

# Appellate Division Upholds \$525,000 Verdict For Hostile Work Environment And Unlawful Retaliation

---

August 6, 2018 | by Alex Lee

On July 30, 2018, a three judge panel of the Appellate Division upheld a \$525,000 jury verdict, for Customer Service Representative Marilyn Velez, against her former employer and supervisor.

Velez's claims were brought under the New Jersey Law Against Discrimination against her employer, Rocktenn Co., a corrugated box producer based out of Newark, New Jersey, and against her supervisor Raymond Perry, alleging claims of sexual harassment under a hostile work environment and retaliation. In support of her claims, Velez alleged that Perry her supervisor made inappropriate comments regarding his sexual relationships to Velez, asked Velez out on dates, suggested that Velez engage in a threesome with him, repeatedly told Velez that he loved Latino women (Velez was Latino), and looked at Velez's breasts, legs, and backside inappropriately when he spoke to her.

Velez further alleged that she made at least nine complaints to Human Resources regarding Perry's behavior that were disregarded. After she rebuffed Perry's advances and made her complaints to H.R., Perry began retaliating against her by complaining to other employees regarding the quality of her work performance. Shortly thereafter she was terminated by her employer on the basis that business was slow, and on recommendation of her supervisor Perry.

Following a trial, the jury returned a verdict awarding Velez \$525,000 in damages against both Defendants. On appeal, the Defendants presented multiple arguments.

Defendants first contended that plaintiff had failed to meet the reasonable woman standard under the standards of *Lehmann v. Toys 'R' Us, Inc.*, 132 N.J. 587 (1993), and that she had presented a sham affidavit in opposing summary judgment that should have resulted in dismissal of her claims before trial. Yet the Appellate Division disagreed finding that attempting to determine the veracity of the

affidavit would be an improper weighing of evidence, and that Velez's factual allegations had met the standards under *Lehmann* for claims of hostile work environment and retaliation.

The Appellate Division also rejected Defendants' repeated arguments in support of a directed verdict and JNOV, finding that there was sufficient direct evidence to support the jury's findings of discrimination, and that plaintiff's testimony of Perry's behavior was corroborated by other witness accounts. Defendants' arguments as to a motion for new trial were also rejected finding that evidence of sexual harassment of other employees was relevant and admissible as to the claim that the employer's sexual harassment policy was ineffective. Finally, the Appellate Division upheld the jury award, finding that remitter was not appropriate, and that the award was supported by the evidence.

Once again, employers should be reminded that particularly in the wake of the #MeToo movement, maintaining a workplace free of sexual harassment must be a priority. Moreover, this case highlights that while maintaining a thorough and effective sexual harassment policy can serve to reduce or eliminate liability to an employer, instituting a toothless and unenforced sexual harassment policy, may be just as ineffective as having no policy at all.