homeward NYC,

Defendant.

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Plaintiffs FERNANDA HERNANDEZ (“Ms. Hernandez”) and JAILENE MORAZAN (“Ms. Morazan”) (hereinafter, collectively referred to as “Plaintiffs”), by and through their attorneys of record, complaining of defendant WEST END RESIDENCES DEVELOPMENT FUND COMPANY, INC. d/b/a Homeward NYC (hereinafter, referred to as “Homeward NYC” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. This action is brought to remedy discrimination based upon religion, failure to reasonably accommodate a religious belief, and retaliation in violation of the New York City Human Rights Law, Administrative Code of the City of New York § 8-107 et seq. (“Administrative Code” or “NYCHRL”); and unpaid wage supplements in violation of the New York Labor Law (“NYLL”)

2. Defendant’s actions were unlawful and Plaintiff seeks injunctive and declaratory relief; monetary damages, including back pay and front pay; compensatory damages for emotional distress, mental anguish, and humiliation; an award of unpaid wage supplements; an award of liquidated damages pursuant to the NYLL; punitive damages; prejudgment interest; costs and attorneys’ fees, and other appropriate legal and equitable relief as the Court deems necessary and proper.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is appropriate pursuant to NY Civil Practice Law and Rules §301.

4. Venue of this Court is appropriate pursuant to NY Civil Practice Law and Rules §503 as

Defendant resides in the County of New York.

PARTIES

5. Ms. Hernandez is an adult Hispanic female who is a Jehovah's Witness.

6. Ms. Hernandez is a citizen of the State of New York.

7. Ms. Morazan is an adult Hispanic female who is a Jehovah's Witness.

8. Ms. Morazan is a citizen of the State of New York.

9. Homeward NYC is a domestic not-for-profit corporation duly organized and existing in the County of New York, State of New York with its principal place of business located at 475 Riverside Drive, Suite 740, New York, New York 10115.

10. At all times relevant to this Complaint, Defendant was Plaintiffs' "employer" as defined by the Administrative Code and the NYLL.

11. At all times relevant to this Complaint, Plaintiff were an "employee" of the Defendant as defined by the Administrative Code and the NYLL.

12. At all times relevant to this Complaint, Plaintiffs held the requisite education, knowledge, experience, skills, and/or qualifications necessary to work in their employment position with Defendant with or without a reasonable accommodation.

FACTUAL ALLEGATIONS

I. Background Facts as to Ms. Hernandez

13. Ms. Hernandez began working for Homeward NYC as a Case Manager in August 2021.

14. Ms. Hernandez is a Jehovah's Witness.

15. It is against Ms. Hernandez's truly held religious beliefs to participate in the celebration of holidays, gift exchanges, or requests concerning holidays, such as Christmas and Halloween.

16. In or around September 19, 2022, Ms. Hernandez complained to Kimberly Marshall, Chief Program Officer, with copy to Leslie Ann McCalla ("Ms. McCalla"), Program Director for Defendant, concerning certain health related issues that she was suffering from due to black mold that existed in and around the offices of Homeward NYC.

17. On October 4, 2022, Ms. Hernandez complained to Carlton Ford, Director of Human Resources for Defendant, that a Caucasian co-worker had made racially discriminatory remarks to Ms. Hernandez.

II. Background Facts as to Ms. Morazan

18. Ms. Morazan began working for Homeward NYC as a Case Manager in January 2022.

19. Ms. Morazan is a Jehovah's Witness.

20. It is against Ms. Morazan's truly held religious beliefs to participate in the celebration of holidays, gift exchanges, or requests concerning holidays, such as Christmas and Halloween.

21. Ms. Morazan completed her probationary employment period in or around April 2022.

22. Pursuant to Defendant's policies and practices, once an employee completes his or her probationary period, the employee becomes eligible to receive fringe benefits or wage supplements from Defendant, including, health insurance, dental insurance, and vision insurance.

23. Employees similarly situated to Ms. Morazan received health insurance, dental insurance, and vision insurance wage supplements from Defendant; however, Ms. Morazan did not.

24. On several occasions in 2022, Ms. Morazan contacted Mr. Ford concerning her entitlement to health insurance, dental insurance, and vision insurance wage supplements; however, Mr. Ford failed or refused to take action to provide such wage supplements to Ms. Morazan.

III. Opposition to Work Assigned in Violation of Plaintiffs' Truly Held Religious Beliefs

25. In or around October 2021, Ms. Hernandez opposed participating in Homeward NYC's 2021 activities celebrating Christmas.

26. In 2021, Ms. Hernandez's direct supervisor, Ms. McCalla accommodated Ms. Hernandez's request for a religious accommodation.

27. In or around the Fall of 2022, Ms. Hernandez opposed participating in Homeward NYC's 2022 activities celebrating Halloween.

28. Thereafter, Ms. McCalla's attitude toward Ms. Hernandez changed in that Ms. McCalla ignored Ms. Hernandez and refused to work directly with Ms. Hernandez subsequent to her religious accommodation request concerning Halloween.

29. In or around October 2022, Ms. Hernandez and Ms. Morazan both sought reasonable accommodations for their religious beliefs which would excuse them from participating in Homeward NYC's 2022 activities celebrating Christmas.

30. Defendant failed or refused to engage in a good faith cooperative dialogue with Plaintiffs concerning their religious accommodation requests.

31. In or around October 20, 2022, Ms. McCalla stated to Plaintiffs, in sum and substance, that Plaintiffs would need to participate in Homeward NYC's 2022 activities celebrating Christmas despite their religious beliefs and that their actions to not participate due to their religious beliefs were deemed to be "insubordination."

32. Shortly thereafter, on October 24, 2022, Ms. McCalla issued both Ms. Hernandez and Ms. Morazan written warnings due to their opposition to participate in Homeward NYC's 2022 activities celebrating Christmas because of their religious beliefs.

33. The written warnings stated that Plaintiffs' failure to perform the work requested by Defendant may result in their dismissal as Case Managers.

34. Later that day, on October 24, 2022, Ms. Hernandez and Ms. Morazan met with Ms. McCalla and Mr. Ford.

35. During the October 24, 2022 meeting, both Ms. Hernandez and Ms. Morazan, once again, expressed their opposition to participating in Homeward NYC's 2022 activities celebrating Christmas.

36. In response to Ms. Hernandez and Ms. Morazan, Mr. Ford retorted, "I don't care about your religious beliefs."

37. During the October 24, 2022 meeting, Ms. McCalla and/or Mr. Ford communicated to Ms. Hernandez and Ms. Morazan that if they did not perform the work assigned, regardless of their religious opposition thereto, by October 26, 2022, then they would be terminated as Case Managers.

38. Around noon on October 25, 2022, Ms. McCalla emailed Plaintiffs to see if they had complied with Defendant's directive to engage in work that constituted the participation in Christmas activities.

39. Plaintiffs responded that they had not because it violated their religious beliefs.

40. Shortly thereafter, on October 25, 2022, Ms. McCalla informed Plaintiffs that their employment had been terminated.

41. Ms. McCalla, on behalf of defendant, then instructed Plaintiffs to gather all of their possessions and Plaintiffs were escorted out of the building by security.

42. The Plaintiffs were escorted out of the building in front of their colleagues and clients so that they would be publicly humiliated and embarrassed by Defendant's decision to terminate their employment as Case Managers.

43. Later, and only after Plaintiffs retained counsel, Defendant claimed, without supporting documentation, that it had placed Plaintiffs on "administrative leave" evidencing its consciousness of wrongdoing in relation to Plaintiffs' terminations.

FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Discrimination based upon Religion in Violation of the NYCHRL)

44. Plaintiffs hereby repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

45. Plaintiffs are a member of the protected class.

46. Pursuant to the acts and practices alleged herein, Plaintiffs suffered an adverse employment action due to their religion.

47. Pursuant to the acts and practices alleged herein, Plaintiffs were treated less well due to their religion.

48. As a result of Defendant's actions, Plaintiffs were discriminated against in their employment and have suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and have suffered other monetary and compensatory damages, for *inter alia*, mental anguish, emotional distress, and humiliation.

49. Defendant acted intentionally and with malice or reckless indifference to Plaintiffs' statutory rights under the Administrative Code, and is thereby liable to Plaintiffs for punitive damages.

SECOND CAUSE OF ACTION AGAINST DEFENDANT
**(Failure to Reasonably Accommodate a Religious Belief
in Violation of the NYCHRL)**

50. Plaintiffs hereby repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

51. Pursuant to the acts and practices alleged herein, Plaintiffs hold truly held religious beliefs.

52. Defendant was aware of Plaintiffs' requests for reasonable accommodations for their religious beliefs.

53. With the reasonable accommodations requested, Plaintiffs could perform the essential job functions of their position of employment with Defendant.

54. Defendant refused to provide or failed to provide reasonable accommodations to Plaintiffs for their religious beliefs.

55. Defendant failed to engage in a good faith cooperative dialogue with Plaintiffs concerning their reasonable accommodation requests for their religious beliefs as required by the NYCHRL.

56. As a result of Defendant's actions, Plaintiffs were discriminated against in their employment and have suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and have suffered other monetary and compensatory damages, for *inter alia*, mental anguish, emotional distress, and humiliation.

57. Defendant acted intentionally and with malice or reckless indifference to Plaintiffs' statutory rights under the Administrative Code, and is thereby liable to Plaintiffs for punitive damages.

THIRD CAUSE OF ACTION AGAINST DEFENDANT
(Retaliation in Violation of the NYCHRL)

58. Plaintiffs hereby repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

59. Plaintiffs engaged in protected activities as alleged herein.

60. Defendant was aware that Plaintiffs engaged in protected activities.

61. Pursuant to the acts and practices alleged herein, Plaintiffs suffered an adverse employment action in retaliation for their engagement in protected activities.

62. As a result of Defendant's actions, Plaintiff were retaliated against in their employment and have suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and have suffered other monetary and compensatory damages, for *inter alia*, mental anguish, emotional distress, and humiliation.

63. Defendant acted intentionally and with malice or reckless indifference to Plaintiffs' statutory rights under the Administrative Code, and is thereby liable to Plaintiffs for punitive damages.

FOURTH CAUSE OF ACTION AGAINST DEFENDANT
(Ms. Morazan's Cause of Action for Unpaid Wage Supplements
in Violation of the NYLL)

64. Plaintiffs hereby repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

65. Pursuant to the acts and practices alleged herein, Ms. Morazan was unlawfully deprived of wage supplements paid to similarly situated employees of Defendant.

66. At all times relevant to this action, Ms. Morazan was a non-exempt employee of Defendant.

67. As a direct and proximate result of Defendant's unlawful conduct alleged herein, Ms.

Morazan suffered economic losses.

68. Ms. Morazan is entitled to recover the value of those unpaid wage supplements plus an equivalent amount of liquidated damages and prejudgment interest pursuant to the NYLL.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment against Defendant containing the following relief:

- a) An order declaring that the acts and practices of Defendant, complained of herein, are in violation of the Administrative Code of the City of New York § 8-107 and the NYLL;
- b) An order enjoining Defendant from further engaging in the unlawful activities alleged above;
- c) An order enjoining Defendant to reinstate Plaintiffs to their prior position, seniority, salary, and work location;
- d) An award of monetary damages to Plaintiffs in the form of back pay, front pay, and unpaid wage supplements;
- e) An award of compensatory damages, including monetary damages in recognition of emotional distress, mental anguish, and humiliation suffered by Plaintiffs;
- f) An award of liquidated damages pursuant to the NYLL;
- g) An award of punitive damages as provided by the Administrative Code;
- h) An award of Plaintiffs' reasonable attorneys' fees and costs;
- i) An award of prejudgment interest; and

j) granting such other and further relief as the Court deems necessary and proper.

Dated: Garden City, New York
January 6, 2023

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