

HAWAII CIVIL RIGHTS COMMISSION 93 JUN 25 26:17

STATE OF HAWAII

In the Matter of)	Docket No. 91-001 E-SH
)	Fep No. WH 3962
DOLORES R. SANTOS,)	
)	FINAL DECISION AND ORDER
Complainant,)	
_____)	
MASAMI "SPARKY" NIIMI and)	
HAWAIIAN FLOWER EXPORTS, INC.)	
)	
Respondents.)	
_____)	

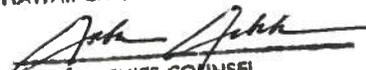
Note:
 Should read "
 "92-001 E-SH"

FINAL DECISION

On January 6, 1993, 1:00 p.m., the Commission heard oral argument in the above-entitled case. Present were Commissioners Amefil Agbayani, Daphne Barbee-Wooten, Josephine Epstein, Jackie Mahi-Erickson, and Richard Port. Complainant Dolores R. Santos ("Complainant") was present. The case in support of the complaint¹ ("Santos") was presented by Enforcement Attorneys Karl Sakamoto, Esq., and Anne Randolph, Esq. Respondent Masami "Sparky" Niimi ("Respondent Niimi") was represented by Glenn Hara, Esq. Respondent Hawaiian Flower Exports, Inc. ("HFE") was not

¹H.R.S. § 368-14(a) (1991) provides in part that "[t]he case in support of the complaint shall be presented at the hearing by counsel provided by the commission." Thus, at the administrative hearing stage, the Complainant is technically not a party to the action unless a motion to intervene is granted. H.A.R. § 12-46-25.

I hereby certify that this is a true and correct copy of the original on file at the HAWAII CIVIL RIGHTS COMMISSION.


 CHIEF COUNSEL

represented and did not file exceptions or participate in the oral argument.

Santos and Respondent Niimi filed written exceptions to and statements in support of the Proposed Decision issued by the Hearings Examiner. The Commissioners considered the exceptions and statements, heard the oral argument, and reviewed the portions of the record cited by the parties. At the hearing, Respondent Niimi sought to have an exhibit entered into the record. Santos did not oppose the request. Although the Commission's review of the proposed decision should be limited to the record developed at the administrative hearing, the Commission admits the document as Respondent's Exhibit O, pursuant to H.R.S. § 91-9(d).²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission hereby adopts and incorporates by reference Findings of Fact 1 through 38 and Appendix A of the Proposed Decision. The Commission hereby adopts and incorporates by reference Conclusions of Law A (Jurisdiction); B (Hostile Work Environment Sexual Harassment); C (Constructive Discharge); D (Liability); and E (Remedies) 1 (Back Pay), 3 (Punitive Damages), and 4 (Other Relief) of the Proposed Decision. The Commission hereby modifies Conclusion of Law E 2 (Compensatory Damages) of the Proposed Decision to determine that \$80,000.00 is appropriate compensation for Complainant's damages. The remainder of

²H.R.S. § 91-9(d) allows the parties to stipulate to modify or waive any procedure in a contested case.

Conclusion of Law E 2 is adopted and incorporated by reference.

The Commission having reviewed the record and considered the arguments finds that Complainant's testimony about the occurrence of the incidents to be more credible than Respondent Niimi's. The Commission finds that the preponderance of the evidence in the record establishes that the harassing conduct did take place. The conduct constitutes sexual harassment or discrimination on the basis of sex in violation of H.R.S. § 378-2 and H.A.R. § 12-46-101 et seq.

The Commission is authorized to award compensatory damages to victims of unlawful discrimination. H.R.S. § 368-14. The record is clear that the discriminatory conduct caused Complainant to suffer considerable embarrassment, humiliation, and emotional distress. There are ample medical records to support the causation and extent of Complainant's injuries. Without minimizing the extent of Complainant's injuries, however, the Commission deems that an award of \$80,000.00 in compensatory damages is appropriate in this case.

ORDER

IT IS HEREBY ORDERED that:

1. Respondent HFE shall pay Complainant back pay in the amount of \$8739.92 which consists of \$10,580.00 (Average weekly wage \$230.00 x 46 weeks) less \$1,840.34 (Weekly Benefits \$154.34 x 12 weeks for July 4, 1991 to September 30, 1991) received as

Workers' Compensation Disability payments. Complainant's future medical expenses will be covered by Workers' Compensation.

2. Respondents HFE and Masami Sparky Niimi are jointly and severally liable and shall pay Complainant \$80,000.00 as damages in compensation for her injuries resulting from discrimination based upon sex.

3. Respondent Masami Sparky Niimi shall pay Complainant \$10,000.00 as punitive damages.

4. Santos' request for deposition costs and interest is denied.

Dated: Honolulu, Hawaii, January 25, 1993

Amevil Agbayani
Amevil Agbayani, Chairperson

Daphne E. Barbee-Wooten
Daphne Barbee-Wooten, Commissioner

Josephine Epstein
Josephine Epstein, Commissioner

Jackie Mahi-Erickson
Jackie Mahi-Erickson, Commissioner

Richard Port
Richard Port, Commissioner

NOTICE: Pursuant to H.R.S. § 91-14 an aggrieved party may institute proceedings for judicial review in the circuit court within thirty days after service of the certified copy of the final decision and order of the agency.