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DAMICO, DEL SARDO & MONTANARI, LLC

300 Lackawanna Avenue
West Paterson, New Jersey 07424
Attorneys for Plaintiffs, Ramon Cuevas
And Jeffrey Cuevas
File No.: CV-0531(E)

RECEIVED #5

MAY 28 2009

SUPERIOR COURT OF N.J.
FEE OFFICE
COUNTY OF HUDSON

BATCH #	612
RECEIVED DATE	5/28/09
CA / CK	MO / CG
CK/CG ACCT. #	4838
AMOUNT	\$200-
PAYOR	

RAMON CUEVAS and JEFFREY CUEVAS,

Plaintiffs,

vs.

**WENTWORTH GROUP, WENTWORTH
PROPERTY MANAGEMENT
CORPORATION, ARTHUR BARTIS
and JOHN DOES 1-10, XYZ
CORPORATION 1-10(names being fictitious),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAWDIVISION: HUDSON COUNTY**

**FILED
TEAM #4**

DOCKET NO.: HUD-L- 2728-09

MAY 28 2009

CIVIL ACTION

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #2

**COMPLAINT, JURY DEMAND,
DESIGNATION OF TRIAL
COUNSEL AND CERTIFICATION**

Plaintiff, RAMON CUEVAS, residing at 108 Centennial Avenue, in the Township of Cranford, County of Union, and State of New Jersey and Plaintiff, JEFFREY CUEVAS residing at 2193 Ash Court, in the Borough of Monmouth, County of Monmouth, and State of New Jersey by way of their Complaint against the Defendants hereby say:

I. Nature of Action, Jurisdiction, and Venue

1. This is an action seeking equitable and legal relief for (1) Violation of New Jersey Law Against Discrimination- Race Discrimination; (2) NJLAD-hostile work environment based on Race; (3) NJLAD- Retaliation; and (4) NJLAD- Failure to promote; (5) Intentional Infliction of Emotional Distress.

2. This Court has jurisdiction due to the nature of the action and the amount in controversy. Additionally, Plaintiffs has satisfied all prerequisites to bringing these claims.

3. Venue is appropriate in this Court since the Defendants conduct business in Hudson County.

II. Parties

4. At all times relevant herein, the Defendants, WENTWORTH GROUP, WENTWORTH PROPERTY MANAGEMENT CORPORATION (collectively referred to as "WENTWORTH" hereafter were duly licensed corporations conducting business in the State of New Jersey and maintained their corporate offices at 100 Highway 36 East, in the Borough of West Long Branch, County of Monmouth, and State of New Jersey. The Defendants maintain and/or manage properties throughout New Jersey.

5. Plaintiff, Ramon Cuevas was employed by the defendant WENTWORTH as a Regional Vice President throughout his tenure with the company.

6. Plaintiff, Jeffrey Cuevas was hired by the Defendant, WENTWORTH as a Portfolio Manager and was promoted to Co-Executive Director prior to his termination.

7. At all times relevant hereto, Defendant, ARTHUR BARTIKOFSKY (hereinafter referred to as "BARTIKOFSKY") was Executive Vice President employed by the Defendant, WENTWORTH and controlled the Plaintiffs' work environment and maintained control and supervision over the Plaintiffs.

8. Corporate Defendants are employers subject to suit under the New Jersey Law Against Discrimination.

9. Individual Defendants are subject to suit under the New Jersey Law against Discrimination.

10. John Does 1-10 represent the fictitious and/or unknown individuals that supervised and/or participated in any unlawful acts against the Plaintiff.

11. XYZ CORPORATION 1-10 represents the fictitious and/or unknown corporation that employed the Plaintiff throughout her tenure and/or at one time during her employment with the company.

12. At all times referred to in this complaint, employees of the Corporate Defendant, who are referred to herein, were acting within the scope of their employment at the workplace during working hours. Moreover, the Corporate Defendants ratified, embraced and added to their conduct.

III. Factual Allegations Common to All Counts

Wentworth Property Management

13. Wentworth was formed and began conducting business more than 20 years ago.

14. Wentworth provides property management services in New Jersey, New York, Pennsylvania, Maryland, Virginia, and the District of Columbia.

15. Wentworth employees approximately 1,200 individuals in various locations throughout the above-referenced States.

16. Although the aforementioned locations are inhabited by a large minority population, Wentworth maintained less than 1 percent minorities as employees at the time the Plaintiff's maintained employment with the company.

Ramon Cuevas

17. The Plaintiff, Ramon Cuevas (hereinafter referred to as "Ramon") was employed by the Defendant, WENTWORTH as a Regional Vice President. Plaintiff was hired in or around May 1, 2005 and terminated on or about January 2, 2008.

18. Ramon interviewed with and was subsequently hired by Michael Mendillo.

19. Throughout the course of his employment, Ramon has performed his job duties in an exemplary fashion.

20. At no time during the Course of his employment was Ramon reprimanded and was repeatedly advised by Michael Mendillo that he was performing an outstanding job at Wentworth.

21. For approximately one year, Ramon was supervised by Michael Mendillo and was not subject to a hostile work environment and found his conditions of employment to be suitable under Michael Mendillo's direct supervision.

22. In or around 2006, Michael Mendillo opted to travel and manage the company's national accounts. As a result, all Regional Vice Presidents, including Ramon, directly reported to the Defendant, Arthur Bartikofsky.

23. The defendant, Arthur Bartikofsky was the Executive Vice President of Operations for Wentworth.

24. Ramon's work conditions and environment dramatically changed upon his duty to report to the Defendant, Arthur Bratikofsky.

25. Although Ramon was performing at an exceptionally high level at Wentworth that was the same as or better than others in his position, the Defendant, Bartikofsky treated the Plaintiff, Ramon Cuevas differently than other employees.

22. The Plaintiff, Ramon Cuevas was the only Hispanic Regional Vice President and also the only minority to hold the position from the inception of the company.

23. In fact, less than 1% of all individuals employed by Wentworth were minorities at the time Ramon was employed by the company.

24. Bartikofsky created a hostile work environment by participating in comments and mockery based on the Plaintiff's race on several occasions.

25. The Plaintiff, Ramon Cuevas together with other supervisors and Bartikofsky were required to participate in conference calls and meetings frequently. Bartikofsky would intentionally single the Plaintiff out and criticize his work performance despite the fact that he was performing at a higher level than others similarly situated.

26. Initially, Ramon had the ability to hire and terminate employees at Wentworth. During the Plaintiff's tenure he was responsible for hiring several well qualified minority employees.

27. Subsequently thereafter, Bartikofsky learned that the plaintiff hired minority employees and called the Plaintiff to a special meeting. The Defendant, Bartikofsky advised the Plaintiff at the aforementioned meeting that his ability to hire and fire has been suspended because the type of employees he has hired. He further advised the Plaintiff that the minority employees did not "reflect well" at the property locations.

28. The Plaintiff questioned Bartikofsky why the Defendant felt the minority employees did not "reflect well" at the property locations. Bartikofsky advised the plaintiff that he did not like the way the minority employees looked, dressed, and spoke.

29. The Plaintiff advised the Defendant, Bartikofsky that he disagreed because the minority employees hired by the Plaintiff were well qualified and their work performance was good.

30. The Defendant Bartikofsky advised the Plaintiff that he it is apparent "you people" all stick together and from this point forward, the plaintiff will not be making any personnel decisions.

31. Subsequently thereafter, the racially motivated jokes substantially increased by Bartikofsky and others in his presence.

32. At a catered lunch meeting between Bartikofsky and all Wentworth's Regional Vice Presidents, Bartikofsky stated "Sorry Ramon, they did not have tacos for you." The Plaintiff, Ramon Cuevas became noticeably embarrassed as his coworkers laughed at Bartikofsky's misplaced humor.

33. The race jokes continued and increased at meetings that Bartikofsky participated in, however, the plaintiff did not feel comfortable complaining because based on previous conduct, he knew that Bartikofsky would terminate his employ regardless of the illegality of same.

34. The Plaintiff attempted to advise Bartikofsky and others that he was not receptive to the racial hostility by advising them "Hey can we joke about something other than a person's race". Despite the Plaintiff's discontent, the defendant, Bartikofsky participated in the hostile environment by making race comments, laughing, and encouraging others to mock the Plaintiff's race.

35. In fact, the more the Plaintiff would resist and express displeasure with the racial comments, the more Bartikofsky would unduly scrutinize his work.

36. During the last six months of the Plaintiff's employment with Wentworth, the plaintiff was producing at a high economic rate and generating monies for the company. During the same time period there were other Regional Vice Presidents who were not as productive as the Plaintiff. Despite the aforementioned, Bartikofsky scrutinized the Plaintiff and praised others (not of minority race) who were not generating the same income for the company as the Plaintiff.

37. The defendant, Bartikofsky promoted white Regional Vice Presidents over the Plaintiff without regard to performance. In fact, some of the Regional Vice Presidents promoted were the issue of complaints of discrimination and hostile work environment and have caused Wentworth to be subject to several lawsuits.

38. The defendant, Bartikofsky increased his abuse towards the Plaintiff which caused the Plaintiff to inquire whether the Defendant, Bartikofsky did not like him solely because of his race. The Defendant, Bartikofsky advised the Plaintiff not to question his authority.

39. On or about January 1, 2008, the Defendant, Bartikofsky e-mailed the Plaintiff and requested to meet him at a rest stop along side of the Garden State Parkway. The Plaintiff was surprised by the defendant's request, however, complied with his request.

40. At the aforementioned location, the Plaintiff was handed a letter and advised that he was fired.

41. Subsequently thereafter, the Plaintiff was replaced by a white employee.

42. The Defendants' actions were so intolerable that they resulted in Plaintiff suffering a specific ailment and/or Plaintiff taking action to seek medical treatment. In addition, plaintiff lost earnings and was compelled to accept employment for less wages.

JEFFREY CUEVAS

43. The Plaintiff, Jeffrey Cuevas (hereinafter referred to as "Jeffrey") was originally employed by the Defendant, WENTWORTH as a Portfolio Manager. Plaintiff was hired in or around December of 2005 and terminated in or around December of 2007.

44. Jeffrey interviewed with and was subsequently hired by Neil Mackey.

45. Throughout the course of his employment, Jeffrey has performed his job duties in an exemplary fashion.

46. In 2006 Jeffrey reported to Wentworth's Regional Vice President, Neil Mackey.

47. Neil Mackey was present and participated in the race jokes that Ramon was the subject matter of during the meetings between Bartikofsky and the Regional Vice Presidents employed by Wentworth.

48. Neil Mackey began mocking the plaintiff and ridiculing him with the same type of conduct the Regional Vice Presidents and Bartikofsky engaged in with respect to his brother, Ramon.

49. Neil Mackey advised Jeffrey to tell his brother, Ramon that when they attend a convention he will make sure to have his room locked so Ramon can't "break in".

50. Neil Mackey further advised Jeffrey that he was going to Atlantic City on business with Ramon and that he felt safe because he knows Ramon carries a switch blade.

51. Neil Mackey would routinely make derogatory comments towards Jeffrey throughout the work day. For instance, Neil Mackey advised Jeffrey that he should appreciate the fact that he is making tacos for dinner.

52. Jeffrey did not laugh or respond to Neil Mackey's aforementioned remarks.

53. In Spring of 2007, Jeffrey was promoted by Michael Mendillo to Co-Executive Director with another white female. As a result, Jeffrey was also required to report to the Defendant, Bartikofsky.

54. The Defendant, Bartikofsky treated Jeffrey very differently than white employees. Bartikofsky would publically reprimand Jeffrey and would unduly scrutinize his work.

55. Bartikofsky would routinely embarrass Jeffrey by making jokes regarding his race. A co-employee, Alan Trachtenberg also participated in and laughed at Bartikofsky's behavior towards Jeffrey.

56. Despite Bartikofsky's expressed and unwarranted displeasure with Jeffrey's work performance, Jeffrey received a \$10,000.00 pay increase that was approved by Michael Mendillo based on Jeffrey's outstanding work performance.

57. Subsequently thereafter, Jeffrey advised Alan Trachtenberg that he felt uncomfortable with the racist remarks passed by Bartikofsky and requested that he cease from

participating in the conduct. Jeffrey further advised Alan Trachtenberg that he wanted to report the conduct to Human resources and/or call the ethics hotline but felt uncomfortable because Bratikofsky would be aware of the person who made the complaint because he was one of the only Hispanic males employed by the company and the only Hispanic in the region.

58. Alan Trachtenberg appeared disturbed and did not respond to Jeffrey's complaint.

59. Within 2 days thereafter, Jeffrey was terminated from Wentworth.

60. The Defendants' actions were so intolerable that they resulted in Plaintiff suffering a specific ailment and/or Plaintiff taking action to seek medical treatment. In addition, plaintiff lost earnings and was compelled to accept employment for less wages.

COUNT I

(New Jersey Law Against Discrimination-Race Discrimination)

61. Plaintiffs reallege and incorporate herein the above paragraphs.

62. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. by discriminating against the Plaintiffs, Ramon Cuevas and Jeffrey Cuevas based harassing on their race and harassing them based on same.

63. Furthermore, upon information and belief, Defendants have engaged in a pattern and practice of such discrimination and harassment.

64. Defendants herein are liable for the racially harassing conduct, the hostile work environment, and retaliatory conduct under the common law principles of respondeat superior as well as case law holding employers responsible in situations when incidents of race discrimination and harassment is known to occur and the employer fails to take remedial action.

65. As a direct and proximate cause of the actions of Defendants, Plaintiffs have suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of previously existing mental or emotional conditions. Furthermore, Plaintiffs have suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Plaintiffs' life. Moreover, Plaintiffs have and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiffs' damages have been experienced in the past, and they will continue in the future.

WHEREFORE, Plaintiffs demand judgment against the defendants named herein jointly and severally, on the first count of this complaint as follows:

- a. for an order awarding pecuniary damages, together with prejudgment interest, at the highest legal rate;
- b. for an order awarding compensatory damages, including but not limited to back pay and front pay together with prejudgment interest at the highest legal rate;
- c. for an order awarding punitive, exemplary and/or special damages;
- d. for an order awarding reimbursement of litigation expenses, including reasonable attorney's fees, expert fees and other costs of suit; and
- e. for an order awarding such other and further relief as this court may deem appropriate and equitable in the premises.

COUNT II
(New Jersey LAD-Hostile Work Environment-Racial Harassment)

66. Plaintiffs reallege and incorporate herein the above paragraphs.

67. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., by submitting Plaintiffs to a hostile work environment based on race.

68. Furthermore, upon information and belief, Defendants have engaged in a pattern and practice of such harassment.

69. The defendants named herein are liable for the racially harassing conduct, the hostile work environment, and retaliatory conduct under the common law principles of respondeat superior as well as case law holding employers responsible in situations when incidents of racially harassment are known or should have been known to occur and the employer fails to take remedial action.

70. As a direct and proximate cause of the actions of Defendants, Plaintiff have suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional conditions. Furthermore, Plaintiffs have suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Plaintiffs' life. Moreover, Plaintiffs have and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiffs' damages have been experienced in the past, and they will continue in the future.

WHEREFORE, Plaintiffs demand judgment against the defendants named herein jointly and severally, on the first count of this complaint as follows:

- a. for an order awarding pecuniary damages, together with prejudgment interest, at the highest legal rate;
- b. for an order awarding compensatory damages, including but not limited to back pay and front pay together with prejudgment interest at the highest legal rate;
- c. for an order awarding punitive, exemplary and/or special damages;
- d. for an order awarding reimbursement of litigation expenses, including reasonable attorney's fees, expert fees and other costs of suit; and

e. for an order awarding such other and further relief as this court may deem appropriate and equitable in the premises.

COUNT III
(New Jersey Law Against Discrimination-Retaliation)

71. Plaintiffs reallege and incorporate herein the above paragraphs.

72. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., by retaliating against Plaintiffs because Plaintiffs have made complaints that Plaintiffs were harassed and/or subjected to unfair treatment based upon their race, and/or subjected to a hostile work environment.

73. The defendants named herein are liable for the racially harassing conduct, the hostile work environment, and retaliatory conduct under the common law principles of respondeat superior as well as case law holding employers responsible in situations when incidents of race harassment are known to occur and the employer fails to take remedial action.

74. As a direct and proximate cause of the actions of Defendants, Plaintiffs have suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional conditions. Furthermore, Plaintiffs have suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Plaintiffs' life. Moreover, Plaintiffs have and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiffs damages have been experienced in the past, and they will continue in the future.

WHEREFORE, Plaintiffs demand judgment against the defendants named herein jointly and severally, on the first count of this complaint as follows:

a. for an order awarding pecuniary damages, together with prejudgment interest, at the highest legal rate;

- b. for an order awarding compensatory damages, including but not limited to back pay and front pay together with prejudgment interest at the highest legal rate;
- c. for an order awarding punitive, exemplary and/or special damages;
- d. for an order awarding reimbursement of litigation expenses, including reasonable attorney's fees, expert fees and other costs of suit; and
- e. for an order awarding such other and further relief as this court may deem appropriate and equitable in the premises.

COUNT IV

New Jersey Law Against Discrimination

(Discrimination Based on Race-Failure to Promote as to Ramon Cuevas)

75. Plaintiff, Ramon Cuevas re-alleges and incorporates herein the above paragraphs.

76. Pursuant to the provisions of the Law Against Discrimination N.J.S.A. 10:5-1 et seq. and specifically N.J.S.A. 10:5-12(a), it is unlawful for an employer, **because of race**, creed, color, national origin, ancestry, age, marital status... gender...to discharge ...from employment such individual or to discriminate against such individual in compensation or in conditions or privileges of employment.

77. The foregoing facts and circumstances alleged herein regarding the treatment of the Plaintiff by the Defendants clearly establish that the plaintiffs were denied promotional opportunities and was later terminated because of his race. The plaintiff was not provided with the same opportunity for advancement at WENTWORTH as white employees similarly situated.

78. Defendants herein are liable for the discriminatory conduct, the hostile work environment, and retaliatory conduct under the common law principles of respondeat superior as well as case law holding employers responsible in situations when incidents of race discrimination are known to occur and the employer fails to take remedial action.

79. Defendants, while acting in their capacity as plaintiff's direct supervisors and/or co-workers aided, abetted, incited, coerced, and compelled the discriminatory acts set forth herein by WENTWORTH and its employees in violation of the provisions of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq. and specifically N.J.S.A. 10:5-12(e). In addition to pecuniary damages, the plaintiffs also seek an award of compensatory damages for pain and humiliation pursuant to Section 12 of the NJLAD, N.J.S.A. 10:5-13.

80. The intentional and willful acts of discrimination engaged by the defendants as aforesaid provide the factual predicate for an award of punitive damages to the plaintiff pursuant to Section 12 of the NJLAD, N.J.S.A. 10:5-17.

81. The Plaintiffs also seek an award of reasonable attorney's fees and reimbursement of litigation expenses pursuant to N.J.S.A. 10:5-27.1.

82. As a direct and proximate result of the negligent, intentional, wrongful and malicious acts of discrimination against the plaintiff based upon his race, engaged in by the aforesaid defendants, the plaintiff has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Plaintiff's life. Moreover, Plaintiff has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiff's damages have been experienced in the past, and they will continue in the future.

WHEREFORE, Plaintiff demands judgment against the defendants named herein jointly and severally, on the first count of this complaint as follows:

- a. for an order awarding pecuniary damages, together with prejudgment interest, at the highest legal rate;
- b. for an order awarding compensatory damages, including but not limited to back pay and front pay together with prejudgment interest at the highest legal rate;
- c. for an order awarding punitive, exemplary and/or special damages;

d. for an order awarding reimbursement of litigation expenses, including reasonable attorney's fees, expert fees and other costs of suit; and

e. for an order awarding such other and further relief as this court may deem appropriate and equitable in the premises.

COUNT V
(Intentional Infliction of Emotional Distress)

83. Plaintiffs reallege and incorporate herein the above paragraphs.

84. The Defendants conduct and actions as set forth above were extreme, outrageous, and uncommon.

85. As a direct and proximate cause of the actions of Defendants, Plaintiffs have suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional conditions. Furthermore, Plaintiffs have suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Plaintiffs' life. Moreover, Plaintiffs have and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiffs' damages have been experienced in the past, and they will continue in the future.

WHEREFORE, Plaintiffs demand judgment against the defendants jointly and severally, on the eighth count of this complaint as follows:

a. for an order awarding pecuniary damages, together with prejudgment interest, at the highest legal rate;

b. for an order awarding compensatory damages, including but not limited to back pay and front pay together with prejudgment interest at the highest legal rate;

c. for an order awarding punitive, exemplary and/or special damages;

d. for an order awarding reimbursement of litigation expenses, including reasonable attorney's fees, expert fees and other costs of suit; and

e. for an order awarding such other and further relief as this court may deem appropriate and equitable in the premises.

JURY DEMAND

Plaintiff hereby demands a trial by jury as on all issues herein presented.

DAMICO, DEL SARDO & MONTANARI, LLC

By: 

DARREN J. DEL SARDO, ESQ.

Dated: May 19, 2009

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, attorney Darren J. Del Sardo, Esq., of the Firm of Damico, Del Sardo & Montanari, LLC, is hereby designated as trial counsel.

DAMICO, DEL SARDO & MONTANARI, LLC

By: 

DARREN J. DEL SARDO, ESQ.

Dated: May 19, 2009

CERTIFICATION

Pursuant to R. 4:5-1, I certify that to the best of my knowledge the matter in controversy is not the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

DAMICO, DEL SARDO & MONTANARI, LLC

By: 
DARREN J. DEL SARDO, ESQ.

Dated: May 19, 2009