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Employment

Worker claimed she was forced to play skirt-lifting game

Verdict: (P) \$25,000.00

Case Type: Sexual Harassment, Intentional Torts - Assault, Intentional Torts - Battery, Employment - Race Discrimination, Intentional Torts - Intentional Infliction of Emotional Distress, Negligence - Negligent Infliction of Emotional Distress

Case: Felicia & Gary Cheatham v. Great American Brochure & Catalog Co. & Stephen Osrow, No. 513/05

Venue: Orange Supreme, NY

Judge: John K. McGuirk

Date: 02-25-2009

PLAINTIFF(S)

Attorney:

- Stephen Bergstein; Bergstein & Ullrich; Chester, NY, for Felicia Cheatham
- Helen G. Ullrich; Bergstein & Ullrich; Chester, NY, for Felicia Cheatham

Expert:

- Jay Joerger; Psychology/Counseling; Middletown, NY called by: Helen Ullrich, Stephen Bergstein

DEFENDANT(S)

Attorney:

- Richard G. Corde; Boeggeman, George & Corde, P.C.; White Plains, NY, for Stephen Ostrow, Great American Brochure & Catalog Co.

Expert:

- None

Facts:

During a period that spanned Oct. 19, 2004, and Nov. 19, 2004, plaintiff Felicia Cheatham, a 30-year old black woman, was employed by Great American Brochure and Catalog Co. as a photo assistant. Her superior was Stephen Ostrow, who also owned the company. Cheatham claimed that Ostrow sexually attacked her in a public storage unit. She also claimed that Ostrow groped her breasts, made sexual remarks and occasionally lifted her blazer to look at her buttocks. Cheatham contended that the conduct forced her to leave her job after less than a month.

Cheatham sued Ostrow and Great American Brochure and Catalog. She alleged that Ostrow's actions constituted assault, battery, sexual harassment, the intentional and negligent infliction of emotional distress, and racial discrimination. She further alleged that the defendants violated the New York Human Rights Law.

Cheatham claimed that Ostrow forced her to play "Simon says," in which she would hop on one foot with her hands in the air while Ostrow tried to get her to lift her shirt.

After the conclusion of Cheatham's case, Judge John McGuirk dismissed the claims that were based on the intentional and negligent infliction of emotional distress.

Ostrow denied all of Cheatham's claims. Defense counsel noted that, during four years of litigation, 10 hours of EBTs and 200 therapist visits, in which Cheatham described in detail every alleged wrongful act, she never mentioned the Simon-says incident. Defense counsel reported that McGuirk would not allow him to question Cheatham as to why the alleged Simon-says incident was not mentioned during her EBTs. Defense counsel also reported that Cheatham's treating therapist did not first mention the alleged Simon-says incident until February 2009, during preparation for the trial, and Cheatham acknowledged that she had not previously told anyone else of the incident.

Injury:

Cheatham left her position as a photo assistant. She has been undergoing weekly therapy since December 2004 and is on several medications for depression, sleep issues and post-traumatic stress disorder, which she claimed stems from the month that she worked for Ostrow.

Cheatham sought recovery of \$35,000 for her past and future emotional suffering.

Defense counsel noted that Cheatham acknowledged that she had been sexually molested from the age of 6 until 13 by uncles, cousins and friends; that she had been abused by her parents; and that she was a rape victim at the age of 27.

Verdict Information The jury found that Cheatham was not subjected to racial discrimination, but it did find that Ostrow's actions constituted assault and battery. It determined that Cheatham's damages totaled \$25,000.

According to defense counsel, jurors indicated that they believed that Cheatham had not been truthful and that they would not have been inclined to have found in her favor had they known that the Simon-says allegation was not presented until the days before the trial. He also reported that the jurors claimed to have formulated a damages award that was as low as could be sustained, given that they found that assault and battery had occurred.

Post-Trial: Defense counsel has expressed an intention to file an appeal.

Editor's Comments This report is based on information that was provided by plaintiff's and defense counsel.