



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Heather Ingram

Complainant,

Complaint No. 12-EMP-COL-38510

v.

Feta Greek Kuzina, LLC

Respondent.

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

Commissioners

Leonard Hubert, Chairman
Stephanie Mercado, Esq.
Lori Barreras
William W. Patmon, III
Tom Roberts

ADMINISTRATIVE LAW JUDGE'S FINDING OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS

**MIKE DeWine
ATTORNEY GENERAL**

Stefan J. Schmidt, Esq.
Senior Assistant Attorney General
Civil Rights Section
30 East Broad Street – 15th Flr
Columbus, OH 43215
Counsel for the Commission

c/o Tom Somos, LLC
1500 West Third Avenue #324
Columbus, OH 43212
Statutory Agent

Heather Ingram
7898 Honda Hills Road
Thornville, OH 43076
Complainant

ALJ'S REPORT BY:
Denise M. Johnson
30 East Broad Street – 5th Floor
Columbus, Ohio 43215-3414
614- 466-6684
Chief Administrative Law Judge

Central Office
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Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners

Leonard J. Hubert, Chairman
Stephanie M. Mercado, Esq.
William W. Patmon, III
Tom Roberts
Lori Barreras

G. Michael Payton, Executive Director

January 30, 2014

Heather Ingram

7898 Honda Hills Rd
Thornville, Ohio 43076

Stefan J. Schmidt, Esq.

Senior Assistant Attorney General
Civil Rights Section – 15th Floor
State Office Tower
30 East Broad Street
Columbus, OH 43215

c/o Tom Somos, LLC

Statutory Agent
1500 West Third Avenue
Suite 324
Columbus, OH 43212

Re: Heather Ingram v. Feta Greek Kuzina, LLC
12-EMP-COL-38510

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty three (23) days from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be **received** by the Commission no later than **February 22, 2014**. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.

Please send the original Statement of Objections to: Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414. All parties and the Administrative Law Judge should receive copies of your Statement of Objections.

FOR THE COMMISSION:

Desmon Martin / rlb

Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Lori A. Anthony, Section Chief – Civil Rights Section / Sharon Tassie, Principal Assistant Attorney General / G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel / Stephanie Bostos-Demers, Chief Legal Counsel

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INTRODUCTION AND PROCEDURAL HISTORY

Heather Ingram (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on April 7, 2011.

The Commission investigated the charge and found probable cause that Feta Greek Kuzina, LLC (Respondent) engaged in unlawful employment practices in violation of Section 4112.02 et. seq. of the Ohio Revised Code .

The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on April 5, 2012.

The Complaint alleged that Respondent discriminated against Complainant in the terms and conditions of her employment by engaging in the following conduct: (1) permitting a hostile work environment based on sex in violation of R.C. 4112.02 (A) and, (2) retaliating against her for engaging in a protected activity in violation of R.C. 4112.02 (I).

Respondent did not file an Answer. On September 27, 2012 the Commission filed a Motion For a Default Hearing pursuant to O.A.C. 4112-3-06(F). On January 17, 2013 the ALJ issued an Order granting the Commission's Motion.

A public hearing was held on February 7, 2013 at the Commission's Central Office at 30 E. Broad Street, 5th Floor, Columbus, Ohio.

The record consists of the previously described pleadings, a transcript of the hearing (37 pages), and a post hearing brief filed by the Commission on December 16, 2013.

FINDINGS OF FACT

The following Findings of Fact are based, in part, upon the ALJ's assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant began employment as a waitress with Respondent on February 21, 2011.

(Tr. 8, Commission Exhibit 8)

2. Respondent is a chain restaurant who owns several locations in and around central Ohio.

3. Complainant worked approximately 35 hours a week and made \$8.00 per hour. (Tr. 10)

4. Throughout Complainant's employment, Complainant worked under the management of Adam Macumba (Macumba) and Saul Guerrero (Guerrero). (Tr. 9)

5. Immediately after Complainant began working for Respondent, Macumba began making sexual advances toward her and making statements of a sexual nature.

6. Macaumba asked Complainant out, tried to hold her hand and brushed up against her, generally touching her whenever the opportunity presented itself. (Tr. 10)

7. Macumba told Complainant that she was pretty and wanted to know if she had a boyfriend and what she looked for in a boyfriend. (Tr. 11)

8. Macumba told Complainant that his wife was not fulfilling her wifely duties. (Tr. 12)

9. Macumba also asked Complainant intimate questions about her sex life. (Tr. 12)

10. Complainant attempted to dissuade Macumba by insisting that she was not going to answer questions about her sex life and wanted to keep their relationship professional. (Tr. 12-13)

11. Complainant complained to Guerrero about Macumba's behavior but Guerrero did not take any action to investigate her complaint. (Tr. 13)

12. Macumba continued to pursue a personal relationship with Complainant by calling her after work and offering to take her out to bars. (Tr. 13-14)

13. Macumba's conduct escalated to the point where he hugged her inappropriately in the restaurant on an occasion when all of the employees were engaging in levity and light-hearted banter and "high fiving" Macumba. When Complainant offered to high five Macumba he hugged her intimately. (Tr. 15)

14. Complainant reminded Macumba that his behavior was not welcomed.

15. Macumba then asked Complainant to go outside of the restaurant where they could talk in private. (Tr. 15)

16. Complainant again reminded Macumba that his behavior was not welcomed and that he agreed that he would stop.

17. Macumba reacted by verbally lashing out at Complainant and denying that he had ever touched her. He also accused her of attempting to get him fired from his job. (Tr. 15-16)

18. Macumba also threatened Complainant that it would be as easy to fire her as it was to hire her. (Tr. 16)

19. Complainant then made a formal complaint to Guerrero. (Tr. 17)

20. Shortly after Complainant made the complaint, Guerrero told Complainant that he had received a complaint from an employee saying that Complainant had cursed in front of a customer. (Tr. 18)

21. The employee who Guerrero said made the complaint had in fact been the one to curse in front of a customer. (Tr. 18)

22. Complainant trained a new employee and after she completed the training, Complainant's hours per week began to reduce. (Tr. 14, 16, Exhibit B)

23. Complainant's hours were reduced from 35 hours a week to 10 hours a week. (Tr. 18)

24. Complainant was eventually taken off of the schedule and fired. (Tr. 19)

25. Complainant's employment was terminated on August 18, 2009. (Tr. 14)

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent the testimony of various witnesses is not in accord with the findings therein, it is not credited.¹

¹Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

1. The Commission alleged that Respondent retaliated against the Complainant for engaging in a protected activity which is in violation of R.C. 4112.02(I).

2. This allegation, if proven, would constitute a violation of R.C. 4112.02 (A) and (I), which provides, in pertinent part, that it shall be an unlawful discriminatory practice:

(A) For any employer, because of the ... sex, ... of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(I) For any person to discriminate in any manner against another person because that person has opposed any unlawful practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02 by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. Sexual harassment is sex discrimination and prohibited by R.C. Chapter 4112. Ohio Adm. Code (O.A.C.) 4112-5-05(J) (1); *Cf. Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (sexual harassment is sex discrimination under Title VII). There are two forms of sexual harassment: *quid pro quo* and hostile work environment. *Id.* at 65. The latter form of sexual harassment, which the Commission alleges in this case, recognizes that employees have the “right to work in an environment free of discriminatory intimidation, ridicule, and insult.” *Id.*

5. O.A.C. 4112-5-05 defines sexual harassment based on a hostile work environment, in pertinent part:

(J) Sexual harassment.

(1) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

6. Whether the alleged conduct constitutes sexual harassment is determined on a case-by-case basis by examining the record as a whole and the totality of the circumstances. O.A.C. 4112-5-05(J)(2).

7. In order to create a hostile work environment, the conduct must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993), quoting *Meritor, supra* at 67. "The conduct must be unwelcome."

Meritor, supra at 68. The "victim must perceive the work environment to be hostile or abusive, and the work environment must be one that a reasonable person would find hostile or abusive." *Harris, supra* at 21-22.

8. To establish a case of retaliation, the Commission must prove that:

- (1) Complainant engaged in a protected activity;
- (2) Respondent was aware that the Complainant had engaged in that activity;
- (3) Respondent took an adverse employment action against the Complainant, and
- (4) There is a causal connection between the protected activity and adverse action.

Greer-Burger v. Temesi, 116, 116 Ohio Sty.3d 324 at para. 13 citing *Canitia v. Yellow Freight Sys., Inc.* (C.A. 6, 1990), 903 2d 1064, 1066

9. Macumba, Complainant's co-worker, subjected Complainant to unwelcomed and unwanted behavior of a sexual nature, both physical and verbal. Macumba's conduct was both persistent and pervasive.

10. Complainant's final entreaty to Macumba resulted in Macumba making threats that he could cause her to lose her job.

11. When Complainant complained to Guerro about Macumba she was thereafter faced with false allegations regarding her behavior in the workplace, had her hours reduced, and was eventually terminated.

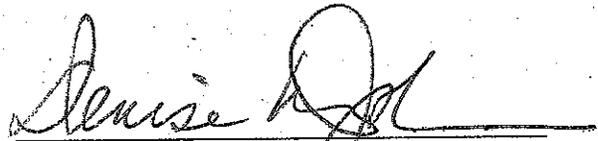
12. The Commission's Complaint and credible evidence introduced at the hearing supports a determination that the Complainant was subjected to a hostile work environment and terminated in retaliation for opposing a discriminatory practice prohibited by R.C. 4112.02 (A) and (I).

13. The Complainant is therefore entitled to relief as a matter of law.

RECOMMENDATION

For all of the foregoing reasons, it is recommended in Complaint No. 38510 that:

1. The Commission orders Respondent to pay Complainant back pay in the amount of \$9,242.30 with interest until the date that the Respondent submits a check to the Commission in compliance with the Commission's Final Order.²



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: January 30, 2014

DMJ/rb

² The Respondent ceased operation of its restaurants on May 22, 2012. (Exhibit 2)



Ohio Civil Rights Commission

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Board of Commissioners

Leonard J. Hubert, Chairman
Lori Barreras
William Patmon, III
Stephanie M. Mercado
Tom Roberts

G. Michael Payton, Executive Director

April 9, 2014

Corrected Letter

Heather Ingram
7898 Honda Hills Road
Thornville, Ohio 43076

RE: Heather Ingram v. Feta Greek Kuzina, LLC
Complaint No. 12-EMP-COL-38510

This corrected letter replaces the previous letter that was mailed on April 4, 2014. Due to a typographical error, the previous letter erroneously contained language stating it was a Dismissal Order as opposed to a Cease and Desist Order. Therefore, the previous letter issued is VACATED.

Enclosed is a certified copy of the Commission Order issued in this matter. This Order requires Respondent to **Cease & Desist** from any and all practices involving the violation of Chapter 4112 of the Ohio Revised Code.

Respondent is herewith notified of its right to obtain judicial review of this Order, as set forth in Revised Code § 4112.06.

FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney – Woods]

Certified No. 7003 1010 0000 4149 4721

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G. Michael Payton, Executive Director

April 9, 2014

Corrected Letter

Johnny Chalkias, Owner
Feta Greek Kuzina, LLC
10079 Worthington Road, SW
Pataskala, Ohio 43062-7721

RE: Heather Ingram v. Feta Greek Kuzina, LLC
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Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
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cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney – Woods]

Certified No. 7003 1010 0000 4149 4738

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April 9, 2014

Corrected Letter

Feta Greek Kuzina, LLC
c/o Tom Somos, Esq., Statutory Agent
1500 West Third Avenue, Suites 324 and 326
Columbus, Ohio 43212

RE: Heather Ingram v. Feta Greek Kuzina, LLC
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FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney – Woods]

Certified No. 7003 1010 0000 4149 4745

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April 9, 2014

Corrected Letter

Stefan Schmidt, Esq.
Assistant Attorney General
Civil Rights Section
30 East Broad St. 15th Floor
Columbus, Ohio 43215

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FOR THE COMMISSION

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Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pju
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney – Woods]

Certified No. 7003 1010 0000 4149 4752

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G. Michael Payton, Executive Director

April 4, 2014

Heather Ingram
7898 Honda Hills Road
Thornville, Ohio 43076

RE: Heather Ingram v. Feta Greek Kuzina, LLC
COL71(38510)04072011
22A-2012-00887C
Complaint No. 12-EMP-COL-38510

The enclosed Order dismissing Complaint No. 12-EMP-COL-38510 the above captioned matter was issued by the Ohio Civil Rights Commission at its meeting April 3, 2014.

This case is closed.

FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pju
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section



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April 4, 2014

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FOR THE COMMISSION

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Director of Enforcement & Compliance
Ohio Civil Rights Commission

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cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section



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April 4, 2014

Feta Greek Kuzina, LLC
c/o Tom Somos, Esq, Statutory Agent
1500 West Third Avenue, Suites 324 and 326
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Director of Enforcement & Compliance
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DM/pjw
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cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section



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G. Michael Payton, *Executive Director*

April 4, 2014

Stefan Schmidt, *Esq.*
Assistant Attorney General
Civil Rights Section
30 East Broad St. 15th Floor
Columbus, Ohio 43215

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FOR THE COMMISSION

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Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, *Esq.*, Chief – Civil Rights Section



John Kasich, Governor

IN THE MATTER OF:)
)
Heather Ingram) COMPLAINT NO. 12-EMP-COL-38510
)
Complainant,)
)
vs.)
)
Feta Greek Kuzina, LLC.)
)
Respondent.)
)

CEASE AND DESIST ORDER

This matter comes before the Commission upon the Complaint and Notice of Hearing No. 12-EMP-COL-38510; the official record of the public hearing held on February 7, 2013, before Chief Administrative Law Judge Denise M. Johnson, a duly appointed administrative law judge; the post-hearing brief filed by the Commission; and the Chief Administrative Law Judge's Report and Recommendation dated January 30, 2014. At its March 13, 2014 meeting, the Commission considered the Administrative Law Judge's Report and Recommendation.

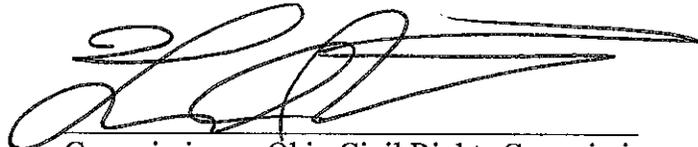
The complaint alleges that Respondent subjected Complainant to a hostile work environment based on sex in violation of R.C. 4112.02(A) and then retaliated against her for

complaining about the sexual harassment in violation of R.C. 4112.02(I). After a public hearing, the Chief Administrative Law Judge recommended that the Commission order Respondent to pay Complainant back pay of \$9,242.30 with interest until the date that the Respondent submits a check to the Commission in compliance with the Commission's Final Order.

After careful consideration of the entire record, the Commission hereby adopts all of the Administrative Law Judge's Recommendations. Therefore, the Commission incorporates the findings of fact, conclusions of law, and the recommendations for relief contained in the Administrative Law Judge's report as if fully rewritten herein.

The Commission orders Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112 and to pay Complainant back pay of \$9,242.30 plus interest.

This ORDER issued by the Ohio Civil Rights Commission this 3rd day of April, 2014.



Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



Desmon Martin
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: _____

4/4/2014

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



Desmon Martin
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: 4/9/2014