

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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| IN THE MATTER OF: |) | |
| |) | |
| MICHELLE GRAVES, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| and |) | CHARGE NO: 1999SF0703 |
| |) | EEOC NO: 21B992210 |
| LARRY LANCASTER, |) | ALS NO: S-11404 |
| |) | |
| Respondent. |) | |
| |) | |

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Springfield, Illinois on June 24 and 25, 2003. By agreement of the parties, the record was left open until the parties took the evidence deposition of Carley Mattimore. That did not occur until October 30, 2003, and the parties have since filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

Contentions of the Parties

According to the allegation of her Complaint, Complainant asserts that she was the victim of sexual harassment in the form of daily and repeated acts of verbal and physical abuse from Respondent, a co-worker in a grocery store meat department. Respondent denies that any of the alleged harassment occurred and further submits that although comments of a sexual nature were uttered on a daily basis within the workplace, Complainant's own active participation in said banter precludes any finding that said conduct was unwelcome to her.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. In December of 1996, Complainant, Michelle Graves, a female, was hired by Shop-N-Save Foods, Inc., a local food store, as a food clerk. At the time of her hire Complainant was twenty-three years old. In January of 1997, Complainant transferred to Shop-N-Save's Chatham Road store in Springfield, Illinois, where she began her duties as a checker.

2. In April of 1997, Complainant transferred into the store's meat department as a meat clerk. As a meat clerk, Complainant would: (1) work at the lunchmeat counter; (2) wrap the meat when the meat wrapper was absent; (3) stand next to the meat cutter and tray the meat up and send it to the wrapper; (4) prepare packages of beef or pork for the meat cutters; and (4) grind beef and pork.

3. At all times pertinent to this Complaint, the meat department was located in an enclosed room off the main floor of the retail facility and behind a wall displaying the fresh meats. The lunchmeat counter was displayed on the main floor of the retail facility and away from the meat department. The meat department room had a cooler at each end of the room and had three saws, one of which was devoted to cutting beef, one of which was devoted to cutting pork, and one of which was devoted to cutting mixed meats.

4. At the time Complainant transferred into the meat department, Respondent, Larry Lancaster, was employed as a meat cutter. Respondent, who had approximately 40 years of meat cutting experience and had been with Shop-N-Save as a meat cutter since 1983, had transferred to the Chatham Road store in 1997. At the time Complainant transferred to the Chatham Road store, Respondent was fifty-one years old. Respondent's job throughout Complainant's tenure at the Chatham store was as a meat cutter assigned to the beef table.

5. At all times pertinent to this Complaint, Complainant worked the morning shift in the meat department, which required that she show-up for work at around 5:30 a.m. or 6:00 a.m. and leave around 2:30 p.m. Because Complainant had different days

off than some of her co-workers, Complainant's schedule required that she work with Respondent four days a week.

6. At all times pertinent to this Complaint, Complainant spent a majority of her time (up to six hours per day) working at the lunchmeat counter outside of the meat room.

7. At all times pertinent to this case, Complainant, the meat cutters including Respondent, as well as the meat wrappers and other meat clerks participated in banter of a sexual nature in the workplace on a frequent if not daily basis. Typically, either Complainant or a co-worker would make a comment or joke about a spouse or a significant other and would boast of his or her past sexual exploits. Many of these conversations occurred as Complainant and her co-workers were waiting for their lunch period to begin.

8. At various points in time between April of 1997 and April of 1999, Complainant commented to her co-workers while in the meat department room that her jaws hurt because she was required to give her live-in boyfriend (hereinafter referred to as the "boyfriend") oral sex, and that her boyfriend's penis had a nickname of "Eddie". Complainant also told her co-workers that she could estimate the size of a man's penis by the size of his hands. Complainant further relayed a story about skipping school with a different boyfriend and hiding from her parents and about an incident when she experienced anal sex with her boyfriend while being passed out from drinking.

9. At some point in time within the first four months after Complainant's transfer into the meat department in April of 1997, Complainant began telling Respondent and other co-workers in the meat department about the troubles she was experiencing at home with her daughter and her boyfriend. Occasionally, the subject matter regarding Complainant's boyfriend turned serious when Complainant spoke of incidents in which the boyfriend: (1) would not fix a flat tire or come to her assistance; (2) refused to give her money to buy clothes for the couple's son; (3) threw her out of the house; (4) locked her

out of the couple's bedroom forcing her to come to work without a fresh change of clothes; (5) argued with her as to who she could walk outside the workplace with at the end of her shift; and (6) mentally abused and mistreated her.

10. Once Complainant began telling her co-workers about her problems with her home life, Respondent and other co-workers began to give Complainant advice about her home life. Specifically, Respondent, after hearing some of Complainant's problems, advised Complainant on many occasions to leave her boyfriend and take her children to a women's shelter. He also suggested that Complainant's boyfriend was seeing another woman. Other co-workers also expressed criticism of Complainant's boyfriend.

11. At various times when Respondent accused Complainant's boyfriend of seeing other women, Complainant would in turn confront her boyfriend about the issue.

12. On November 7, 1997, Complainant spoke to Dr. Karen Broquet, a psychiatrist, about the problems that she was experiencing with her boyfriend and others, and about the physical toll that these problems were having on her. At this time, Complainant told Dr. Broquet that: (1) she was crying frequently and having problems with being angry; and (2) she had been working as a meat clerk for the past 11 months and had liked her job. During this meeting, Complainant also gave Dr. Broquet a long history regarding her physical and verbal fights with her boyfriend and others, but never complained that Respondent was sexually harassing her or that sexual harassment in the workplace was the source of her emotional problems. Dr. Broquet prescribed medication for Complainant after this appointment.

13. In December of 1997 and in June of 1998 Complainant saw Dr. Broquet. On neither of these occasions did Complainant assert that she was experiencing sexual harassment at the workplace.

14. In June of 1998, Complainant told her boyfriend that she was experiencing sexual harassment in the workplace. At that time, Complainant's boyfriend instructed her

to see a local attorney. Complainant shortly thereafter went to a local attorney who advised Complainant that: (1) she should go to her employer and report the alleged harassment; and (2) the alleged harassment would be taken care of pursuant to her employer's policy.

15. After speaking with her lawyer, Complainant did not report any alleged sexual harassment regarding Respondent or any of her co-workers, although she told her boyfriend at that time that she had reported the sexual harassment to her employer.

16. From June 1998 to March of 1999, Complainant's home life deteriorated. By March of 1999, Complainant no longer spent any appreciable time with her children, and would typically come home from work, go to sleep at 4:00 p.m. after picking up her daughter from school, wake up in the middle of the night and eat something, and then go back to sleep until it was time for her to go to work. Complainant also experienced crying spells two to three times a day and began indulging in food.

17. On February 23, 1999, Complainant again saw Dr. Broquet. During this appointment Complainant indicated that she believed that she was coping with her depression, but that she still was experiencing crying spells. Complainant did not mention that she was having any trouble with sexual harassment in the workplace.

18. By March of 1999, Complainant resumed her past experience of drinking alcohol to excess, such that Complainant got drunk at least once a week and would come into work and get sick in the meat room's beef barrels. By this time, Complainant had abstained from sexual relations with her boyfriend for approximately five months and was to the point of frequently arguing and yelling with her boyfriend. In her leisure time, Complainant would spend most of her time lying on the couch watching television, but doing nothing else.

19. On April 3, 1999, Complainant's mother, who worked in a different branch of the Shop N' Save grocery store informed management at the mother's store that

Complainant was being subjected to sexual harassment, and that no one was doing anything about it. Later that day, Dave Tolbert, the manager at Complainant's store, met with Complainant who for the first time claimed to management that Respondent subjected her to a series of verbal and physical assaults of a sexual nature.

20. Later on April 3, 1999, after Complainant told Tolbert about the alleged conduct on the part of Respondent, Bret Crawford, the head meat cutter in the meat department who prepared the work schedules for the employees in the meat room and directed them in their job duties, informed Respondent that Complainant had made a charge of sexual harassment without telling Respondent that Complainant had named Respondent as the culprit. When Complainant came back to the meat department, Respondent told her that "there had been a lot of stuff" going on in the meat department and that he apologized if he had done anything to her.

21. Shortly after Respondent spoke to Complainant on April 3, 1999, Respondent was called into Tolbert's office where he was informed for the first time about Complainant's accusations of sexual harassment against him. Respondent denied the accusations, and management thereafter conducted an internal investigation. In the meantime, management transferred Respondent two days later to a different store where Respondent has remained employed as a meat cutter as of the date of the public hearing.

22. On April 18, 1999, the store's management issued both Complainant and Respondent a memorandum indicating the investigation found that the conduct of both parties was "questionable". The memorandum further warned both parties that any similar conduct in the future would not be tolerated and would result in termination.

23. While Complainant asserted that all of the alleged conduct attributed to Respondent was committed in the meat room with various co-workers present, none of Complainant's co-workers witnessed any of the sexual harassment alleged by Complainant. Specifically, Complainant's co-workers denied witnessing Respondent: (1)

inform Complainant about a sexual encounter he had with another female co-worker in one of the holding coolers; (2) describe to Complainant the best way to touch a woman's genitals; (3) make daily requests of Complainant over a 22-month period as to whether she wanted "to fuck"; (4) describe a dream about engaging Complainant in sex; (5) request Complainant in January and February 1999 to jump on the meat table so he could check her out; (5) push Complainant down on the meat table in March of 1999 and say "what's wrong Shelly you can't believe I want to fuck you?"; (6) grab Complainant's face and make comments about her make-up; (7) tell Complainant in March of 1999 that if she was not willing to "give it up" he was going to rape her; (8) place candy in the breast pocket of Complainant's meat coat in such a manner so as to feel her breast; (9) grab Complainant's meat coat on several occasions and jerk her; (10) mouth the words "I love you" and on two occasions ask Complainant for a kiss; (11) attempt on a daily basis to convince Complainant that her boyfriend was having an affair with a woman at his work; (12) come up behind Complainant on several occasions in early 1999 and press his groin up against her posterior; and (13) threaten Complainant in February of 1999 that if she ever reported his conduct, he would blow up her "fucking house", and that at some juncture he would admit to his conduct and "blow up the fucking store."

Conclusion of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.
2. Respondent is an "employee" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.
3. Complainant has failed to establish a *prima facie* case of sexual harassment in that she failed to prove either that Respondent had actually committed the alleged conduct attributed to him or that the proven conduct of Respondent had the

purpose or effect of substantially interfering with her work performance or creating an intimidating, hostile or offensive working environment.

Determination

Dismissal of the instant Complaint is warranted inasmuch as Complainant has failed to establish a *prima facie* case of sexual harassment.

Discussion

This case arises under section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)), which provides, among other things, that it is a civil rights violation “for any...employee...to engage in sexual harassment.” The Act further defines sexual harassment as “any unwelcome advances or requests for sexual favors or conduct of a sexual nature when...such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” (775 ILCS 5/2-102(D).) The Commission has declared that there is no “bright line” test for determining what behavior will lead to liability under a sexual harassment theory and has charged the administrative law judge to assess not only what was done, but how it was done in relationship to the total working environment. (See, **Robinson v. Jewel Food Stores**, 29 Ill. HRC Rep. 198, 204 (1986).) Ultimately, however, the threshold issue in any sexual harassment case is whether the instances of harassment established by Complainant rise to a level of hostility so as to be considered actionable conduct.

Before examining whether Complainant has established a *prima facie* case, I must first determine what actually happened in the workplace, for indeed, credibility is typically at the heart of any sexual harassment case. (See, for example, **Camden v. AAA-Chicago Motor Club**, 26 Ill. HRC Rep. 2 (1986).) Initially, I note that the witnesses from both parties described a work atmosphere where various individuals, including Complainant, would engage on a daily basis in sexual banter comprising of sexual jokes,

sexual exploits and sexual likes and dislikes. While Complainant initially denied telling her co-workers sexual jokes or stories of her sexual exploits, or otherwise discussing things of a personal nature in the workplace, several of Complainant's co-workers testified to Complainant relaying stories about: (1) "Eddie" the nickname she gave to her boyfriend's penis; (2) her sore jaws after having given oral sex to her boyfriend; and (3) her boyfriend's desire to engage in anal sex. Although Complainant later explained that any sexual banter that she may have contributed to the workplace was essentially an attempt to "fit in" with her co-workers, I find that the familiarity of her co-workers with so many intimate details of her personal life demonstrates that Complainant was an active participant in the sexual banter that took place in the meat room.

But, a complainant's participation in sexual shenanigans in the workplace does not automatically preclude him or her from obtaining recovery under the Human Rights Act for sexual harassment, and our Respondent has wisely not argued that Complainant somehow welcomed the alleged physical harassment attributed to him because of her participation in the sexual banter. Indeed, as the Commission's decision in **Cunningham and Wal-Mart Stores, Inc.** ___ Ill. HRC Rep. ___ (1992CF0496, April 16, 1998) demonstrates, a complainant who otherwise participates in sexual conduct in the workplace could still recover under the Human Rights Act if the complainant sufficiently registers an opposition to the conduct, and if the subject conduct is objectively different in nature than the conduct attributed to the complainant. And so it is in this case, given Complainant's allegations that Respondent made daily requests for sex and repeatedly subjected her to offensive physical touchings on her breast and other parts of her body in front of various co-workers and her supervisor¹ that seem to be of a different nature and severity than the conduct she engaged in at the workplace.

¹ Curiously, Complainant never charged Shop N' Save with sexual harassment in the sense that she experienced sexual harassment on the part of Respondent while Shop N'

Yet the difficult question in this case is whether Complainant is credible with respect to her allegations against Respondent, since there appears to be no middle ground given the serious and pervasive nature of the allegations of harassment and given Respondent's complete denial of her allegations of harassment as contained in the Complaint. In attempting to resolve this question, I initially note a glaring discrepancy in Complainant's testimony with respect to the amount of time she actually spent with Respondent in a typical workday. Specifically, Complainant was adamant that she spent approximately six out of every eight-hour shift with Respondent and others in the meat room, while Respondent and others asserted that Complainant spent, at most, two hours a shift in the meat room. Unfortunately for Complainant, no one, including her own witnesses, backed her up in this regard, and Complainant has provided no explanation as to why she could not accurately tell me a basic fact about her working day. Thus, I am left to wonder why Complainant would make such a significant exaggeration of her potential contact with Respondent.

Other facts also call into doubt Complainant's allegations of sexual harassment against Respondent. Specifically, Complainant claimed that all of the alleged incidents with Respondent occurred within the meat room, and all occurred in front of either her co-workers or Crawford, her supervisor. However, as recognized by the Commission in **Borling and Wildwood Industries, Inc.**, ___ Ill. HRC Rep. ___ (1988SF0355, January 6, 1995), the failure of witnesses to corroborate Complainant's version of the facts in circumstances where Complainant has conceded that various individuals should have

Save did nothing on her behalf in spite of her complaints. In her Charge of Discrimination she states that she first made her protests known to Tolbert (the store manager) in April of 1999. But if Complainant is right that some of the worst physical touchings occurred in front of Bret Crawford and that she objected to said conduct, a sexual harassment claim could have been made against Shop N' Save since its knowledge of Respondent's conduct (as well as any opposition thereto) could have been inferred through Crawford at a much earlier time since under **Cunningham**, Crawford, who gave out work assignments and drafted schedules, qualified as a "supervisor" for purposes of the Human Rights Act.

viewed the alleged conduct can have a detrimental effect on her credibility. In this regard, Complainant urges me to discount the testimonies of Crawford and Tony Pyle because Crawford had his own reputation as a supervisor to uphold and Pyle admitted that he was a good buddy to Respondent. But, in view of the fact that Shop N' Save was no longer on the hook in this lawsuit, Complainant has not provided any good explanation as to why Crawford would have lied about failing to witness the alleged physical harassment that Complainant was experiencing in front of him. Similarly, Pyle's testimony that he saw none of the alleged incidents of harassment that were asserted in the Complaint was uniformly supported by other co-workers (i.e., Gregory Simmons is a good example) who had no obvious allegiances with either Complainant or Respondent. In one respect, if Complainant were correct that Respondent on a daily basis over a twenty-two month period asked her "to fuck", one would think that someone in the meat room would have witnessed at least one request.

More troublesome for Complainant, however, is the fact that she never mentioned Respondent's conduct to Dr. Broquet, her treating psychiatrist, during the time frame when Respondent was allegedly harassing Complainant. Specifically, Complainant claims that from June of 1997 to April of 1999, Respondent began his campaign of sexual harassment against her that began with daily requests for sex and escalated to incidents of physical abuse. Indeed, she further asserted that it was Complainant's conduct in the workplace that caused her to experience difficulties in her home-life with her boyfriend and daughter. However, the record reflects that when Complainant saw Dr. Broquet in November of 1997 and complained about frequent bouts of crying and problems with her anger, Complainant gave Dr. Broquet a long history detailing her verbal and physical fights with her boyfriend and others, but failed to make any mention of Respondent as being the source of her emotional problems. Indeed, Complainant's statement to Dr. Broquet during the November, 1997 visit that she liked her job at Shop N' Save only

supports that notion that pre-existing problems in Complainant's home-life, rather than Respondent's alleged conduct, were the true causes of Complainant's emotional problems.

Remarkably, when asked by her own counsel why she had failed to discuss with Dr. Broquet in November of 1997 any alleged problems she was having with Respondent, Complainant simply replied: "[b]ecause I didn't see any reason to." (Transcript Vol. II at p. 105.) But if, as Complainant claims, Respondent was sexually harassing her on a daily basis in terms of multiple requests for sex, why not tell Dr. Broquet about the conduct? In this regard, Complainant is essentially asking me to infer that Respondent's conduct was the cause of her emotional problems by ignoring the known factors that she proffered to Dr. Broquet as being present in her life in favor of a factor that she did not mention to Dr. Broquet that related to Respondent's conduct. This request is simply too great of a leap in logic, and thus, Complainant's response that she did not "see any reason to" inform Dr. Broquet about the alleged harassment can only mean that the alleged harassment was not actually occurring at that time.

True enough, Complainant testified that Respondent's alleged sexual harassment was not as severe in 1997 as it was in the latter stages of 1998 and early 1999, and that this fact is the reason that she made no mention of Respondent's conduct to Dr. Broquet. However, Complainant's testimony does not square with her failure to tell Dr. Broquet about Respondent's conduct at the June, 1998 appointment, when, according to Complainant, she sought legal advice around this time regarding how to address sexual harassment complaints in the workplace. Indeed, Complainant's apparent failure to tell Dr. Broquet about Respondent's conduct at the February 23, 1999 appointment is even more puzzling since it was during this time frame when Complainant reports that she experienced her most severe bouts of alcohol abuse, sleeping and eating problems and other related disorders. While Complainant explains that she did not relay Respondent's

conduct to Dr. Broquet at these times because these appointments were only perfunctory ten-minute sessions, I find that such an explanation is incredible given the severity of the alleged conduct that Complainant insists was going on in the workplace, and her ability to offer other statements during these appointments regarding what was going on in her life. Accordingly, for all of the above reasons, I find that the alleged instances of verbal and physical sexual harassment attributable to Respondent simply did not occur as alleged in the Complaint.

Three more matters, and then we are done. First, Complainant cites as evidence supporting her claim for sexual harassment, the opinion of Carley Mattimore, a licensed clinical counselor, who opined that Respondent was the responsible party for Complainant's emotional problems. True enough, the record shows that Complainant first saw Ms. Mattimore on September 21, 1999 (the day before Complainant filed the instant Charge of Discrimination) and eventually participated in a series of appointments which led Ms. Mattimore to diagnose Complainant with suffering from post-traumatic stress syndrome. However, Ms. Mattimore's diagnosis is only as good as the information given to her by Complainant, and the record does not establish what Complainant precisely told Ms. Mattimore during these appointments or why, some five months after Respondent transferred to a different Shop N' Save store, Complainant suddenly believed it relevant to talk to her counselor about Respondent's alleged conduct in the workplace as being the source of her emotional problems.

What the record does show, however, is that Ms. Mattimore was laboring under some inaccurate information regarding Complainant's work environment given Ms. Mattimore's testimony that she was under the (mis)impression that Respondent was still working with Complainant at the time of Complainant's first appointment in September of 1999. Additionally, I am not sure that Ms. Mattimore was aware of the full extent of Complainant's emotional problems that went back to 1994 since Ms. Mattimore

acknowledged that she could not recall discussing with Dr. Broquet the nature of the problems that Complainant had presented to Dr. Broquet prior to September of 1999. In any event, given Ms. Mattimore's concession that Complainant's symptoms that existed in September of 1999 were consistent with someone having experienced family difficulties and physical and emotional abuse by a spouse or significant other, I cannot give any significant weight to Mattimore's opinion that attributes Respondent's alleged conduct in the workplace as the cause of Complainant's emotional problems.

Second, Complainant makes much of the fact that Respondent, when informed that Complainant had made a complaint of sexual harassment, went up to Complainant and apologized for anything he may have done to her. While Complainant submits that Respondent's apology is inconsistent with any finding that he never engaged in any offensive sexual conduct, I agree with Respondent's counsel that it is difficult to glean the significance of Respondent's vague apology concerning unspecified conduct. Moreover, given the fact that courts often struggle with the definition of actionable sexual harassment, I would be hard-pressed to find that the apology itself constituted some sort of admission on the part of Respondent that his conduct violated the sexual harassment provisions of the Human Rights Act. This is especially so since this case contains essentially two forms of potential harassment, i.e., the daily sexual banter that Complainant, Respondent and their co-workers participated in, and the serious allegations of offensive touchings and verbal requests for sex at issue in the Complaint. In this regard, then, Respondent's apology can easily be explained as his attempt to apologize for only the conduct for which he was aware, i.e., the daily sexual banter that Complainant has not included as part of her sexual harassment claim.

Third, of the twenty-three categories/incidents of harassment mentioned in the instant Complaint, Complainant's allegation that Respondent criticized her boyfriend and suggested that the boyfriend was having an affair enjoys some support in the record as

Respondent admitted to occasionally advising Complainant to leave her boyfriend, and other co-workers testified that Respondent and others frequently criticized the boyfriend due to what they had learned about him from Complainant. While Complainant initially denied having told any of her co-workers about her personal problems or about any of the physical or mental abuse that she experienced with her boyfriend, Complainant changed her testimony later in the public hearing (after listening to her co-workers testify about intimate personal matters between Complainant and her boyfriend) to concede that “sometimes” she would talk to her co-workers, including Respondent, about her boyfriend. (Compare, Transcript Vol. I at p. 145, with Transcript Vol. II at pp. 85-86.) However, as noted by the Commission in **Gelbach and State of Illinois, Department of Corrections, Logan Correctional Center**, ___ Ill. HRC Rep. ___ (1995SF0694, April 23, 1999), if Complainant did not wish to have Respondent make critical comments about her boyfriend or accuse her boyfriend of being unfaithful, she should not have confided in him about the personal problems she was experiencing with her boyfriend in the first place. As such, Respondent’s comments in this regard can only be viewed as invited conduct under **Gelbach**.

In summary, there are probably many more unexplored reasons as to why Complainant decided to press the instant lawsuit naming Respondent as a party to her sexual harassment claim that were not developed in the instant record. While Complainant argues that she must have been telling the truth about her experiences at the Shop N’ Save because she would not have lied to her boyfriend about the alleged incidents or have sought legal counsel, Respondent points out that Complainant actually did lie to her boyfriend in June of 1998 when she claimed that she told him that she had already spoken to management about Respondent’s conduct, and that Complainant sought legal counsel only at the boyfriend’s insistence. Indeed, to the extent that Complainant confronted her boyfriend about Respondent’s accusations concerning the

boyfriend's alleged infidelity, it is understandable that Complainant's boyfriend (now husband) might have harbored an animosity towards Respondent that could explain why Respondent found himself a target in this sexual harassment claim. But, regardless of any motivation to make any accusations against Respondent, I find that Complainant loses on the credibility battle with Respondent since: (1) none of her co-workers supported her version of the facts in circumstances where she admits that they should have witnessed the alleged incidents; and (2) Complainant failed to mention Respondent's conduct to her psychiatrist at a time when the alleged acts were purportedly occurring. Thus, when stripped of all but one of Complainant's allegations of sexual harassment, we are left with Respondent having participated in daily sexual banter with Complainant and having criticized her boyfriend. These allegations, though, are insufficient to establish a *prima facie* case of sexual harassment since Complainant either actively engaged in the conduct or invited Respondent's criticisms.

Recommendation

For all of the above reasons, I recommend that the instant Complaint, and the underlying Charge of Discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 1ST DAY OF JUNE, 2004