



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT

MHRC No: E14-0459

August 15, 2016

Lorraine Farris (Auburn, ME)

v.

J&S Oil (Manchester, ME)¹, &
Nouria Energy Corp., and the J&S Division of Nouria Energy (Worcester, MA)

I. Complainant's Complaint:

Complainant Lorraine Farris alleged that Respondents J&S Oil, Nouria Energy Corp., and the J&S Division of Nouria Energy discriminated against her based on her sex when they subjected her to sexual harassment in the workplace, retaliated against her for engaging in protected activity, and unlawfully terminated her employment.

II. Respondents' Answer:

J&S Oil denied discriminating against Complainant based on her sex or retaliating against her. Complainant's employment was terminated based on her violation of Respondent's zero-tolerance theft policy. Respondents Nouria Energy Corp. and the J&S Division of Nouria Energy (collectively "Nouria"), alleged to be the successor(s) to J&S Oil, did not respond in any way to Complainant's complaint. Accordingly, Complainant's allegations, as they relate to Nouria, are deemed to be true. References to "Respondent" in this matter refer to Respondent J&S Oil.²

III. Jurisdictional Data:

1) Date of alleged discrimination: March 2013 through March 2014.

¹ Complainant's complaint listed Respondent's name as "J&S Oil". Respondent provided that its legal name is "J&S Oil Company, Inc.". Because Complainant has not amended her complaint to use Respondent's legal name, the name used by Complainant has been retained.

² In April 2016, Complainant amended her complaint to add Respondents Nouria Energy Corp. and the J&S Division of Nouria Energy (collectively "Nouria"), stating that J&S Oil had been sold to Nouria. Respondent J&S Oil's attorney submitted a letter dated June 10, 2016 that stated, "I have been informed that Nouria Energy Corp. did not acquire, never mind merge with the J&S Oil Company, Inc. The shares of J&S Oil Company were sold from one individual to another. A change in the ownership does not affect anything with respect to the company itself. Accordingly, the amendment seeking to add Nouria should be dismissed and J&S Oil Company remains unaffected and the only respondent as it was the employer". Complainant objected to Respondent J&S Oil's dismissal request. The Commission declined to grant the dismissal request, and Nouria remains a party to the complaint and claims here.

- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 27, 2014. Complainant filed an Amended Complaint to add Nouria on April 22, 2016.
- 3) Respondent J&S Oil has 200 employees and is subject to the Maine Human Rights Act ("MHRA"), Title VII of the Civil Rights Act of 1964, as amended, the Maine Whistleblowers' Protection Act ("WPA"), and state and federal employment regulations. Respondents Nouria Energy Corp. and the J&S Division of Nouria Energy are alleged to be subject to the same statutes.
- 4) Complainant is represented by Rebecca Webber, Esq. Respondent J&S Oil is represented by John Lambert, Jr., Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties, a request for additional information, and an Issues and Resolution Conference ("IRC"). This investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

IV. Development of Facts:

- 1) The parties in this case are as follows:
 - a) Complainant worked for Respondent as a cashier from January 2013 through March 10, 2014.
 - b) Respondent J&S Oil owns and operates a fuel transportation company and variety of retail stores, including service stations and convenience stores, car washes and vacuum centers, and oil change and auto cleaning services.
 - c) Nouria completed its acquisition of J&S Oil the week of April 6, 2016; it is a convenience and fuel retailer.
- 2) Complainant provided the following in support of her position:
 - a) Complainant interacted with one of Respondent's Assistant Managers ("Asst. Manager") at her prior employment; he asked her to apply to work for Respondent. Asst. Manager indicated he was impressed with her attitude and work performance. Subsequently, Complainant filled out an application and was hired by Respondent. She began working in January 2013.
 - b) Complainant received training on sexual harassment during her orientation; she paid attention in the training because she knew where she was working. She was trained that Respondent is a family-owned company and that they back their employees.
 - c) In March 2013, Complainant began to experience sexual harassment on the job. She reported to her Manager ("Manager 1") and Asst. Manager that the Second Shift Leader ("2nd Shift Leader") made sexually explicit comments about his wife's bisexuality and their discussions of Complainant joining them for fun. Complainant told 2nd Shift Leader that she was not interested and that she did not want to know such information.
 - d) In April 2013, Complainant arrived to work while 2nd Shift Leader trained a new employee. He was blocking the time clock that Complainant used to punch in for her shift, and two other employees waited behind her while the trainee sat in a chair watching 2nd Shift Leader. Complainant asked 2nd Shift Leader to move so she could see the time clock; he responded "How about you suck my dick, I'll

even bring you to my house so you can do so.” Complainant was so disgusted and appalled that she began crying. Others told her to go outside; one of her coworkers stood with her as she collected herself outside.

- i. Asst. Manager arrived, and Complainant recounted what happened with 2nd Shift Leader. Asst. Manager replied that when Manager 1 arrived they would review the tapes and see what was going on. Manager 1 arrived and the office door was closed. Complainant knocked on the closed door and asked if she could go home because she had a rough night; they said OK.
 - ii. A few weeks went by without a response until Complainant inquired about the outcome. Complainant learned that 2nd Shift Leader was demoted from a supervisory position and relocated to a different store; he was not banned from the store where Complainant worked.
 - iii. As a result of the incident with 2nd Shift Leader the entire store received training on sexual harassment.
- e) As a result of the incident with 2nd Shift Leader, Complainant started calling the Human Resources contact (“HR”) from the contact information she transcribed from the posted notice at work. Complainant called, gave her name, was placed on hold and then provided with a reason why HR could not speak; Complainant left messages on his voicemail. HR never returned her call.
- f) In April 2013, Asst. Manager began sending Complainant multiple messages on Facebook, indicating that she should watch her back. He wrote things like “find a friend I need a massage”.
- g) From May 2013 through July 2013, Complainant felt that things became awkward at work. Manager 1 became cross and was always rude and brash. Complainant asked for a transfer to a different shift and was refused. Complainant told her manager and assistant manager that child care for her daughter had become more difficult and was impacting her health.
- i. Manager 1 gave Complainant a write up for letting someone sleep in a car outside of the store, stating the Complainant had a friend hanging around the store. Complainant felt there was no harm to let the stranger sleep in the car; she did not know the individual. Manager 1 cornered Complainant in the office to have her sign the warning. Thereafter she went home.
- h) Around June 2013, Asst. Manager tried to become more friendly with Complainant, more friendly than Complainant was comfortable with. She did not want a friendship or any other personal relationship with her supervisor. Asst. Manager began showing up at Complainant's personal residence uninvited and unannounced asking to come in; Complainant replied no. Complainant reported the behavior to Manager 1 who said he could not do anything because it happened outside of work.
- i) On July 22, 2013, Asst. Manager sent a Facebook message asking if she was working; she said yes. The message did not go through and Asst. Manger 1 wrote back, hello.
- j) From August 2013 through October 2013, Asst. Manager's behavior escalated: he tried to come into her home, and at work he made comments about her breasts and ass, asked if she could bend over further, and made a variety of other crude and rude comments. Each time Complainant reported the comments to Manager 1. The more Complainant reported, the worse Asst. Manager's behavior became. Complainant was told to ignore it. Asst. Manager began retaliating against Complainant by threatening to write her up for another employee's actions and by calling her a bitch. He became mean after Complainant reported him. He said things like, “you know how to get yourself out of trouble” with a wink and smile. Complainant told him, with others present, that he needed to stop addressing

her like a hooker on Lisbon Street. In response, he asked how much she would charge if she was a hooker. Complainant went home and cried.

- k) On October 29, 2013, Complainant received a Facebook message from Asst. Manager stating that he was not going to be able to protect her very much longer. Complainant asked him to stop contacting, threatening, and harassing her. Then she blocked him on Facebook.
- l) From November 2013 through December 2013, a few new employees were hired. One employee ("Employee") began harassing Complainant by asking her to hang out with him and spend time with him. When Complainant rebuffed him, he became mean at work. Sometimes he slid notes across the counter that said "fucking bitch" or "cunt". Complainant reported the behavior to Manager 1.
- m) Manager 1 told Complainant that if she did not stop complaining about the men that she would be fired. He yelled, pointed in her face, used profanity, and told her to keep her mouth shut and that he did not want to hear any more complaints.
- n) In January 2014, Asst. Manager and Employee continued to harass Complainant. Asst. Manager 1 ended his employment with Respondent that month. Employee continued to call Complainant "fucking whore," "fucking cunt," "cold hearted fucking bitch," and say things like "what makes you that much more important than me that I can't have your attention". Employee never left a shift without calling Complainant a "bitch," a "cunt," or a "heartless evil bitch". Complainant did not report the behavior to Manager 1 because of his threats to end her employment.
- o) Later in the month, Employee observed Complainant kissing her boyfriend goodbye outside, and reacted inside by slamming a stool so hard that it reverberated off the floor. Complainant was nervous to start her shift. That night he called her "cunt" and "bitch"; she was scared.
- p) Before the month was over, Manager 1 walked out and a new manager ("Manager 2") replaced him.
- q) In February 2014, Employee's behavior continued and Manager 2 did not help despite Complainant's reports about the harassment. Complainant again requested a transfer and was refused.
- r) On February 2, 2014, Employee wrote a message on the white board. Complainant reported to Manager 2 that Employee threatened to put her in a body bag if she did not stop refusing his advances. She said something to her boyfriend. On February 4, 2014, a message on the white board said "Hey Rainey, it was a box not a body-bag".² Complainant told Manager 2 about the message after she photographed it. Nothing was done. Manager 2 laughed when she reported the message. Complainant pointed to the board to show it was real, Manager 2 turned and went into his office.
- s) In February 2014, Complainant had a heart attack related to the stress from work.
- t) In March 2014, Manager 2 left and a new manager started ("Manager 3"). Manager 3 announced that he was brought on to "clean house". Complainant told Manager 3 about her work environment. She reported incidents on a daily basis about what she experienced at work and about unsafe conditions in the workplace. Complainant asked him to be the manager that helped her. Manager 3 patted her on the back and said, "I'll see what I can do about that."
- u) Shortly after the conversation, Complainant went to Manager 3 and said she was tired of being called

² Complainant's nickname is Rainey.

names and that Employee would not leave her alone. She requested a transfer and he said he would see what he could do.

- v) Complainant requested a transfer or asked about how to request a transfer multiple times to multiple people in the company. A different store manager and a different shift leader were receptive to Complainant and wanted to help her. Complainant's reason for the transfer was the sexual harassment at work and that working at her store was getting hard on her.
- w) On March 5, 2014, Complainant received a positive performance evaluation.
- x) On March 8, 2014, Complainant purchased a pack of cigarettes, placed a rubber band around them with the receipt per company policy, and then forgot them, and her jelly beans (not purchased at the same time), on the counter at the end of her shift because she was in a rush. Someone placed Complainant's cigarettes and jelly beans next to each other in the breakroom. Complainant also left her coffee cup. She went back the next day for her cigarettes and found her cigarettes and jelly beans in the breakroom.
 - i. Complainant routinely left items behind at work. This was not uncharacteristic.
- y) On March 10, 2014, Employee worked outside and he was upset that Complainant was inside. He opined that she should be outside freezing where her "bitch ass" belonged. He walked by and called her a "fucking cunt," sometimes with customers present. He threw notes at her. Complainant took one of the notes and told Manager 3 what was happening. A few hours later, Manager 3 asked if Complainant could stay late to stock the cooler; Complainant did so. After she completed the task, Manager 3 asked her to come into the office. He said he was terminating her employment for allegedly stealing a pack of cigarettes. Complainant expressed incredulity, saying that he should talk to the employees who were working when she purchased the cigarettes. She observed the video Manager 3 played and said those were her cigarettes she reached for on the shelf when an employee was in the room with her, not a customer's as alleged. Despite this information, Manager 3 indicated that Complainant needed to sign a termination form, so Complainant wrote that she disagreed. Manager 3 told her to have a nice day, and Complainant left.
 - i. It was against the rules to put customers' items in the breakroom; items left by customers were left near the registers in case the customer returned for the items.
 - ii. Respondent did not preserve the full video from March 8, 2014 showing Complainant purchasing and leaving behind the cigarettes.
 - iii. Respondent did not interview or speak with Complainant about the alleged issue before making the decision to terminate her employment.
- z) Complainant kept her job and persevered through the treatment to support her child.
- aa) On March 13, 2014, Complainant went to the store for her paycheck because Respondent refused to hand it over until she returned coveralls that she did not use, she pointed this out to Manager 3. He took her to the breakroom where she showed him the coveralls. Complainant inquired if he spoke to anyone else about the cigarettes. He said no, apologized, and said he would use the incident as an example of how not to manage in the future.
- bb) Complainant provided a statement from a coworker ("Coworker") corroborating that Asst. Manager sexually harassed Complainant. Coworker began working for Respondent in September 2013. Coworker also overheard Manager 3 tell Complainant that he made a terrible mistake and apologized for

letting Complainant go on the day she returned her coveralls. Coworker was discharged from her employment the next day.

cc) Complainant followed the State of Maine's process in reporting the sexual harassment: she told her managers and she told coworkers. Her supervisors did not inform HR.

3) Respondent J&S Oil provided the following in response to Complainant's allegations:

a) Asst. Manager and Manager 1 recommended that Complainant talk to HR. HR was hesitant to hire Complainant due to a prior conviction for theft, yet he deferred to Asst. Manager and Manger's recommendation.³

b) Around the time that Complainant started working, HR gave Complainant a three-and-a-half-hour training and orientation on a variety of topics, including sexual harassment in the workplace, prohibited conduct in the workplace, and the Rules of Conduct.

c) On March 22, 2013, 2nd Shift Leader made a very inappropriate statement to Complainant. Complainant reported to Manager, who reported the incident to HR. HR immediately investigated Complainant's accusation and confirmed the statement. On March 25, 2013, Complainant provided Respondent with a handwritten note repeating the reported information. The same day, HR issued a written warning to 2nd Shift Leader; he was suspended, demoted, banned from the Lewiston store, his pay was reduced, his next two discretionary bonuses were suspended, and he attended a sexual harassment training on April 1, 2013.⁴

i. HR spoke to Complainant prior to imposing sanctions on 2nd Shift Leader. She told HR that she did not want 2nd Shift Leader discharged from his employment.⁵

d) On April 10, 2013, HR and the District Manager ("Dist. Manager") conducted a sexual harassment and employee behavior training; Complainant attended. The retraining happened as a result of information learned during the investigation into 2nd Shift Leader's behavior. HR learned that other employees engaged in inappropriate conduct in the workplace. During the meeting, HR encouraged employees to contact him if they experienced further sexual harassment.

e) Neither HR nor the Dist. Manager heard any further complaints from Complainant about sexual harassment until Complainant's Charge of Discrimination was received.

f) After March 22, 2013, Complainant had multiple contacts with Respondent; Complainant did not report sexual harassment during any of her contacts with Respondent:

- i. On May 13, 2013, Complainant received a verbal notice for a friend hanging around the store;
- ii. In June 2013, Complainant and HR attended a meeting about Respondent's retirement program;
- iii. On June 29, 2103, Complainant received a verbal notice;
- iv. On July 31, 2013, Complainant signed a performance appraisal completed by Manager;

³ Complainant acknowledges that she had a prior conviction. She asserts that she made a bad decision about ten years before working for Respondent when she was living under different circumstances.

⁴ Complainant provided that 2nd Shift Leader was not banned from the store. He came into the store after his demotion.

⁵ Complainant denied saying that she requested that 2nd Shift Asst. Manager not be fired.