
Retaliation Charges

Sumitomo Shoji America, Inc. v. Avagliano, 457
US 176 - Supreme Court 1982

8-4-1986

Rosemary Bellini and Palma Incherchera Retaliation Complaint in Fed. Ct. with Exhibits

Lewis M. Steel '63

NOTICE OF ENTRY

Sir:-Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

STEEL & BELLMAN, P.C.

Attorneys for

Office and Post Office Address

351 Broadway
NEW YORK, N. Y. 10013

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

STEEL & BELLMAN, P.C.

Attorneys for

Office and Post Office Address

351 Broadway
NEW YORK, N. Y. 10013

To

Attorney(s) for

Index No.

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROSEMARY BELLINI and PALMA
INCHERCHERA,

Plaintiffs,

-against-

SUMITOMO CORP. OF AMERICA,
INC.,

Defendant.

SUMMONS and COMPLAINT

STEEL & BELLMAN, P.C.

Attorneys for Plaintiffs

Office and Post Office Address, Telephone

351 Broadway
NEW YORK, N. Y. 10013
(212) 925-7400

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box
☐ Certification By Attorney
☐ Attorney's Affirmation

certify that the within has been compared by me with the original and found to be a true and complete copy. state that I am

the attorney(s) of record for in the within action; I have read the foregoing and know the contents thereof; the same is

true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

I, being sworn, say: I am

Check Applicable Box
☐ Individual Verification
☐ Corporate Verification

in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

the of a corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

(If both boxes are checked — indicate after names, type of service used.)

I, being sworn, say; I am not a party to the action, am over 18 years of age and reside at

On 19 I served the within

Check Applicable Box
☐ Service By Mail
☐ Personal Service on Individual

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

Sworn to before me on

19

The name signed must be printed beneath

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROSEMARY BELLINI and PALMA
INCHERCHERA,

Plaintiffs,

-against-

COMPLAINT

SUMITOMO CORP. OF AMERICA,
INC.,

Defendant.

-----X
JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1337, 1343(3) and (4), 2201 and 2202. This case arises under the Equal Employment Opportunity Act of 1964, as amended, 42 U.S.C. §2000e, et seq.

THE PARTIES

2. Plaintiff Rosemary Bellini is a female citizen of the United States. She is and has been an employee of the defendant Sumitomo Corp. of America, Inc. (hereinafter referred to as "SCOA"), and its predecessor corporation, Sumitomo Shoji America, Inc., since August 7, 1972. Ms. Bellini is a named plaintiff in a class action pending against the defendant in the Southern District of New York before the Hon. Charles H. Tenney, which is styled Avagliano, et al. v. Sumitomo Shoji America, Inc., 77 Civ. 5641 (CHT). At all times relevant to this complaint, plaintiff has been employed at SCOA's office located at 345 Park Avenue, New York, New York.

3. Palma Incherchera is a female citizen of the United States. She is and has been an employee of the defendant SCOA and

its predecessor corporation, Sumitomo Shoji America, Inc., since October 30, 1972. Ms. Incherchera is the plaintiff in a class action pending against the defendant in the Southern District of New York before the Hon. Charles H. Tenney, which is styled Incherchera v. Sumitomo Corp. of America, Inc., 82 Civ. 4930 (CHT). At all times relevant to this complaint, plaintiff has been employed at SCOA's office located at 345 Park Avenue, New York, New York.

4. The defendant SCOA is a corporation incorporated in the State of New York and subject to the provisions of the Equal Employment Opportunity Act of 1964, as amended (hereinafter referred to as "the Act").

JURISDICTIONAL MATTERS

5. Plaintiffs Bellini and Incherchera both filed charges with the Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC") on February 15, 1983. Both charges allege that the plaintiffs were retaliated against by SCOA for charging it with prohibited discrimination under the Act.

6. On August 8, 1984, the District Director of the New York District Office of the EEOC issued a determination on the basis of the Incherchera charge and the EEOC's investigation, finding that there was probable cause to believe that SCOA had attempted to intimidate the plaintiff after she filed her charges of discrimination, that SCOA had sought to isolate the plaintiff from other SCOA employees and that SCOA had failed to promote the plaintiff in retaliation for filing her charges of discrimination. Thereupon, the EEOC determined to attempt to conciliate

Incherchera's charges. This Determination is attached as Exhibit 1.

7. On August 8, 1984, the District Director of the New York District Office of the EEOC made a determination with regard to the Bellini charge. The EEOC determined that there was probable cause to believe that SCOA intimidated the plaintiff as a result of her proceeding with her federal court complaint against SCOA. The EEOC, however, did not find enough evidence on Bellini's claim that she had been retaliated against by being denied a promotion to either make a finding of probable or no probable cause. The EEOC also determined to attempt to conciliate the Bellini charges. This Determination is attached as Exhibit 2.

8. Thereafter, the EEOC issued both plaintiffs a Notice of Right to Sue dated January 28, 1986, which are attached as Exhibits 3 and 4.

FIRST CAUSE OF ACTION

9. The defendant has denied plaintiff Bellini promotions and continues to deny her promotions in retaliation for her filing charges of discrimination pursuant to the Act and in retaliation for her participating as a plaintiff in the case of Avagliano, et al. v. Sumitomo Shoji America, Inc., 77 Civ. 5641 (CHT).

10. The defendant has intimidated and harassed plaintiff Bellini in or about December 1982 by attempting to get her to settle her pending federal action out of the presence of her attorney and by denying her a promotion to administrator in retaliation for her determining to continue to prosecute the Avagliano case and resisting this settlement pressure. At the time

the defendant engaged in this conduct, plaintiff was the only remaining plaintiff who continued to work for SCOA, and the Avagliano case had not yet been certified as a class action.

11. Defendant has further retaliated against the plaintiff by continuing to deny her promotions, in violation of the Act.

SECOND CAUSE OF ACTION

12. The defendant has retaliated against plaintiff Incherchera by denying and continuing to deny her promotions in retaliation for her filing a charge of discrimination with the EEOC on or about January 5, 1982 and for instituting and prosecuting her suit in the United States District Court, entitled Incherchera v. Sumitomo Corp. of America, Inc., 82 Civ. 4930 (CHT).

13. The defendant also retaliated and attempted to intimidate plaintiff Incherchera after the filing of her charge with the EEOC by attempting to get her to settle her charges outside the presence of her attorney and by denying her promotions when she refused to do so.

14. The defendant further has harassed and retaliated against the plaintiff by seeking to isolate her from other employees as a result of her having filed charges with the EEOC and having filed a complaint in the United States District Court.

EQUITY

15. Plaintiffs have no adequate or complete remedy at law to redress the wrongs alleged and a permanent injunction is the only means of securing adequate relief.

WHEREFORE, plaintiffs respectfully request that this Court:

A. Assign this case for hearing at the earliest possible date and cause the matter to be expedited in every possible way;

B. Issue a permanent injunction:

1. Prohibiting the defendant from harassing, intimidating, or retaliating against the plaintiffs;

2. Enter a declaratory judgment that defendant's conduct was discriminatory and retaliatory and in violation of the Act;

3. Award plaintiffs all appropriate damages for all injuries suffered by virtue of the acts of defendant as described in the above allegations;

4. Order that the plaintiffs be promoted to appropriate positions, awarded back pay and given training as necessary to insure that they are made whole;

5. Award plaintiffs all costs, plus reasonable attorney fees;

6. Award such other and further relief as may be necessary and proper.

Dated: New York, New York
April 4, 1986

Respectfully submitted,

STEEL & BELLMAN, P.C.
Attorneys for Plaintiffs
351 Broadway
New York, New York 10013
(212) 925-7400

by 



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1501
NEW YORK, NEW YORK 10007

Rosemary Bellini
51 East 97th Street
New York, NY 10029

Charge No. 021-83-1381

Charging Party

Sumitomo Corporation of America
345 Park Avenue
New York, NY 10154

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral and all other jurisdictional requirements have been met.

Charging Party alleges that she was harassed, and that she was denied promotion in retaliation for having filed a previous Title VII charge with this Commission, and for her persistence in pursuing her rights protected by Title VII of the Civil Rights Act of 1964, as amended.

Respondent denies the allegations.

Investigation reveals that Charging Party has been employed by Respondent since 1972. On February 28, 1977, she filed a sex and national origin discrimination charge with the Commission (charge no. 021-77-1361). She subsequently requested a Right-to-Sue letter to allow her to join a private action entitled Avagliano v. Sumitomo Shoji America, Inc. She is the only plaintiff from this action who is still employed by Respondent.

Charging Party alleges that because of the actions she had taken to protect her Title VII rights, she was not awarded the title of senior secretary until January 1982. She alleges that on December 29, 1982, after her lawsuit was reactivated in the District Court, her supervisor engaged her in a conversation about her suit and possible settlement in the absence of her attorney. She alleges that she was intimidated during the conversation. Respondent admits having a conversation with Charging Party about her Title VII case out of the presence of her attorney, but denies harassing her or pressuring her into resolving it through settlement.

Investigation shows that Respondent was aware that Charging Party had been represented by counsel, and her counsel's objection to any direct contacts with his clients concerning their case. Investigation further shows that Respondent attempted to find out from another Charging Party during a deposition how the class is paying for attorney fee.

It is undisputed that the December 29, 1982 conversation involving Charging Party and her supervisor was held in the absence of her attorney. Whether Respondent had instructed the supervisor to engage in such a conversation or not does not affect this Commission's decision, because Respondent would still be responsible, one way or the other, for the supervisor's conduct if it was found to be in violation of Title VII.

Contents of the conversation submitted by both parties were reviewed and considered. I conclude that, even judging from the information submitted by Respondent, there is reasonable cause to believe that Charging Party was intimidated by the conversation, especially by the remarks made by her supervisor concerning the great deal of money Respondent was spending on the lawsuit. I further conclude that Charging Party was intimidated by what could reasonably be construed as another attempt to seek information concerning the plaintiffs' financial ability and their attorney fee arrangement. Charging Party's response along these lines, and her subsequent gesture of her friendship to her supervisor, including a farewell visit and a gift, do not understate what she believes was an intimidating message delivered for Respondent to have her successfully settled her case. Accordingly, I conclude that there is reasonable cause to believe that the intimidation allegation is true.

It is undisputed that Charging Party was not among the six (6) senior secretaries promoted in January 1983. Respondent contends that Charging Party did not have the required two-year service as a senior secretary to qualify her for the promotion. It further states that she was not retaliated against because none of the senior secretaries promoted in 1983 had spent less than two years on the job. It also states that the selections for the promotion had been made prior to the December 29, 1982 conversation.

Examination of Respondent's records shows that the recommendations and the selections for the 1983 promotion had been made prior to Charging Party's December 29, 1982 conversation with her supervisor. However, prior promotion records covering the 1980 through the 1982 promotions show that there were at least four (4) senior secretaries promoted without having to meet the required two-year title seniority requirement. Respondent contends that this requirement was waived only in exceptional cases. The record, nevertheless, shows that in at least one instance the senior secretary promoted did not receive an evaluation normally considered outstanding to warrant a waiver. Although performance is described by Respondent as one of the many factors considered for promotion, it appears that it was at least a major factor.

The record shows that there were five employees who also had one year service as senior secretaries but who received the same or higher

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Charge No. 021-83-1381

numerical scores than Charging Party in their December 1982 evaluations. The record shows that no waivers for the two-year title seniority requirement were granted in 1983, despite that one employee received a score as high as 92 in her evaluation. Examination of Charging Party's previous evaluations, including those given prior to her filing of her original charge, shows that she had never been given any evaluation with numerical score higher than 82. While some of the evaluations, especially those given shortly after she had filed her original charge, might have been acts of retaliation in themselves, her 1981 and 1982 evaluations appear to be consistent.

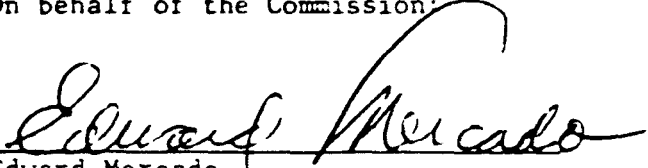
The record as a whole does not provide enough evidence to support either party's version in this matter, I therefore make no finding on the issue of promotion.

Having determined that there is reasonable cause to believe that the charge is true in part, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A "Notice of Conciliation Process" is enclosed for your information. A representative of this office will be in contact with each party in the near future to begin the conciliation process.

On behalf of the Commission:

AUG - 8 1984

Date


Edward Mercado
District Director

Enclosure:

Notice of Conciliation Process



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1501
NEW YORK, NEW YORK 10007

Palma Incherchera
2866 Philip Avenue
Bronx, NY 10461

Charge No. 021-83-1382

Charging Party

Sumitomo Corporation of America
345 Park Avenue
New York, New York 10154

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral and all other jurisdictional requirements have been met.

Charging Party alleges that she was denied equal terms and conditions of employment, and that she was denied promotion in retaliation for having filed a previous Title VII charge with this Commission, and for her persistence in pursuing her rights protected by Title VII of the Civil Rights Act of 1964, as amended.

Respondent denies the allegations.

It is undisputed that Charging Party has been employed by Respondent since 1972. The record shows that Charging Party filed a sex and national origin discrimination charge with this Commission in January 1982. The record further shows that she subsequently commenced a private Title VII action in Court. Charging Party alleges that she was denied equal terms and conditions of employment after her filing of her charge, in that she was harassed and pressured to settle her case and that she was isolated from the other employees. She alleges that Respondent further retaliated against her by not promoting her in January 1983.

Investigation shows that Respondent was aware that Charging Party was represented by counsel at the time the alleged intimidating conversation occurred. Charging Party alleges that Respondent's officials sought her out to have a conversation with her as to why she had filed the discrimination charge. She alleges that she was pressed with dropping her charge and her attorney. Respondent admits having a conversation with Charging Party, but denies applying pressure in an attempt to achieve a settlement. Respondent states that discussions concerning her case came up in meetings designed to listen to Charging Party's grievances concerning her heavy workload and other non-Title VII related working conditions.

Investigation reveals that Respondent's official did ask Charging Party to drop her counsel in this meeting. The record supports Charging Party's intimidation allegation, as evidenced by statements submitted by Charging Party including a letter of protest by her attorney. Respondent subsequently cancelled a scheduled meeting with Charging Party.

Charging Party's isolation allegation is supported by two confidential witnesses who stated that their friendship with Charging Party had met with Respondent's disapproval. In one case, the confidential witness stated that this witness had been warned by a supervisor to stay away from Charging Party and not to get into trouble. Although Respondent states that it was not afforded the substance of the statements of the confidential witnesses to allow it to formulate a response, we see no reason not to credit the statements from these witnesses.

With respect to the promotion issue, Respondent states that Charging Party was not promoted in January 1983 because she was not one of the best performers warranted promotion. It further states that a better performer who, like Charging Party, met the two-year requirement as a senior secretary was also not promoted.

Examination of Charging Party's evaluations indicates that she had been given very good evaluations in 1980 and 1981. The record shows that her evaluation dropped substantially in 1982, after she had filed her previous Title VII charge.

Respondent states that Charging Party was given a lower numerical score in her 1982 evaluation because her heavy workload, which had awarded her good evaluations in the two previous years, declined after it hired an extra employee. It further states that Charging Party began developing negative attitude towards her job. Respondent's contention regarding the workload was rebutted by a credible witness who stated that Charging Party's workload has remained the same. Respondent's evaluation of her negative attitude is subjective and is not supported by record. Respondent's retaliatory practice of given lower evaluation was likewise practiced on another Charging Party who had filed similar charges with the Commission. I, therefore, conclude that there is reasonable cause to believe that Charging Party was not promoted to administrator in January 1983 because of retaliation.

Having determined that there is reasonable cause to believe that the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A "Notice of Conciliation Process" is enclosed for your information. A

Page 3

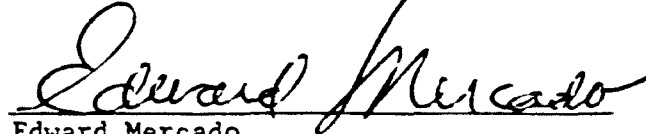
Palma Incherchera vs. Sumitomo Corporation
Charge No. 021-83-1382

representative of this office will be in contact with each party in the near future to begin the conciliation process.

On behalf of the Commission:

AUG - 8 1984

Date

A handwritten signature in dark ink, appearing to read "Edward Mercado", is written over a horizontal line.

Edward Mercado
District Director

Enclosure:

Notice of Conciliation Process

RECEIVED 12 29

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Dismissal)

TO: Rosemary Bellini
51 East 97th Street
New York, NY 10029

FROM: Equal Employment Opportunity Commission
90 Church St., Room 1501
New York, NY 10007

☐ On behalf of a person aggrieved whose identity is
CONFIDENTIAL (29 C.F.R. 1601.7(a)).

CHARGE NUMBER

021-83-1381

EEOC REPRESENTATIVE

Legal Unit

TELEPHONE NUMBER

(212) 274-7188

(See Section 706 (f) (1) and (f) (3) of the Civil Rights Act of 1964 and the additional information on reverse of this form.)

TO THE PERSON AGGRIEVED: This is your NOTICE OF RIGHT TO SUE. It is issued because the Commission has dismissed your charge. Your charge was dismissed for the following reason:

- ☐ No jurisdiction for the following reason, and therefore the Commission has no authority to process your charge further.
- ☐ Your charge was untimely filed with the Commission, i.e., you waited too long from the date of the action(s) of which you complained to file your charge and it was therefore outside the time prescribed by law. Therefore, the Commission cannot investigate the allegation(s) contained in your charge.
- ☐ The Commission has determined that you did not allege or otherwise demonstrate that you were directly affected by the practice described or effectively deterred from acting because of the practice.
- ☐ Respondent employs less than 15 employees.
- ☐ Other (briefly state) _____
- ☐ No reasonable cause was found to believe that the allegations made in your charge are true, as indicated in the attached determination.
- ☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/ conferences or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.
- ☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.
- ☒ The respondent has made a written settlement offer which affords full relief for the harm you alleged. At least 30 days have expired since you received actual notice of this settlement offer.

The issuance of this NOTICE OF RIGHT TO SUE terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in United States District Court. IF YOU DECIDE TO SUE, YOU MUST DO SO WITHIN 90 DAYS FROM THE RECEIPT OF THIS NOTICE OF RIGHT TO SUE. OTHERWISE YOUR RIGHT TO SUE IS LOST.

On behalf of the Commission.

JAN 28 1986

(DATE)



TYPED NAME AND TITLE OF COMMISSION OFFICIAL

cc: (to respondent)

Sumitomo Corporation of America
345 Park Ave.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Dismissal)

TO: Palma Incherchera
2866 Philip Avenue
Bronx, NY 10461

FROM: Equal Employment Opportunity Commission
90 Church Street, Room 1501
New York, NY 10007

☐ On behalf of a person aggrieved whose identity is
CONFIDENTIAL (29 C.F.R. 1601.7(a)).

CHARGE NUMBER

EEOC REPRESENTATIVE

TELEPHONE NUMBER

021-83-1382

Legal Unit

(212) 264-7188

(See Section 706 (f) (1) and (f) (3) of the Civil Rights Act of 1964 and the additional information on reverse of this form.)

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- ☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/ conferences or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.
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On behalf of the Commission:

JAN 28 1986

(DATE)



TYPED NAME AND TITLE OF COMMISSION OFFICIAL

cc: (to respondent)
Sumitomo Corporation of America
345 Park Avenue
New York, NY 10154