

CIVIL RIGHTS COMMISSION

STATE OF HAWAII

LINDA C. TSEU, Executive Director, on behalf of the complainant filed by SUSAN C. COLLINS,)
) Docket No. 95-001-E-R-S
) HEARINGS EXAMINER'S
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
 v.) AND RECOMMENDED
) ORDER; APPENDIX A;
 CEDERQUIST, INC.; ANDRES) ATTACHMENT 1.
 CORPUZ; and TERESITO)
 CABRADILLA,)
)
 Respondents.)

HEARINGS EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED ORDER

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I. INTRODUCTION

1. Chronology of Case

The procedural history of this case is set forth in the attached Appendix A.

2. Summary of the Parties' Contentions

The Executive Director asserts that Respondents Cederquist, Inc. (hereinafter "Cederquist") and Andres Corpuz (hereinafter "Corpuz") violated H.R.S. § 378-2 and H.A.R. § 12-46-109 by:

- 1) sexually harassing Complainant Susan Collins;
- 2) retaliating against Complainant after she complained about the harassment; and
- 3) constructively discharging Complainant.

Respondents deny that the alleged sexual harassment and retaliation occurred and contend that Complainant voluntarily quit her job because she did not want to work with or be supervised by Filipinos.

Having reviewed and considered the evidence and arguments presented at the hearing together with the entire record of these proceedings, the Hearings Examiner hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT¹

1. Complainant Susan Collins is a Caucasian woman. In 1976 she moved to Maui, Hawaii from Arizona. In 1987 she joined Local 745 of the United Brotherhood of Carpenters and Joiners of America (hereinafter "union") and became an apprentice carpenter. (Tr. 9; Ex. 5)²

2. Apprentice carpenters are carpenters in training and must work under the supervision of journeymen carpenters. Apprentice carpenters are expected to follow instructions from the journeymen and foremen they are assigned to. Apprentices may ask questions or make suggestions, but can be fired for challenging or refusing to follow instructions. Apprentices and all other carpenters are generally expected not to socialize or "talk story" while working. In order to advance to journeymen status, an apprentice must complete 8,000 work hours in six different categories of carpentry

¹ To the extent that the following findings of fact also contain conclusions of law, they shall be deemed incorporated into the conclusions of law.

² Unless otherwise indicated, "Tr." preceding a page number refers to the transcript of the contested case hearing; "Ex." followed by a number refers to the Executive Director's exhibits; "Ex." followed by a letter refers to Respondent Cederquist, Inc.'s exhibits; "Ex." followed by the letters "R-___" refers to Respondent Andres Corpuz's exhibits.

work. (Tr. 599-600, 1032-1033, 1036; Ex. 27 p. 3-4)

3. From 1987 to fall 1990, Complainant worked for Pacific Construction Co. at the Embassy Suites Hotel and the Kahului airport. She built and dismantled concrete forms and did layout work, which involved heavy physical labor. Complainant had difficulties with the physical demands of the work and was unsure that she could continue to handle it. However, she liked the high pay and good benefits. (Tr. 10-13, 77, 90, 905-906)

4. Respondent Andres Corpuz is a Filipino man. In 1969 he immigrated to the United States from the Philippines. In 1971 he joined the union. Around 1976 he became a journeyman carpenter. In 1980 he obtained a contractor's license and established his own contracting company, which builds single family homes. Corpuz works both as a journeyman carpenter on union jobs as well as a contractor with his own business (Tr, 360-361; Ex. 13 p. 6, 9)

5. During her last month at the airport job, Complainant was assigned to work with Corpuz. At that time, Corpuz was a journeyman carpenter. Corpuz thought Complainant was a lazy worker. He was critical of Complainant's work performance and often complained about her work to the foreman. This was because at times, Complainant would not follow Corpuz's instructions and would not do heavy lifting work. Complainant also had a difficult time understanding Corpuz's and some other Filipino carpenters' English accents and thought they were "idiots". She once remarked to another female Caucasian carpenter, "How can you learn from somebody like that? . . . he obviously doesn't even speak

English well". (Tr. 13-15, 19, 305-311, 770, 904-905; Ex. 13 p. 21-26)

6. During the month Complainant worked with Corpuz, he would ask her out to drink beer and whiskey and to go to chicken fights. Complainant refused these invitations. Although Corpuz's invitations upset Complainant, she did not complain to anyone because she knew that the airport job and her assignment to Corpuz would soon end. (Tr. 14-15)

7. At the airport job, Corpuz informally supervised at least one other female Caucasian apprentice. This carpenter obediently followed his instructions and physically performed what Corpuz felt was her fair share of work. He did not similarly ask this female carpenter to go drinking or to chicken fights and had a good working relationship with her. In his contracting business, Corpuz employs a female carpenter as a roofer. (Tr. 897-898; Ex. 13 p. 23-25)

8. On September 3, 1986 Respondent Cederquist was incorporated to do business in the State of Hawaii. The corporation manufactured finish materials such as panelings, moldings, door frames and doors at its plant in California. It also shipped the materials to various construction projects and installed them. In spring 1990 Cederquist was subcontracted by Pacific Construction Co. to supply and install finish materials at the Grand Hyatt Wailea and Stouffer Wailea Beach Resort hotels. (Ex. 13 p. 10, Ex. 34)

9. The finish work at the Grand Hyatt Wailea involved the installation of paneling, moldings, door frames and doors in the ballrooms, meeting rooms, hallways, public bathrooms and various other parts of the hotel. The finish materials cost several hundred thousand dollars and apprentice carpenters were usually not allowed to cut or nail them. Instead, apprentices were assigned to observe and help the journeymen by doing menial tasks such as fetching materials and tools, helping to measure materials, cutting and putting up rough wood backings for the paneling, unloading containers, putting putty in nail holes, cleaning up work areas, and putting tools away. (Tr. 19, 1030-1032)

10. Cederquist stationed its job superintendent, Don Ternberg, at the Grand Hyatt Wailea and Stouffer Wailea Beach Resort. Ternberg was responsible for hiring the foremen and carpenters from the union, giving instructions to the foremen, and ensuring that the subcontract was completed on time. (Tr. 312, 959)

11. Ternberg hired Corpuz as the working foreman of both jobs. Corpuz was responsible for the day to day supervision of all the carpenters, including Complainant. This included assigning carpenters to different jobs, instructing them on how to do the jobs, and checking their completed work throughout the construction site. (Tr. 101-102, 312-315, 325; Ex. 13 p. 10)

12. Some time around late October, 1990 Herman Nascimento, a business agent and the chairperson of the apprenticeship program of the union, asked Corpuz if he would hire and train Complainant to do finish work. This was because Complainant had no experience doing finish work and needed to complete a certain amount of hours in finish work in order to advance to journeyman status. Corpuz spoke to Ternberg, who stated he would agree to hire Complainant if Corpuz was willing to have her on the crew. Corpuz and Ternberg told Nascimento they were willing to hire and train Complainant. (Tr. 250-252, 317-319, 595-597; Ex. 13 p. 28-31)

13. On November 5, 1990 Complainant was sent by the union to work for Respondent Cederquist as an apprentice carpenter. At that time the crew consisted of 8 people: 4 Caucasian male carpenters, 3 Filipino male carpenters (including Corpuz), and Complainant, who was the only female carpenter. (Tr. 17, 325; Ex. R-A)

14. During Complainant's employment at Cederquist, the corporation had one or more employees. (Ex. R-A)

15. During Complainant's employment at Cederquist, the corporation did not have an expressed policy against sexual harassment. It also did not conduct any training among its supervisors or employees on sexual harassment. Corpuz did not know of such concept until after February 26, 1991. The corporation had an informal grievance procedure in which employees were encouraged to discuss problems with their supervisors or with management. (Tr. 245-246, 380, 400-401; Ex. 3, Ex. 13 p. 13)

16. At Cederquist, Corpuz showed favoritism to certain apprentices and journeymen who were his personal friends by getting them hired and/or assigning them to easier or more interesting jobs. (Tr. 771-772, 1060, 1096-1098)

17. Complainant was eager to learn finish work. She thought finish work would be easier than layout and form building because it was indoors and less physically demanding. Complainant wanted to measure, saw and nail up the finish materials. She didn't realize she lacked the experience to do this work and became frustrated and angry at Corpuz when he assigned her to do menial tasks. She also became frustrated and angry with Corpuz for giving the easier menial jobs to the apprentices he favored. (Tr. 16, 1030-1034, 1052-1054, 1095, 1097-1098)

18. On November 5, 1990 Cederquist also hired Teresito Cabradilla³ as a journeyman carpenter. Cabradilla is a Filipino man. In 1959 he immigrated from the Philippines to Hawaii and became a journeyman carpenter in 1976. He is not related to Corpuz. When the crew got larger, Cabradilla was promoted to working foreman. Cabradilla was a tough and strict foreman. He occasionally exploded and yelled at the carpenters (both Filipino and Caucasian) when they made mistakes. Once Cabradilla lost his temper, grabbed a saw from a male Caucasian carpenter and yelled something like, "You damn stupid haole, that's not how you do it!" (Tr. 367, 395, 413, 441, 1091-1093; Ex. 14 p. 10, 15; Ex. 51 p. 7;

³ On November 7, 1995 the Executive Director dismissed Cabradilla as a party respondent to this action. See, Appendix A p. v.

Ex. R-A)

19. During Complainant's employment with Cederquist, Corpuz subjected Complainant to the following offensive and unwanted sexual conduct:

- a) on Complainant's first day of work, Corpuz asked Complainant to go drinking and to chicken fights with him. Complainant refused and told him to stop asking her;
- b) Corpuz then slapped Complainant on the butt as he left the meeting room she was working in;
- c) sometime between November 28 and December 14, 1990 Corpuz offered Complainant \$100 if she would say "I love you" in Ilocano;
- d) throughout Complainant's employment at Cederquist, Corpuz continued to bother Complainant by constantly asking her to go drinking and to chicken fights with him.

(Tr. 28, 30, 39, 140-141, 143-144, 147, 458-459, 1034-1035; Ex. 9; Ex. 51 p. 19, 21)

20. Corpuz's invitations annoyed Complainant. She felt miffed and insulted by them and tried to ignore them so she could keep working. Complainant became upset and embarrassed when Corpuz slapped her on the butt and offered her \$100 to say "I love you" in Ilocano. (Tr. 30, 555, 1035, 1059; Ex. 51 p. 21)

21. During Complainant's employment with Cederquist, the non-supervisory male carpenters employed by Cederquist subjected Complainant to the following offensive and unwanted sexual conduct:

- a) from November 5 to December 14, 1990 most of the Caucasian and Filipino male carpenters used profanities such as "fuck", "fucking", "shit", "damn", "bitch" and "screwed" when they spoke to Complainant and to each other. These profanities were not directed at Complainant, but were freely used when speaking. The male carpenters also often talked about sex and told jokes about sex among themselves, but not with Complainant;
- b) some time between November 30 and December 14, 1990 Cabradilla once stated to Complainant, "you should stay home and make babies" while they and other crew members were putting tools away. A few times when the crew was getting ready to go home, Cabradilla also announced to everyone, "time to go home and make babies".

(Tr. 54, 121-122, 463-465, 489, 549-550, 801-808, 812-813, 1037-1038, 1087-1088, 1139-1140; Ex. 51 p. 5-6)

22. The above conduct by the crew offended Complainant and made her feel disgusted, terrible and unwanted at the job site.
(Tr. 26, 456)

23. Throughout Complainant's employment at Cederquist, Corpuz and Complainant had also conflicts unrelated to her sex. Corpuz continued to feel that Complainant was a lazy, unsafe and insubordinate worker. A few times Complainant was late for work, took long breaks and left work early without helping the crew put cords and power tools away. Corpuz warned her to "be more careful"

and to "watch [her] time". Complainant also talked a lot while working. On November 26, 1990 Complainant walked on the edge of a scaffold and on November 28, 1990 Complainant unloaded a container by pulling out materials that were underneath some paneling instead of unloading the paneling first. On both occasions, Corpuz told her to "watch out, you might get killed".

Complainant felt that Corpuz was an incompetent and dictatorial foreman. She believed that he read plans and measured incorrectly, instructed her and other carpenters to do work in the wrong sequence and was not open to her questions, ideas or suggestions. Complainant openly complained about not getting challenging or educational jobs and Corpuz's favoritism to other carpenters. She often refused to do her assignments by saying "No", walking away, or asking, "Why can't I do this instead?" Complainant also challenged Corpuz's instructions or criticisms as being incorrect. She would sometimes talk back and say, "You don't know what you're talking about", "Shut your mouth", or "I don't want to listen to any shit coming from your mouth!" She also continued to have problems understanding Corpuz's accent and once remarked, "If you used English, I wouldn't have made a mistake".

Complainant's insubordination angered Corpuz. He felt apprentices should not question the authority or instructions of foremen or journeymen. When Complainant talked back or didn't follow instructions, Corpuz would warn Complainant, "watch out" or "be careful of your mouth, I can get you in trouble" and indicated that he would have her expelled from the union. Complainant would

become upset and sometimes cry after these confrontations. (Tr. 19-21, 64, 107, 148-150, 153-154, 335-337, 352-359, 363-364, 391-392, 466-467, 864-865, 1032-1034, 1053-1054, 1095, 1116, 1121-1122; Ex. 51 p. 9, 13)

24. Complainant also held some stereotypes and misassumptions about Corpuz and some of the Filipino carpenters. From overhearing some work site conversations and reading some newspaper articles about chicken fighters, she mistakenly thought that Corpuz, Cabradilla and some of the chicken fighters on the crew were related, belonged to a Filipino syndicate or "clan system" and that they had "lots of guns". She also thought that Filipinos in general "get even" with people who "cross" them by beating them up or killing them. (Tr. 43-44, 63-65, 232-234, 326-329, 562; Ex. 17; Ex. 51 p. 22)

25. On November 26, 1990 Complainant attempted to talk to Ternberg about the crew's use of profanity and Corpuz's behavior. Corpuz called Ternberg away to discuss something else. Complainant became upset and left work. (Tr. 43; Ex. 10)

26. On November 28, 1990 Complainant returned to work. She complained to Ternberg about Corpuz criticizing and berating her and the crew's use of profanity. Ternberg told Complainant that such speech was common at construction sites and that she should get used to it. He felt her complaint was "minute" and "far out". (Tr. 231-232, 989-990; Ex. 3)

27. Complainant became upset at Ternberg's response and went to the union later that day. She spoke to Nascimento and told him that some of the men were "bugging her" and giving her a bad time about her work, that she was given menial, hard and dirty jobs, that there was a lot of swearing at the work site, and that she was having a hard time communicating with some of the Filipino carpenters. Nascimento explained to Complainant that a lot of swearing occurs on construction sites, but that he would speak to Ternberg about it. (Tr. 44, 547-550, 600-602; Ex. 51 p. 19)

28. Nascimento spoke to Ternberg about the crew's use of profanity and suggested that Ternberg assign Complainant simple tasks, since she was not experienced in finish work. (Tr. 548-549; Ex. 51 p. 19)

29. By November 28, 1990 the crew increased to 12 carpenters. There were 5 Caucasian males, 6 Filipino males (including Corpuz) and Complainant. By December 7, 1990 and until the end of Complainant's employment at Cederquist, the crew at times increased to 14 carpenters, consisting of: 6 Caucasian males, 7 Filipino males and Complainant. (Ex. R-A)

30. Some time after November 28, 1990 Corpuz went to Nascimento and complained about Complainant's attitude. Corpuz stated that Complainant was a "wise ass", wouldn't follow or listen to his instructions and made him lose face in front of the crew. Nascimento then spoke to Complainant about following instructions and not questioning her foreman and journeymen. (Tr. 340-341, 597-600; Ex. 51 p. 21)

31. On December 14, 1990 Complainant complained to Nascimento about the continued use of profanity at the work site, and Corpuz slapping her on the butt and asking her to say "I love you" in Ilocano. Complainant was upset and embarrassed about the incidents with Corpuz. Complainant also stated that Corpuz and some Filipino carpenters continued to be "negative" towards her - they wouldn't listen to her suggestions and wouldn't teach her how to do things. Complainant stated that she enjoyed working with Frank "Sam" Piburn, a Caucasian journeyman who was a patient teacher and listened to her suggestions. (Tr. 45, 551-555, 559-560, 609-611, 1053-1054; Ex. 51 p. 19, 21)

32. Nascimento felt that the butt slapping and "I love you" complaints were very serious. He advised Complainant to keep a log of any improper conduct. Later, Nascimento spoke to Karen Kamisado, the Equal Opportunity Officer (EEO) of Pacific Construction Company about Complainant's allegations. Kamisado spoke to Ternberg about the crew's use of profanity at the work site and Complainant's allegations. (Tr. 202, 607, 611-612, 617-618, 962, 988-989, 1073)

33. Nascimento went to the job site and spoke to Ternberg and Corpuz about Complainant's complaints, the seriousness of such complaints, and how women should be treated at the work site. Corpuz denied slapping Complainant on the butt and offering her \$100 to say "I love you" in Ilocano. Because Complainant was having a difficult time working with and understanding certain Filipino journeymen, Nascimento suggested that she be assigned to

work with Piburn and other Caucasian journeymen. Ternberg concurred. (Tr. 551-552, 555-556, 611-612, 1028; Ex. 51 p. 19-20)

34. Ternberg spoke Complainant about her complaints, asked her "what she wanted", and if she wanted Corpuz to be fired. Complainant stated that she didn't like working with Corpuz and certain other people, that she wanted the crew to stop using profanity, and that she didn't want Corpuz fired. Ternberg then spoke with the male carpenters individually and told them to stop using profanity at the work site and to treat co-workers "as if you were at home". Nascimento also spoke to several male carpenters as a group and individually, and told them to watch their language and conduct themselves as working men, not like "kids out of high school". Ternberg and Nascimento also told Piburn, Jacobson and some of the Caucasian carpenters to watch over Complainant and to keep her away from Corpuz and the Filipino carpenters she was having conflicts with. (Tr. 556-557, 612-613, 991, 995-997; Ex. 3; Ex. 51 p. 5, 8; Ex. R-E p. 29, 34)

35. After December 14, 1995 the male carpenters for the most part stopped using profanity at the work site. Ternberg assigned Complainant to work primarily with Piburn and other Caucasian journeymen. Nascimento checked on Complainant weekly. During this period of time, she informed him that she had no complaints and that she was enjoying the work. (Tr. 44, 47, 121-122, 603-604, 996-997, 1028-1029, 1050, 1120; Ex. 3; Ex. 51 p. 19)

36. Complainant, however, began to feel that Corpuz was retaliating against her for complaining to the union. She

erroneously believed that he told the crew to watch her so she could be fired. She also mistakenly thought that Corpuz was trying to isolate her from the rest of the crew. When Corpuz called her journeymen on the radio, she thought he was scrutinizing her work so that he could fire her. Complainant also continued to have work conflicts with Corpuz. During these arguments, when Corpuz told her to "watch out" she thought he might be physically threatening her. The work conflicts and perceived retaliation caused Complainant to feel pressured, stressed and made her cry. She started to get headaches and constant upset stomach. She became anxious and upset about returning to work on Mondays. (Tr. 39-40, 45, 48, 59, 62-64, 73, 194-195, 466-467; Ex. 17)

37. In early February 1991 Cabradilla became Complainant's foreman. He continued to assign Complainant to Caucasian journeymen. Cabradilla felt that Complainant was an inconsiderate, lazy, inept and insubordinate worker. Prior to becoming foreman, Cabradilla saw Complainant put her hands in the crew's drinking water jug to retrieve a soda and then refuse to change the drinking water. After Cabradilla became her foreman, Complainant was late for work a few times and couldn't lift some of the heavy moldings and saws. She once walked away after Cabradilla told her to press more putty into some nail holes. (Tr. 429-432, 462-463, 1093; Ex. 14 p. 32, 36, 40-42, 44-45, 47, 57-58, 69-70)

38. On February 25, 1991 some of the male carpenters told Cabradilla that Complainant left work early without helping the crew put tools away. (Tr. 418, 786, 954-956, 1166-1168; Ex. 14 p.

45-46)

39. On February 26, 1991 Complainant went to work in the ballroom of the Grand Hyatt Wailea. Cabradilla was already in the ballroom. Cabradilla approached Complainant and accused her of leaving work early the day before and not helping the crew put tools away. Complainant denied leaving early and told Cabradilla she had walked out with three other carpenters. Cabradilla told Complainant she couldn't have walked out with those three carpenters because two of them complained that she left early. Cabradilla yelled at Complainant stating, "You're no good, nobody wants to work with you!" Complainant became upset, scared and said something like, "I've had enough of this - this isn't fair". She left the ballroom. She ran in to Corpuz in the hallway. Corpuz asked Complainant if she had left early the day before. Complainant yelled at Corpuz and said something like, "I'm going to go to the union - somebody is going to pay for this". She then walked out of the building, slipped on a rock in the parking lot and severely sprained her ankle. She got into her car and drove to the union hall. (Tr. 56-58, 219, 423-426, 641, 1081, 1124-1125; Ex. 14 p. 49-50, 53-56)

40. At the union hall, Complainant spoke to Nascimento. She told Nascimento that Cabradilla picked on her for being late, became enraged, and that she wasn't going to take any more verbal abuse. She was angry and fed up. (Tr. 219-220, 560-561; Ex. 9)

41. Nascimento felt that the situation "had gone far enough". He suggested that Complainant file a grievance with the union and

Pacific Construction EEO officer. Complainant refused because she heard that Filipinos get "even with people that try to cross them" and thought that Corpuz and Cabradilla would retaliate by physically harming her. Despite Complainant's refusal, Nascimento reported the February 26, 1991 incident to Ternberg and the Pacific Construction EEO officer. Nascimento also informed Complainant that after her ankle healed, he would place her in another job with a different crew at a different work site. (Tr. 561-562, 606-607; Ex. 51 p. 20)

42. On February 27, 1991 the Pacific Construction EEO officer phoned Complainant and spoke to her about her complaints. The EEO officer offered to act as a mediator between Complainant and Cederquist, Ternberg and Corpuz to resolve the complaints. Complainant refused because she believed that Corpuz, Cabradilla or members of their "clan" or "syndicate" would physically harm her, and because she was upset about her ankle injury. (Ex. 9; Ex. 12 p. 23)

43. During the few months after February 26, 1991 Complainant continued to believe that Corpuz, Cabradilla or their "syndicate" would physically harm her in retaliation for complaining about their conduct. She feared for her life and thought she might become a "cane field statistic". However, Complainant's fears were unfounded. Corpuz and Cabradilla did not belong to a Filipino syndicate and they did not take any actions to threaten or physically harm Complainant. (Tr. 63-64, 441)

44. The above fears caused Complainant's headaches to get worse and she began to have nightmares. She also began to have excessive perspiration, tight jaws, restless sleep, palpitations, pressure in her chest, shortness of breath, alopecia and crying spells. She lost her appetite and felt mentally exhausted. She became afraid to go to public places and stopped going shopping, to restaurants and to the beach. She also became mildly depressed about her ankle injury. (Tr. 63; Exs. 17, 19)

45. On February 26, 1991 Complainant filed a workers' compensation claim for her sprained ankle. On May 29, 1991 she filed a workers' compensation claim for job related stress. (Ex. A)

46. On March 18, 1991 Dr. Gary Iannitello, the physician treating Complainant's ankle, referred her to Dr. Michael Mathews, a psychiatrist, to treat emotional stress concerns that Complainant expressed to him. (Ex. 17)

47. On May 17, 1991 Dr. Iannitello released Complainant to resume light duty work. On May 31, 1991 Dr. Iannitello released Complainant to resume regular duty work. (Ex. A)

48. On June 4, 1991 Complainant went to see Dr. Mathews. She reported that some Filipino workers had discriminated against her and that she was afraid to go back to work. She also reported the post traumatic stress symptoms described in Finding of Fact number 44 above, and feelings of depression about her ankle injury. Dr. Mathews diagnosed Complainant as having adjustment disorder with mixed mood, but opined that most of Complainant's symptoms had

cleared. He did not feel that Complainant needed ongoing psychiatric care. On October 7, 1991 Complainant again saw Dr. Mathews, who documented that Complainant still had some anxiety about approaching crowded areas and a "fear of the union", but was back to normal in all other areas. (Exs. 17, 19)

49. On June 25, 1991 Complainant filed a complaint with this Commission.

50. Around October or November 1991 Complainant began work as a massage therapist (one of her prior occupations). (Tr. 10; Ex. 17)

51. Some time in 1992 Respondent Cederquist ceased doing business in the state of Hawaii. (Ex. 34)

52. In August 1992 Complainant was evaluated by Dr. George Bussey, a psychiatrist hired by Cederquist's workers' compensation insurer to make an independent medical evaluation of Complainant's stress claim. Dr. Bussey interviewed Complainant for two hours about her psychiatric history and experiences at Cederquist. He also conducted a mental status examination and later reviewed her medical files. (Tr. 161-162; Ex. 17)

53. Based on information obtained from the interview, mental status examination and medical files, Dr. Bussey diagnosed Complainant as having suffered post traumatic stress disorder stemming from the incident with Cabradilla which occurred on February 26, 1991 and the symptoms which developed thereafter.

Alternatively, Dr. Bussey diagnosed Complainant as having suffered adjustment disorder with post traumatic type symptoms

based on the occurrence of four events and the resulting symptoms caused by all four events: 1) Corpuz and the crew's sexual harassment of Complainant; 2) Complainant's work conflicts with Corpuz; 3) Complainant's misperception that Corpuz and Cabradilla were retaliating against her; and 4) Complainant's fears that Corpuz and Cabradilla would physically harm her, caused by her stereotypes that Corpuz, Cabradilla and the chicken fighters belonged to a "clan system" or "syndicate" with "lots of guns", and that Filipinos in general "get even" with people who "cross them".

Dr. Bussey also noted that most of Complainant's symptoms subsided. He believed that Complainant could have returned to carpentry work with a different crew if she received active psychiatric intervention. He concluded that Complainant had a 5% impairment in social functioning, concentration and adaptation. (Tr. 172-178; Ex. 17)

54. On May 19, 1993 Complainant and Cederquist's insurer settled her workers' compensation claims. In the settlement agreement, the parties agreed that Complainant suffered 5% permanent disability to whole woman because of stress and 5% permanent partial disability of the right foot. Complainant was awarded \$10,650.20 for her both injuries and was not required to reimburse \$5,179.43 in overpayment of temporary total disability for the period between May 18 and August 13, 1991. (Ex. A)

55. In 1994 Respondent Cederquist ceased doing business, vacated its plant and offices and auctioned off its assets. (Exs. 34, 49)

III. CONCLUSIONS OF LAW⁴

A. Jurisdiction

H.R.S. § 378-1 defines "employer" to mean

. . . any person, including the State or any of its political subdivisions and any agent of such person, having one or more employees, but shall not include the United States.⁵

The statute in turn defines "person" to mean one or more individuals and includes, but is not limited to, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or the State or any of its political subdivisions.

1. Respondent Cederquist

During Complainant's employment at Cederquist, Respondent Cederquist was a corporation with one or more employees. I therefore conclude that Cederquist is an employer under H.R.S. § 378-1 and is subject to the provisions of H.R.S. Chapter 378.

2. Respondent Corpuz

Respondent Corpuz, the working foreman and overall supervisor of all the carpenters employed by Cederquist, served in a supervisory position over Complainant Collins. He approved her hiring and exercised control over her conditions of employment. He is therefore an agent of Respondent Cederquist and an employer under H.R.S. § 378-1. In Re Shaw / Sam Teague Ltd., Docket No. 94-

⁴ To the extent that the following conclusions of law also contain findings of fact, they shall be deemed incorporated into the findings of fact.

⁵ This definition has been in effect since 1981. See, L 1981, c 94 § 2)

001-E-P (March 3, 1995) (hereafter referred to as Shaw); In Re Santos / Hawaiian Flowers Exports, Inc., Docket No. 92-001-E-SH (January 25, 1993) (hereinafter referred to as Santos); Kauffman v. Allied Signal, Inc., 970 F.2d 178, 59 EPD 41,642 at 71,691 (6th Cir. 1992).

B. Hostile Work Environment Sexual Harassment

H.R.S. § 378-2(1)(A) makes it an unlawful discriminatory practice for any employer to discriminate against an individual in the terms, conditions or privileges of employment because of sex. Hostile work environment sexual harassment is a violation of the above statute. Santos, supra; H.A.R. § 12-46-109⁶; see also Meritor Savings Bank, FSB v. Vinson, 477 US 57, 91 L.Ed.2d 49, 106 S.Ct 2399, 40 EPD 36,159 at 42,577 (1986); Harris v. Forklift Systems Inc., 114 S. Ct. 367, 126 L.Ed. 2d 295, 62 EPD 42,623 at 77,397 (1993).

H.A.R. 12-46-109 defines hostile work environment sexual harassment as

. . . unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual forms of harassment of a sexual nature. . . when. . . that conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

The Executive Director must prove by the preponderance of the evidence that:

⁶ Although H.A.R. § 12-46-109 became effective on December 31, 1990, it is substantively identical to its predecessor rule, H.A.R. § 12-23-59 which became effective on November 15, 1982.

- (1) The complainant was subjected to sexual advances, requests for sexual favors or other visual, verbal or physical conduct of a sexual nature. Santos, supra; Ellison v. Brady, 924 F.2d 872, 55 EPD 40,520 at 65,624 (9th Cir. 1991).
- (2) The conduct was unwelcome in the sense that the complainant did not solicit or incite it, and in the sense that the complainant regarded the conduct as intimidating, hostile or offensive. Santos, supra; Ellison, supra; Harris, supra.
- (3) The conduct was sufficiently severe or pervasive to alter the conditions of employment, such as having the purpose or effect of unreasonably interfering with an individual's work performance or by creating an intimidating, hostile or offensive working environment. H.A.R. 12-46-109(a)(3); Santos; supra; Ellison, supra. The perspective to be used in evaluating the severity or pervasiveness of the harassment is that of the victim. Santos, supra; Ellison, supra, at 878-879. Because the complainant in the present case is a woman, this objective standard is met if a reasonable woman would consider such conduct sufficiently severe or pervasive to unreasonably interfere with work performance or create an intimidating, hostile or offensive environment.

The establishment of the above prima facie case of hostile work environment sexual harassment constitutes direct evidence of intent to discriminate. Santos, supra; Katz v. Dole, 709 F.2d 251, 255, 32 EPD 33,639 at 30,002 (4th Cir. 1983). Thus, once a complainant makes out the above prima facie case of hostile

environment sexual harassment, the burden of proof shifts to the employer to rebut such showing by: 1) proving that such conduct did not take place; 2) showing that the conduct was not unwelcome; 3) showing that such conduct was trivial or isolated. Santos, supra; Katz v. Dole, supra.

1. Whether the Sexual Conduct Occurred

The Executive Director alleges that Respondent Corpuz subjected Complainant to the following acts of sexual conduct:

- a) on November 5, 1990 Respondent Corpuz asked Complainant to go drinking and to chicken fights; after she refused these invitations he slapped her on the butt;
- b) in late November 1990 after giving Complainant a ride back to her car, on two occasions Respondent Corpuz stated, "suppose to be that I kiss Susan good-bye";
- c) on November 28, 1990 Respondent counted out eight \$100 bills in front of Complainant and offered them to her if she said "I love you" in Ilocano;
- d) some time between November 28 and December 14, 1990 Corpuz offered Complainant \$100 if she would say "I love you" in Ilocano;
- e) from November 5, 1990 through February 1991 Corpuz asked Complainant to go drinking or to chicken fights with him almost every other day despite Complainant's continuous refusal.

The Executive Director also alleges that Complainant's co-workers subjected her to the following acts of sexual conduct:

- i) on November 28, 1990 three members of the crew grabbed their crotch areas in front of Complainant and Corpuz; Corpuz laughed and failed to take any corrective action;
- ii) between November 28 and December 14, 1990 some members of the crew continued to grab their crotch areas and whisper "pussy" when Complainant walked by them;

- iii) between November 5 and December 14, 1990 most of the crew used profanity in Complainant's presence;
- iv) some time between November 30 and December 14, 1990 Cabradilla told Complainant she should be "home making babies" and a few times announced it was "time to go home to make babies" when the crew was putting tools away.

Respondents contend that Complainant fabricated all of the alleged incidents. Specifically, they argue that:

- 1) Complainant's daily log, which Nascimento advised her to keep, is written out of order (see, Ex. 9);
- 2) Complainant is inconsistent in her testimony regarding the eight - \$100 bills/ "I love you" incident;
- 3) Respondent Corpuz has asthma, doesn't drink liquor and had no reason to ask Complainant to go drinking;
- 4) except for Jacobson, all other carpenters testified that they did not see or hear the alleged sexual conduct; and
- 5) Corpuz's log indicates that Complainant was not working in the same room as the men she alleges grabbed their crotches.

I agree and conclude that Exhibit 9 does not contain entries made at or about the time the alleged events occurred. Nascimento testified that he told Complainant to keep a log during their second meeting on December 14, 1990. (Tr. 607) Complainant testified she didn't start keeping a log until after Nascimento advised her to. (Tr. 202) Piburn confirmed that Complainant told him Nascimento suggested she keep a log and saw her write in a log. (Tr. 1073) However, the log contains entries for events which occurred prior to December 14, 1990, the date Nascimento told Complainant to start her log. (Ex. 9) In addition, Complainant incredulously testified that in April 1991 she copied her original

log into Exhibit 9 and recently threw the original away because it was sloppy. (Tr. 200) She also could not explain why some entries were out of sequence or why certain entries were heavily edited. (Tr. 200-202) I therefore find that Exhibit 9 was made some time prior to April 25, 1991 and is a reconstruction of the events Complainant alleges occurred.

However, I find parts of Complainant's testimony regarding Corpuz's and the crew's conduct credible because some of it was consistent, she did complain about certain conduct to others, and portions were corroborated by other witnesses. Piburn testified that Complainant complained to him about Corpuz asking her out and offering her \$100. (Tr. 1035; Ex. 51 p. 15) Complainant testified that Corpuz asked her if she drank beer or whisky, and Corpuz testified that he used to drink these same two beverages. (Tr. 39, 701) While Respondent Corpuz may not be able to drink liquor, I find that he constantly asked Complainant to go drink beer or whisky, not for the purpose of actually going out or drinking liquor with her, but to annoy her. Nascimento confirmed that when Complainant first met with him on November 28, 1990, Complainant did complain about some one "bugging" her. (Tr. 547) Roger Jacobson, another Caucasian journeyman, heard Corpuz offer Complainant \$100 to say "I love you" in Ilocano. (Tr. 458-459)⁷

⁷ Jacobson's credibility during the hearing was for the most part questionable. He claimed he was working in the same room with Complainant on November 5, 1990 and saw Corpuz slap Complainant on her "rear end". (Tr. 458, 626) However, in his February 23, 1994 interview with a Commission investigator, Jacobson stated that he only saw Corpuz bump into Complainant while passing by, and that she may have told him that Corpuz touched her on her behind. (Ex. 51 p. 3) In addition, Corpuz's log shows that Jacobson was not working in the same room with Complainant that day. (Ex. R-A) At the hearing, Jacobson also

The evidence also shows that on December 14, 1990 Complainant also complained to Nascimento about Corpuz slapping her on the butt and asking her to say "I love you" in Ilocano. (Tr. 553-555, 558-560; Ex. 51 p. 19, 21) For these reasons I conclude that Corpuz did ask Complainant to go drinking and out to chicken fights, slapped her on the butt, and once offered her \$100 to say "I love you" in Ilocano.

Ternberg, Jacobson, Piburn, Nascimento, Dionecio Cordero (a Filipino apprentice) and Jim Riley (another Caucasian journeyman) testified that the crew freely used profanity and talked about sex at the work site. (Tr. 549-550, 801-808, 1037-1038, 1087-1088, 1139-1140) Ternberg and Nascimento testified that Complainant complained about the profanity, and that they spoke to the crew about it. (Tr. 549, 601-602, 989-990; Ex. 3) Jacobson confirmed that he heard Cabradilla state "time to go home and make babies" when the crew was putting their tools away. (Ex. 51 p. 5-6) I therefore conclude that alleged profanity and comments by Cabradilla occurred.

The preponderance of the evidence, however, does not show that Corpuz stated that he was "suppose to kiss [Complainant] good-bye"

testified that Complainant told him that Corpuz had asked her out. (Tr. 465-466). Later, Jacobson testified that he actually heard Corpuz ask Complainant out. (Tr. 495-496). However, in his interview with the Commission investigator, Jacobson stated he didn't hear Corpuz ask Complainant out. (Ex. 51 p. 2) Finally, Jacobson claimed he was present with Complainant when she met with Ternberg on November 28, 1990, that the meeting occurred in the afternoon and that he heard Ternberg tell Complainant, "If you can't take the heat, get out of the kitchen". (Tr. 480) However, Complainant testified that she was alone when she met with Ternberg and that the meeting occurred first thing in the morning. (Tr. 232, 236; Ex. 12 p. 71) In his interview with a Commission investigator, Jacobson stated that he didn't hear Ternberg make the "kitchen heat" comment. (Ex. 51 p. 11)

when he gave her a ride in his truck. Piburn and Rick Kinunen (a Caucasian journeyman), who Complainant testified were sitting with her in the truck during these incidents, did not hear such statements. (Tr. 870-871, 1086) In two interviews with a Commission investigator, Complainant only states that Corpuz insisted she sit in the cab of his truck instead of riding in the back because it was "packed". There is no mention of any "kissing" comments. (Ex. R-E p. 29, 41) In addition, Complainant did not mention or complain about these incidents to Nascimento or Dr. Bussey. (Tr. 617; Ex. 17; Ex. 51 p. 21)

The weight of the evidence also does not show that Corpuz counted out eight \$100 bills and asked Complainant to say "I love you" in Ilocano on November 28, 1990. Kinunen and Andy Andaya, the two carpenters who were unloading the container with Complainant denied seeing or hearing such conduct. (Tr. 818-819, 823, 864-866) Complainant's testimony regarding this incident was also inconsistent. At the hearing, Complainant first testified that she saw a woman walk on to the work site and give \$800 to Corpuz. (Tr. 29). Later, Complainant stated that a male carpenter at the job site gave the money to Corpuz. (Tr. 207-208) In her February 15, 1994 interview with a Commission investigator and her March 11, 1995 answers to interrogatories, Complainant states that Corpuz took out the eight one-hundred dollar bills. (Ex. 51 p. 23; Ex. 5, respectively.) Complainant told Dr. Bussey Corpuz offered her \$600 to say "I love you". (Ex. 17) Complainant also did not complain about this incident to Nascimento when she saw him on

November 28, 1990. (Tr. 553, 609-610)

Finally, the preponderance of the evidence does not show that the alleged incidents of crotch grabbing occurred. Complainant's testimony regarding this conduct was again inconsistent. At the hearing, Complainant testified that the first incident of crotch grabbing occurred on November 28, 1990 when one carpenter grabbed his crotch area, jumped back, and said, "Oh, Susan, I thought you were going to grab my da kine", and that two other crew members also grabbed their crotches and started laughing. She testified that Corpuz was present, took no corrective action and laughed too. (Tr. 31-32, 38, 134-136) However, later in the hearing Complainant testified that she tried to speak to Ternberg about the crew's crotch grabbing on November 26, 1990, two days before the first incident allegedly occurred. (Tr. 230-231) In her answers to interrogatories, Complainant states that the November 28, 1990 incident occurred while she was working at the Stouffer Wailea Beach Resort Hotel. (Ex. 5) However, Corpuz's log shows that the crew did not begin work at that hotel until December 3, 1990. (Ex. R-A) Complainant's April 25, 1991 notes state that the above incident occurred on November 30, 1990. However, at the hearing and during her February 15, 1995 interview, Complainant did not testify about any incident occurring that day. (Tr. 31-38; Ex. 51 p. 24) In her answers to interrogatories, Complainant states that the incident occurred on November 30, 1990 but involved only one carpenter. (Ex. 5) At the hearing, Complainant stated that the incidents of crotch grabbing stopped by December 14, 1990 after she

made her second complaint to the union. (Tr. 47, 121-122) However, in her answers to interrogatories and February 15, 1994 interview, Complainant stated that the crotch grabbing occurred again on December 27, 1990 and that the crew "did it all the time". (Ex. 5; Ex. 51 p. 23, respectively.) In her answers to interrogatories, Complainant states that the December 27, 1990 incident occurred at the Grand Hyatt job site. However, Corpuz's log shows that Complainant was working at the Stouffer hotel that day. (Ex. R-A) Finally, Jacobson and Piburn stated that they never saw crew members engage in such conduct. (Tr. 1068-1069, 1088-1089; Ex. 51 p. 4) Jacobson, Piburn, Nascimento and Ternberg also stated that Complainant did not complain about any crotch grabbing conduct to them, despite openly complaining about other less offensive conduct. (Tr. 970, 1069-1070; Ex. 51 p. 4, 19-21) Complainant also did not mention such conduct to Dr. Bussey when he interviewed her in August 1992. (Tr. 185-186; Ex. 17)

2. Whether The Sexual Conduct Was Unwelcome

The Executive Director has shown by a preponderance of the evidence that the conduct was unwelcome. Complainant testified that she consistently refused Corpuz's invitations and that his behavior made her feel insulted, embarrassed and upset. She also testified that she felt the crew's behavior was demeaning and made her feel terrible, inferior and unwanted at the work site. She complained about the conduct to Ternberg, Nascimento and some of her co-workers. Complainant was clearly offended by the conduct and no evidence was presented to show that she solicited, incited

or welcomed such conduct.

3. Whether The Conduct Created An Intimidating, Hostile Or Offensive Work Environment

The record shows that Corpuz physically slapped Complainant on the butt and offered her \$100 to say "I love you" in Ilocano. Corpuz also constantly asked her to go out drinking and to chicken fights despite her repeated refusals. The record also shows that Complainant was told she should "stay home and make babies" and that the crew freely used profanity and joked and talked about sex. Nascimento testified that female carpenters from other crews commonly complained about the use of profanity and sexual jokes at work sites. (Tr. 550) I therefore conclude that a reasonable woman would consider the conduct of Corpuz and the crew sufficiently severe and pervasive to create a hostile and offensive work environment.

C. Retaliation

The Executive Director alleges that Respondents retaliated against Complainant after she complained about the sexual conduct when: a) Corpuz intimidated Complainant by implying that he had syndicate ties and would physically harm her; b) Corpuz scrutinized her work and asked other carpenters to watch Complainant so she could be fired; c) Corpuz isolated Complainant from the crew; and d) Cabradilla yelled at her and accused her of leaving work early on February 25, 1991 and lunged and attempted to choke her.

H.R.S. § 378-2(2) prohibits an employer from discharging, expelling or otherwise discriminating against any individual because that individual has opposed an unlawful discriminatory practice, filed a complaint, testified, or assisted in any proceeding under H.R.S. Chapter 378. Because the section includes opposition to unlawful discriminatory practices, protected actions need not be related to administrative or judicial proceedings. EEOC v. Kallir, Philips, Ross, Inc., 401 F.Supp 66, 10 EPD 10,366 at 5542 (S.D. N.Y. 1975). In addition, a person is protected from retaliation regardless of whether the conduct he or she opposes is actually illegal so long as he or she has a reasonable belief that the employer is engaging in illegal activity. Hearth v. Metropolitan Transit Commission, 436 F.Supp 685, 15 EPD 8077 at 7274-7275 (D. Minn. 1977); Sias v. City Demonstration Agency, 588 F.2d 692, 18 EPD 8773 at 5140 (9th Cir. 1978).

Retaliation may be shown by either direct or circumstantial evidence. Ostrowski v. Atlantic Mut. Ins. Cos., 968 F.2d 171, 59 EPD 41,613 (2nd Cir. 1992). In the present case, the Executive Director did not present any direct evidence of retaliation.

To establish a prima facie case of retaliation prohibited by H.R.S. Chapter 378, the Executive Director must establish that:

- 1) the individual opposed a discriminatory practice made unlawful by H.R.S. Chapter 378 or was a participant in a Chapter 378 proceeding;
- 2) the individual's activity was protected;
- 3) the individuals was subjected to adverse treatment by the employer; and
- 4) there was a causal connection between the opposition or

participation and the adverse treatment.

Wallis v. JR Simplot Co., 26 F.3d 885, 64 EPD 43,074 at 79,989 (9th Cir. 1994); Gunther v. County of Washington, 623 F.2d 1303, 20 EPD 30,204 at 12, 104 (9th Cir. 1979).

The weight of the evidence does not show that Complainant was subject to adverse treatment because she complained about unwanted sexual conduct. The record does not show that Corpuz attempted to intimidate Complainant by implying syndicate ties or physically threatening her. Complainant testified she overheard Corpuz make vague references to the syndicate in connection with chicken fights when he was putting tools away and she thought it was to intimidate her. (Tr. 64-65, 232-239) In an early interview with a Commission investigator, Complainant stated only that some "people" told her that Corpuz and Cabradilla had syndicate connections because they raised fighting cocks. (Ex. R-E p. 29) Complainant admitted that from these conversations and from newspaper articles she read, she assumed that Corpuz and Cabradilla belonged to a Filipino syndicate. Jacobson and Complainant herself testified that Corpuz told Complainant to "watch out", "watch your mouth" or threatened to have her kicked out of the union only in the context of criticizing her for not following work instructions or for talking back. (Tr. 64, 483) Corpuz testified that he also told Complainant to "watch out" when she didn't follow safety procedures. (Tr. 337, 353, 391)

The evidence also does not show that Corpuz scrutinized Complainant's work or asked others to watch Complainant so she

could be fired. Scott Wical, a Caucasian journeyman Complainant was assigned to work with for several weeks, testified that Corpuz called them on the radio to check on materials or other work matters and not to check on Complainant. (Tr. 636-637) All the carpenters testified that Corpuz did not ask them to watch Complainant so she could be fired. (Tr. 649, 871, 932-933, 1058, 1126-1127) Instead, Piburn testified that Nascimento asked the Caucasian carpenters to watch over Complainant in order to help her out. (Tr. 1028; Ex. 51 p. 15)

The evidence also shows there was no attempt to isolate Complainant from the rest of the crew. Instead, Piburn stated that Nascimento also asked him to keep her away from certain Filipino carpenters so there would be less conflict. (Ex. 51 p. 15) Jacobson stated that he heard Complainant ask Ternberg to keep Corpuz and certain carpenters away from her and that Ternberg in turn asked him to keep Complainant away from Corpuz and Cabradilla. (Ex. 51 p. 5, 8) Wical testified that he and Complainant worked together for several weeks away from the rest of the crew because they were a special satellite team doing door frames. (Tr. 635-637, 645)

Finally, the evidence does not show that Cabradilla retaliated against Complainant when he berated her for being "no good" and accused her of leaving early. The record shows that Cabradilla exploded and yelled at all the carpenters, not only Complainant. (Tr. 1091-1093; Ex. 51 p. 5-6). The record also shows that some male carpenters did complain about Complainant leaving early

without putting tools away. (Tr. 418, 786, 954-956, 1166-1168)

In addition, the weight of the evidence does not show that Cabradilla lunged at or attempted to choke Complainant on her last day of work. When Complainant spoke to Nascimento on the day of the incident, she stated that Cabradilla raged at her, but did not mention any lunging or choking. (Tr. 560-561) In her notes received on April 25, 1991 Complainant states that Cabradilla yelled at her and continued to yell as he followed her out of the ballroom. Again, there is no mention of lunging or choking. (Ex. 9) In an early interview with a Commission investigator, Complainant states that Cabradilla started to walk towards her, she became afraid and left. (Ex. R-E p. 30) In her August 28, 1992 interview with Dr. Bussey she also does not mention any lunging or choking. (Ex. 17)

For these reasons, I conclude that Respondents did not retaliate against Complainant for complaining about the unwanted sexual conduct.

D. Constructive Discharge

Constructive discharge occurs when a reasonable person in the employee's position would have felt that she was forced to quit because of intolerable and discriminatory working conditions. Tseu, on behalf of the complaint filed by Davis v. Volcano Island Farms, Inc. Docket No. 94-003-E-R (February 8, 1995) (hereinafter Davis); Santos, supra; Watson v. Nationwide Ins. Co., 823 F.2d 360, 361, 43 EPD 37,298 (9th Cir. 1987). This test is an objective one

and does not involve showing employer intent to force the complainant to resign. Davis; supra; Santos; supra; Watson, supra.

In general, a single isolated instance of employment discrimination is not sufficient to support a finding of constructive discharge. Id. A complainant must instead show some aggravating factors, such as a continuous pattern of discriminatory treatment. Id.

In the present case, the Executive Director has not shown by a preponderance of the evidence that Complainant was forced to quit her job because of Corpuz's and the crew's sexual conduct. The record shows that after Complainant made her second complaint to the union on December 14, 1990 regarding: 1) Corpuz slapping her on the butt; 2) Corpuz offering her \$100 to say "I love you" in Ilocano; and 3) the crew's use of profanity, all of this conduct stopped. The only unwelcome sexual conduct which continued was Corpuz's invitations to go drinking and to chicken fights. While Corpuz's invitations annoyed Complainant, they were not so intolerable as to force her to quit.

The record instead shows that after December 14, 1990, other non-discriminatory events caused Complainant to get "fed up" and quit. Jacobson and Piburn testified that Complainant continued to have work conflicts and arguments with Corpuz which upset her and made her cry. In addition, Complainant mistakenly thought that Corpuz was retaliating against her for complaining to Ternberg and the union, and she erroneously thought that Cabradilla was retaliating against her when he accused her of leaving work early.

(See discussion in Section III.C. above.) The work conflicts and perceived retaliation caused Complainant to quit, not the discriminatory conduct by Respondents.

D. LIABILITY

1. Respondent Cederquist

An employer is responsible for its acts of sexual harassment and those of its agents and supervisory employees regardless of whether the acts were authorized or even forbidden, and regardless of whether the employer knew or should have known of their occurrence. H.A.R. § 12-46-109(c). Because Corpuz was a supervisor and agent of Respondent Cederquist during Complainant's employment, the corporation is liable for Corpuz's conduct towards Complainant.

An employer is responsible for acts of sexual harassment between employees where the employer or its agents or supervisory employees knows or should have known of the conduct and fails to take immediate and appropriate corrective action. H.A.R. § 12-46-109(d). Corrective action is appropriate if it: 1) involves a prompt and thorough investigation of the allegations; 2) ends the current harassment; and 3) deters future harassment by the same offender or others. Ellison v. Brady, supra, at 65,629-65,630; Fuller v. City of Oakland, 47 F.3d 1522, 65 EPD 43,431 at 82,074-82,075 (9th Cir. 1995) If no corrective action is undertaken, or if the corrective action attempted is inappropriate, liability will

attach. Fuller, supra, at 82,075-82,076.

In the present case, Respondent Cederquist knew of the unwelcome sexual conduct by its crew. Complainant informed Ternberg about the crew's use of profanity. The union and Pacific Construction EEO officer also informed Ternberg about her complaints. Respondent Cederquist also failed to take immediate and appropriate corrective action. Ternberg felt that Complainant's complaints were "minute" and "far out". He took action only after the union and Pacific Construction EEO officer spoke to him about the complaints. While Ternberg did speak to the crew generally about treating Complainant "the way you would treat people at home", he did not: a) conduct a full investigation of Complainant's allegations by interviewing witnesses; b) express strong disapproval of such conduct; or c) inform the crew of any sanctions if such behavior continued. Thus, although almost all of the crew's sexual conduct fortuitously ceased, the corporation's failure to take appropriate action is still unacceptable. It remains liable for the unwanted sexual conduct of its crew.

2. Respondent Corpuz

Corpuz, as an agent of Cederquist, is an employer under H.R.S. § 378-1. Therefore, pursuant to H.A.R. 12-46-109(c), he is personally liable for sexually harassing Complainant.

E. REMEDIES

The Executive Director requests that Respondents be ordered to pay Complainant back pay and compensatory and punitive damages. The Executive Director also seeks to have the Commission issue a cease and desist order; have Respondent Cederquist, Inc. implement and adopt policies and procedures against employment discrimination based on sex, harassment and retaliation; and have Respondents publish the results of the Commission's investigation in a press statement provided by the Commission in the Sunday edition of the Honolulu Advertiser and in a newspaper having a general circulation on Maui.

1. Back Pay

Because I conclude that Respondents did not constructively discharge Complainant because of her sex or in retaliation for complaining about the sexual harassment, she is not entitled to back pay.

2. Compensatory Damages

Pursuant to H.R.S. §368-17, the Commission has the authority to award compensatory damages for any pain, suffering, embarrassment, humiliation or emotional distress Complainant suffered as a result of the sexual harassment. The amount awarded as compensatory damages is generally based on a consideration of both the severity and duration of the harm. Restatement of Torts 2d § 905 (1979)

The evidence shows that Complainant was insulted and annoyed by Corpuz's constant invitations to go drinking and to chicken fights. She was embarrassed and upset after he slapped her butt and offered her \$100 to say "I love you" in Ilocano. These injuries were observed in part by Jacobson, Nascimento and Piburn. While the slap on the butt and offering of money to say "I love you" occurred once each, Corpuz's invitations were constant throughout Complainant's four months of employment at Cederquist. Considering these circumstances, I determine that \$20,000 is appropriate compensation for Complainant's emotional distress caused by Corpuz's conduct.

The evidence also shows that Complainant was also emotionally injured by the conduct of the crew. The constant use of profanity and being told "you should stay home and make babies" was offensive and degrading to Complainant. It made her feel disgusted, terrible and unwanted at the work site. Such conduct, however, for the most part stopped after an approximately one month period. Considering these circumstances, I determine that \$10,000 is appropriate compensation for Complainant's emotional distress caused by the crew's conduct.

The Executive Director argues that during and after Complainant's employment at Cederquist, she developed post traumatic stress disorder or adjustment disorder with post traumatic type symptoms. The essential feature of post traumatic stress disorder is the development of characteristic symptoms following a psychologically distressing event that is outside the

range of usual human experience. Thus, a person must experience an event that would be markedly distressing to almost anyone (criteria A) and experience the following types of symptoms: persistent reexperiencing of the traumatic event (criteria B), persistent avoidance of stimuli associated with the event or a numbing of general responsiveness (criteria C), persistent increased arousal (criteria D), and duration of such symptoms for at least one month (criteria E). (Tr. 173-174; Diagnostic and Statistical Manual of Mental Disorders, Third Edition - Revised (DSM-III-R), American Psychiatric Association (1987) p. 247-251)

The record and Dr. Bussey's report show that Complainant's fears and most of her post traumatic type symptoms arose on or after her last day of work on February 26, 1991. (Tr. 173-174) Jacobson and Piburn testified that during her employment, Complainant wasn't afraid of Corpuz and instead was rather defiant. (Tr. 483, 1065) Jacobson testified that Complainant was intimidated by Cabradilla not because of his conduct towards her, but because Cabradilla had a reputation for having a violent temper. (Tr. 483-484) Nascimento stated that Complainant indicated she was afraid of Corpuz and Cabradilla only on February 26, 1991 when she refused to file a grievance against them for the events which occurred that morning. (Ex. 51 p. 20) In an early interview with a Commission investigator, Complainant states that she felt she might "get hurt later" and that she felt intimidated during and after the February 26, 1991 incident with Cabradilla. (Ex. R-E p. 30-31) Dr. Bussey opined that

Complainant's fears arose from the February 26, 1991 incident with Cabradilla and that her symptoms stemmed from: a) her misperceptions that Corpuz and Cabradilla were retaliating against her; and b) her stereotypes and misassumptions that Corpuz and Cabradilla belonged to a Filipino syndicate and would physically harm her. (Tr. 173-174; Ex. 17)

The essential feature of adjustment disorder is some life event that is stressful and has resulted in impaired psychological and behavioral functioning. (Tr. 175) Dr. Bussey's alternate diagnosis of adjustment disorder with post traumatic type symptoms is based on symptoms which stemmed from: a) Corpuz and the crew's sexual harassment; b) Complainant's work conflicts with Corpuz; c) her misperceptions that Corpuz and Cabradilla were retaliating against her; and d) her stereotypes and misassumptions that Corpuz and Cabradilla belonged to a Filipino syndicate and would physically harm her. (Tr. 174-176; Ex. 17)

Because Complainant's fears and most of her symptoms were not caused by the sexual harassment by Corpuz, Cabradilla or the crew, I conclude that Complainant did not suffer either post traumatic stress disorder or adjustment disorder as a result of their discriminatory conduct.

3. Punitive Damages

H.R.S. § 368-17 also authorizes the Commission to award punitive damages. Punitive damages are assessed in addition to compensatory damages to punish a respondent for aggravated or outrageous misconduct and to deter the respondent and others from

similar conduct in the future. See, Shaw, supra; Santos, supra; Masaki v. General Motors Corp., 71 Haw. 1, 6, 780 P.2d 566 (1989).

Since its purposes are punishment and deterrence, punitive damages are awarded only when a respondent's wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime. Id.

The Executive Director is required to show, by clear and convincing evidence, that Respondents acted wantonly, oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or where there has been some wilful misconduct or entire want or care which would raise the presumption of a conscious indifference to consequences. Id. at 15-17.

The Executive Director has not meet this burden. The evidence does not show that Respondents engaged in aggravated or outrageous misconduct. C.f., Santos, supra, (aggravated and outrageous misconduct found where agent made sexual comments, gestures and physically assaulted complainant for over two years). Aside from being slapped once on the butt, Complainant was subjected to visual and verbal conduct which ceased immediately after her second complaint and within one and a half months of her employment. Although Respondent Corpuz continued to ask Complainant to go drinking and to chicken fights, I do not find such conduct so shocking or offensive as to rise to the level of aggravated or outrageous misconduct. Furthermore, while Ternberg

failed to fully investigate Complainant's complaints and adequately express disapproval and sanctions for such conduct, he did speak to the crew about its use of profanity, told them to treat Complainant the way "you treat people at home" and had Complainant work with the Caucasian carpenters she got along with.

For these reasons, I decline to award punitive damages.

4. Equitable Relief

The Executive Director also seeks the following equitable relief:

- a) to have the Commission issue a cease and desist order;
- b) have Respondent Cederquist, Inc. implement and adopt a policies and procedures against employment discrimination based on sex, harassment and retaliation; and
- c) to have Respondents publish the results of the Commission's investigation in a press statement provided by the Commission in the Sunday edition of the Honolulu Advertiser and in a newspaper having a general circulation on Maui, Hawaii.

Because Respondent Cederquist is no longer doing business, I recommend that the Commission issue a cease and desist order and order Cederquist to develop and implement non discrimination policies based on sex and harassment, should the corporation return to do business in Hawaii.

The best way to publicize this decision to the public is to require the Respondents to publish the attached Public Notice (Attachment 1) in the Sunday edition of the Advertiser and in a newspaper having a general circulation on Maui, Hawaii.

V. RECOMMENDED ORDER

Based on the matters set forth above, I recommend that the Commission find and conclude that Respondents Cederquist and Corpuz violated H.R.S. § 378-2 and H.A.R. § 12-46-109 by subjecting Complainant Susan Collins to unwelcome sexual conduct which created an intimidating, hostile and offensive work environment.

For the violations found above, I recommend that pursuant to H.R.S. § 368-17, the Commission should order:

1. Respondents Cederquist, Inc. and Andres Corpuz jointly and severally to pay Complainant \$20,000 as damages in compensation for her emotional injuries caused by Respondent Corpuz's sexual harassment.

2. Respondent Cederquist, Inc. to pay Complainant \$10,000 as damages in compensation for her emotional injuries caused by the crew's sexual harassment.

3. Respondents Cederquist, Inc. and Corpuz to jointly publish the attached Notice (Attachment 1) in the Sunday edition of the Honolulu Advertiser and in a newspaper having a general circulation in the county of Maui within 10 days of the Commission's final decision in this matter.

4. Respondent Cederquist, Inc. to cease and desist from discriminating against all future employees on the basis of sex and to develop a non-discrimination policy on the basis of sex and harassment should it return to conduct business in the state of Hawaii.

DATED: Honolulu, Hawaii MARCH 13, 1990 .

HAWAII CIVIL RIGHTS COMMISSION


LIVIA WANG
Hearings Examiner

APPENDIX A

On June 25, 1991 Complainant Susan Collins filed a complaint with this Commission alleging sex and race harassment and retaliation against Respondents Cederquist, Inc., Andres Corpuz and Teresito Cabradilla.

On October 27, 1994 the Executive Director sent Respondents final conciliation demand letters pursuant to Hawaii Administrative Rule (H.A.R.) § 12-46-17. Respondents received such letters on November 2, 1994.

On January 10, 1995 the complaint was docketed for hearing and a Notice Of Docketing Of Complaint was issued.

The Executive Director filed its Scheduling Conference Statement on January 25, 1995. Respondents Corpuz and Cabradilla filed their Scheduling Conference Statement on January 31, 1995. Respondent Cederquist, Inc. filed its scheduling conference statement on February 6, 1995. A scheduling conference was held on February 8, 1995 and the Scheduling Conference Order was issued on February 9, 1995.

On March 8, 1995 Respondents Corpuz and Cabradilla filed an Objection and Motion For Protective Order from the Executive Director's request that they produce documents relating to their financial conditions. On March 13, 1995 the Executive Director filed a memorandum in opposition to this motion. On March 14, 1995 the Hearings Examiner issued an order denying Respondents' motion and placed the documents under a protective order.

On May 17, 1995 the Executive Director filed a motion to extend deadlines for discovery, pre-hearing motions and pre-hearing conference. Respondents did not file any memoranda in opposition to the motion and on May 25, 1995 an order granting the motion was issued.

On June 1, 1995 notices of hearing and pre-hearing conference were issued. On June 16, 1995 Respondents Corpuz and Cabradilla filed their pre-hearing conference statement. On June 21, 1995 the Executive Director filed its pre-hearing conference statement. By letters dated June 19 and 21, 1995 Respondents Corpuz and Cabradilla filed lists of supplemental character witnesses. On June 23, 1995 Respondent Cederquist, Inc. filed its pre-hearing conference statement. On June 28, 1995 a pre-hearing conference was held and on June 29, 1995 a pre-hearing conference order was issued.

On June 15, 1995 Respondents Corpuz and Cabradilla filed a motion to dismiss on the grounds that the Notice of Finding of Reasonable Cause was untimely filed. On June 16, 1995 Respondents Corpuz and Cabradilla filed a motion in limine to exclude the investigative reports of Mary Nakamura Gonzales. On June 21, 1995 the Executive Director filed a memorandum in opposition to the motion in limine. On June 23, 1995 Respondent Cederquist, Inc. filed a joinder in the motion to dismiss and motion in limine. On June 26, 1995 the Executive Director filed a memorandum in opposition to the motion to dismiss. On June 27, 1995 Respondents

Corpuz and Cabradilla filed a response to the Executive Director's memorandum in opposition to the motion to dismiss. On June 28, 1995 the Executive Director filed an affidavit and supplemental exhibits in opposition to the motion to dismiss.

On June 28, 1995 hearings were held on Respondents' motion to dismiss and motion in limine. On June 29, 1995 the Hearings Examiner issued orders denying the motion to dismiss and granting in part and denying in part the motion in limine.

On June 27, 1995 the parties filed a stipulation to extend discovery.

On June 27, 1995 the Executive Director filed a motion in limine to exclude certain supplemental witnesses. On June 29, 1995 Respondents Corpuz and Cabradilla filed a memorandum in opposition to the motion in limine. On July 5, 1995 a hearing was held on the motion in limine and the motion was orally granted in part, although Respondents Corpuz and Cabradilla were allowed to present some of the witnesses as rebuttal witnesses.

Pursuant to H.R.S. Chapters 91 and 368, the contested case hearing on this matter was held on July 5, 6 and 7 1995 the at the conference room of the offices of Ueoka & Ueoka, 2103 Wells Street, Wailuku, Maui Hawaii before the undersigned Hearings Examiner. The Executive Director was represented by Enforcement Attorney Karl K. Sakamoto and law clerk Young Lee. Complainant Collins was present during portions of the hearing. Respondents Corpuz and Cabradilla were represented by Meyer M. Ueoka, Esq. Pursuant to notice given

at the pre-hearing conference, Respondent Cederquist, Inc. declined to participate in the contested case hearing. During the taking of testimony on July 6, 1995 it was discovered that pursuant to a H.A.R. § 12-46-41 demand for disclosure, Respondents Corpuz and Cabradilla received copies of nine Commission interview notes which differed from the original notes in the Executive Director's possession. On July 7, 1995 the Hearings Examiner suspended the contest case hearing and ordered: a) the Executive Director to give Respondents copies of the original interview notes; b) the Executive Director to file a statement explaining why the original investigator interview notes were not disclosed to Respondents and who was involved in the failure to disclose; and c) the parties to file motions to request appropriate relief. On July 14, 1995 the Executive Director filed a statement as to why the original investigator interview notes were not disclosed to Respondents. On July 26, 1995 Respondents Corpuz and Cabradilla filed a motion to dismiss, or in the alternative to strike testimonies. On July 28, 1995 Respondent Cederquist, Inc. joined in the motion. On July 28, 1995 the Executive Director filed a motion to resume suspended contested case hearing and on August 2, 1995 it filed a response to Respondents' motion to dismiss. A hearing on the motions was held on August 3, 1995. At the hearing, the Hearings Examiner found that the alteration of the interview notes was not made in bad faith, but was intentional and negligent. On August 4, 1995 an order was issued denying Respondents' motion to dismiss, or in the

alternative to strike testimonies, but allowing Respondents to re-cross examine witnesses who had previously testified at the contested case hearing.

On November 7, 1995 the Executive Director filed an ex parte motion to dismiss the complaint against Respondent Teresito Cabradilla with prejudice. That day, the Hearings Examiner issued an order granting the motion and dismissing the complaint against Respondent Cabradilla with prejudice.

The contested case hearing resumed on November 27, 28 and 29 1995 at the conference room of the offices of Ueoka & Ueoka, 2103 Wells Street, Wailuku, Maui Hawaii before the undersigned Hearings Examiner. The Executive Director was represented by Enforcement Attorney Karl K. Sakamoto and law clerk Young Lee. Complainant Collins was present during portions of the hearing. Respondent Corpuz was represented by Meyer M. Ueoka, Esq. Pursuant to notice given on August 3, 1995 Respondent Cederquist, Inc. again declined to participate in the contested case hearing.

On December 18, 1995 the Executive Director and Respondent Corpuz filed post-hearing briefs.

On January 5, 1996 Respondent Corpuz filed a motion to reopen hearing for the purpose of taking the testimony of Jim Riley. On January 10, 1996 the Executive Director filed a memorandum in opposition to the motion. On January 16, 1996 a hearing was held on the motion. At the hearing, the Executive Director orally moved to reopen the hearing to take the testimony of Frank Sam Piburn.

On January 17, 1996 the Hearings Examiner issued an order granting both motions.

The contested case hearing was reopened on January 25, 1996 and held at the conference room of the offices of Ueoka & Ueoka, 2103 Wells Street, Wailuku, Maui Hawaii before the undersigned Hearings Examiner. The Executive Director was represented by Enforcement Attorney Karl K. Sakamoto. Respondent Corpuz was represented by Meyer M. Ueoka, Esq. Pursuant to notice given on January 19, 1996 Respondent Cederquist, Inc. again declined to participate in the contested case hearing.

On February 23, 1996 Respondent Corpuz filed a supplemental post-hearing brief. On March 7, 1996 Respondent Cedequist filed a post-hearing brief.

ATTACHMENT 1

PUBLIC NOTICE

published by Order of the
HAWAII CIVIL RIGHTS COMMISSION
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
STATE OF HAWAII

After a full hearing, the Hawaii Civil Rights Commission has found that Respondents Cederquist, Inc. and Andres Corpuz violated Hawaii Revised Statutes Chapter 378, Employment Discrimination, when they subjected a female employee to unwanted sexual conduct which created an intimidating, hostile and offensive work environment.

(Linda C. Tseu on behalf of the Complaint filed by Susan Collins v. Cederquist, Inc. and Andres Corpuz, Docket No. 95-001-E-R-S, [date of final decision], 1996).

The Commission has ordered us to publish this Notice and to:

- 1) Pay that employee an award to compensate her for emotional injuries she suffered.
- 2) Immediately cease and desist from sexually harassing all future employees and require Cederquist, Inc. to develop written non-discrimination policies on sex and harassment should it return to conduct business in the State of Hawaii.

DATED: _____

BY: _____
Authorized Agent for
Cederquist, Inc.

ANDRES CORPUZ