

JUDGE COTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NANCY MAHL,

Plaintiff,

- against -

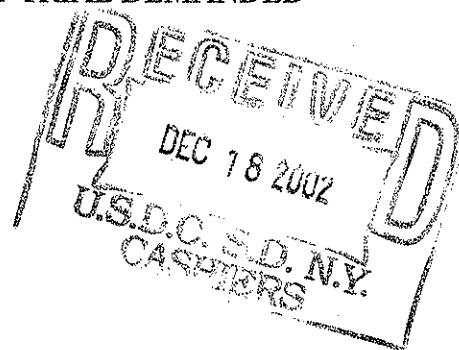
JURY TRIAL DEMANDED

MILLAR ELEVATOR SERVICE CORP.,
SCHINDLER ELEVATOR CORP., and
ALBERT SARNO

Defendants,

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02 CV 10019



NATURE OF COMPLAINT

1. This is an action brought to preserve and vindicate the rights secured to plaintiff by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. ("Title VII"); the Equal Pay Act, 29 U.S.C. § 206(d); the New York State Human Rights Law, New York Executive Law §§ 296 et seq. ("State HRL"); and the New York City Human Rights Law, New York City Administrative Code §§ 8-01 et seq. ("City HRL").

JURISDICTION AND VENUE

2. In this action for declaratory, injunctive, and monetary relief, the jurisdiction of this court is invoked pursuant to 28 U.S.C. §1331 and §1343(4), conferring original jurisdiction upon this

court over any civil action to recover damages or to seek equitable relief under any act of Congress providing for the protection of civil rights; the All Writs Act, 28 U.S.C. §1651(a), empowering the Court to issue writs necessary or appropriate to aid in its jurisdiction; and Title VII, 42 U.S. § 2000e-5(f). The court's supplemental jurisdiction is invoked pursuant to 28 U.S.C. § 1367 on the ground that the acts of sex discrimination and retaliation challenged herein are also in violation of the laws of the State and City of New York.

3. Pursuant to 28 U.S.C. § 1391(b), venue lies in the Southern District of New York because the discriminatory acts complained of took part substantially within this district.

PARTIES

4. Plaintiff Nancy Mahl is a citizen of the State of New Jersey. She was an employee of Millar Elevator Service Corp. ("Millar"), a wholly owned subsidiary of Schindler Elevator Corp. ("Schindler") from May, 1996 to about February, 2002 when Millar was merged into its parent company. She is now employed directly by Schindler.
5. Defendant Millar Elevator Service Corp. was a wholly owned subsidiary of Schindler Elevator Corp. doing business at 620 12th Avenue, New York, New York 10036. Millar was merged into its parent company, Schindler Elevator Corp., on or about February 27, 2002.
6. Defendant Schindler Elevator Corp. was at all times relevant the parent company of Millar and had control over Millar's activities. On or about February 27, 2002, Schindler merged Millar into Schindler, taking over the servicing of all of Millar's contracts and retaining almost all of Millar's elevator mechanic employees. Schindler's offices are located at 1211 Avenue of the Americas, New York, New York 10036.

7. Defendant Albert Sarno, at all times relevant, was employed by Millar and Schindler as a supervisor of elevator mechanics and was for a period of time Ms. Mahl's supervisor.

ADMINISTRATIVE PROCEEDINGS

8. On or about February 23, 2000, Ms. Mahl filed a timely charge of sex discrimination and retaliation with the United States Equal Employment Opportunity Commission ("EEOC").
9. On August 27, 2002, the EEOC issued its Determination finding that there was reasonable cause to believe that Ms. Mahl was discriminated against because of her gender and was retaliated against for asserting her discrimination claim.
10. On September 24, 2002, Ms. Mahl received a right to sue letter from the EEOC.
11. Prior to filing this federal action, plaintiff served a copy of this complaint, by mail, on the New York City Commission on Human Rights and the Corporation Counsel of the City of New York pursuant to § 8-502(c) of the City HRL.

STATEMENT OF CLAIM

12. Millar did, and its parent company, Schindler, does, maintain a pattern and practice of denying women elevator mechanics equal employment opportunities including failure to hire, promote and train women as they do similarly situated men. Indicative of these practices is the fact that at the time plaintiff filed her EEOC complaint there were only three women in the elevator trade at Millar. Only one of those three women was a "mechanic," the other two, which included Ms. Mahl, were "helpers." It took the one female mechanic over ten (10) years to be elevated from helper to mechanic. In contrast, men are usually promoted within their first three (3) to five (5) years.

13. On information and belief, at the present time out of at least 500 elevator mechanics and helpers employed by Schindler in New York, there are only two (2) female Mechanics.
14. On information and belief, the complained of conduct continues to this day.
15. As a consequence of the discriminatory practices, Ms. Mahl was demoted, sexually harassed, denied equal opportunities to earn overtime, retaliated against after filing her EEOC charge and in other ways discriminated against.
16. On information and belief, upon hiring, Ms. Mahl was paid at a lower wage rate than similarly situated men.
17. On information and belief, the pay disparity between Ms. Mahl and similarly situated men continued until at least January, 2002.
18. Ms. Mahl was hired by Millar in September of 1994 as a temporary computer operator. In May of 1996 she was admitted to the International Brotherhood of Electrical Workers, Local 3 Apprenticeship Program for the Elevator Division. This is a pre-requisite to working in the elevator mechanic trade.
19. The Apprentice Program, which includes a school for apprentices, was jointly created and run jointly by Millar and Local 3. On information and belief, at all times relevant, the head of the Apprentice School was a Vice President of Millar, James McDermott, and before him, Frank O'Neill.
20. On information and belief, Schindler jointly runs an elevator constructor apprentice program with the International Union of Elevator Constructors Local 1.
21. Once admitted to the School, Ms. Mahl was hired as a Helper B by Millar, which is an entry level apprentice position.

22. Ms. Mahl was denied training and mentoring opportunities given to her male colleagues. For example, when she was first hired as a Helper B she was assigned to Bellevue Hospital which is one of the lesser training opportunities. Most of her work there involved mopping floors. There was very little elevator work.
23. Two men, Joe Gatti and Sal Mazelli, who had less prior experience than Mahl entered the program and became apprentices at the same time as Ms. Mahl. Mr. Gatti was also assigned to Bellevue, but within weeks he complained that he was not learning enough and was thereafter transferred to a midtown job location. Mr. Mazelli had a better assignment from the very beginning.
24. Ms. Mahl did very well at the Apprentice School, but nonetheless was not promoted to a Helper "A" position until the summer of 1999, when she was moved to One Penn Plaza. On information and belief, similarly situated men were promoted earlier.
25. In September of 1999, Ms. Mahl was promoted to Mechanic B and transferred to a location at One State Street Plaza. On information and belief similarly situated men, though no more qualified, were promoted to Mechanic B earlier.
26. The State Street location was a troubled assignment. Many prior mechanics had left because of building and supervisory problems. Moreover, at this location Ms. Mahl was improperly exposed to hazardous materials. Without any forewarning and without being advised, she cleaned up the motor rooms only to find that they were filled with asbestos.
27. In her new position at State Street, Ms. Mahl was denied the assistance and mentoring promised by her supervisors, Al Sarno and Mario Bargiacchi.

28. As a mechanic, Ms. Mahl was entitled to work standby which involved being on call to answer emergencies during the night and early morning. Standby assignments allowed for substantial overtime earnings. Ms. Mahl was not given standby assignments because a dormitory to house those on standby was built, but it would accommodate only men.
29. On January 6, 2000, despite performing as well or better than her male colleagues, Ms. Mahl was told that she was being demoted to Helper "A." The excuse given was that the supervisors at One State Street complained about her.
30. In addition to the discriminatory assignments and demotion, Ms. Mahl was subjected to pervasive sexual harassment.
 - (a) Pornography, including photographs of nude women and "beaver" shots, are posted at the workplace at Millar and Schindler.
 - (b) Ms. Mahl's supervisor, Albert Sarno, ("Sarno") an employee of Millar and Schindler, leveled a non-stop barrage of sexual remarks at her including discussing his fantasies about having sex with various women in the office, his sexual exploits and descriptions of his favorite porn movies.
 - (c) During her 1998 performance review, in a room filled with explicit pornography, Sarno told Ms. Mahl that things would "go a lot smoother" if she "blew" him.

(d) Sarno also tried to intimidate and embarrass Ms. Mahl. He said such things to her as “all of my female employees have to wear fish net stockings,” and that if you made a mistake you had to have sex with him. He would regularly embarrass her by yelling, in a room crowded with other employees “blow me a kiss” and then he would laugh.

(e) The material used for apprentice training was filled with vile sexist references.

31. On information and belief, Sarno has harassed other women and routinely engages in sexist behavior.
32. On information and belief, other women have complained to management about his sexist conduct.
33. On January 24, 2000 Ms. Mahl filed a grievance within the company complaining about her demotion and treatment. No action was taken by any member of management.
34. On February 7, 2000 the attorney that Ms. Mahl hired wrote to David Fried, the President of Millar, raising these complaints.
35. Upon receiving counsel’s letter, defendants engaged in a process which was calculated to further harass and intimidate Ms. Mahl, and which, in fact has had a devastating impact on her daily work experience. Defendants did not undertake a confidential investigation. Instead, within a few days all of Ms. Mahl’s co-workers knew about her grievance. In the guise of conducting an investigation, on information and belief, every male mechanic that Ms. Mahl worked with, was told about Ms. Mahl’s complaint or shown her lawyer’s letter. No one

interviewed Ms. Mahl to learn the specifics of her complaint.

36. After Ms. Mahl filed her grievance, she was denied any meaningful work experience. She was assigned to 25 Broadway, 61 Broadway, 75 Broad Street and 333 Rector Street, where her duties entailed, almost exclusively, sweeping floors and cleaning equipment. She was almost never sent out to work with a skilled mechanic to enhance her skills, which is an important aspect of learning to become a mechanic. These were further acts of discrimination and retaliation.
37. On February 23, 2000 Ms. Mahl filed her EEOC charge. As a result, she was subsequently reinstated as a Mechanic. However, she continued to be denied overtime at the same rate as her male colleagues. Also, although she was allowed to work standby, she was "on call" from her home in New Jersey, whereas the men continued to be housed at the all male dormitory, which was more conveniently located to the jobs. Mechanics received a set rate of one and one half hours of overtime pay for each call, no matter the length of time spent on the job. Because of her travel time, Ms. Mahl, was often not fully compensated for standby work.
38. Ms. Mahl is now assigned to the New York Times building, which uses old elevator equipment. She has been denied all requests for training on the newer equipment, including the Schindler equipment.
39. Ms. Mahl is also isolated from opportunities for training and learning from other mechanics.
40. Plaintiff believes the adverse actions taken against her are because of her gender and in retaliation for filing her EEOC complaint.

COUNT I - Violations of Title VII of the
Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.

41. By the conduct alleged in ¶¶ 12 through 40, defendants have discriminated against plaintiff in compensation and in the terms and conditions of employment because of plaintiff's sex, in violation of 42 U.S.C. § 2000e-2.
42. By the conduct alleged in ¶¶ 12 through 40, defendants have limited, segregated and classified their employees in a manner that deprives and tends to deprive individuals of employment opportunities and adversely affects their status as employees because of their sex, in violation of 42 U.S.C. § 2000e-2.
43. By the conduct alleged in ¶¶ 12 through 40, defendants have retaliated against plaintiff for opposing an unlawful employment practice, namely, the ongoing discrimination against her, in violation of 42 U.S.C. § 2000e-3.

COUNT II - Violation of The Equal Pay Act, 29 U.S.C. § 206(d)

44. By the conduct alleged in ¶¶ 12 through 40, defendants have discriminated against plaintiff by failing to provide compensation equal to that given to men who perform substantially equal work, in violation of the Equal Pay Act, 29 U.S.C. § 206(d).

COUNT III - Violation of New York State Human Rights Law,
N.Y. Exec. Law §§ 296 et seq.

45. By the conduct alleged in ¶¶ 12 through 40, defendants have discriminated against plaintiff in compensation and in the terms, conditions and privileges of employment because of plaintiff's sex, in violation of N.Y. Exec. Law § 296(1)(a).
46. By the conduct alleged in ¶¶ 12 through 40, defendants have retaliated against plaintiff for opposing unlawful discrimination, namely, the ongoing discrimination against her, in violation of N.Y. Exec. Law § 296(1)(e).

COUNT IV - Violation of New York City Human Rights Law,
N.Y.C. Admin. Code §§ 8-101 et seq.

47. By the conduct alleged in ¶¶ 12 through 40, defendants have discriminated against plaintiff in compensation and in the terms, conditions and privileges of employment because of plaintiff's gender, in violation of N.Y.C. Admin. Code § 8-107(1)(a).
48. By the conduct alleged in ¶¶ 12 through 40, defendants have retaliated against plaintiff for opposing unlawful discrimination, namely, the ongoing discrimination against her, in violation of N.Y.C. Admin. Code § 8-107(7).

PRAYER FOR RELIEF

48. Plaintiff requests that the Court grant the following relief:
- (a) Award plaintiff damages for lost wages and fringe benefits, together with prejudgment interest;
 - (b) Award plaintiff punitive damages;
 - (c) Award plaintiff compensatory damages;
 - (d) Declare that defendants have breached their duties, responsibilities and obligations imposed upon them by Title VII, the State and City HRLs, and the Equal Pay Act, and have violated plaintiff's rights thereunder;
 - (e) Permanently enjoin defendants from engaging any further in the acts complained of;
 - (f) Direct that Schindler provide equal opportunity to women in any apprenticeship training program in which it participates;
 - (g) Create an affirmative program to ensure that women will be recruited to elevator trade positions at Schindler, and will be given equal training and employment opportunities in the future;
 - (h) Direct that Schindler, in cooperation with plaintiff and her counsel, develop a sexual harassment training program for all managers, employees and apprentice trainers, and implement a comprehensive sex harassment policy;
 - (i) Award plaintiff the costs of this action, including reasonable attorneys' fees;
 - (j) Grant plaintiff such other and further relief as this Court deems necessary, just and

proper; and

(k) Order a jury trial on all issues in this action

Dated: New York, New York
December 18, 2002

**NOW LEGAL DEFENSE &
EDUCATION FUND**

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