

THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

200 EAST 81ST RESTAURANT CORP.
D/B/A BEYOGLU

and

Case No. 02-CA-115871

MARJAN ARSOVSKI, an Individual

EXCEPTIONS OF 200 EAST 81ST RESTAURANT CORP.

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (“NLRB”), the Respondent, 200 East 81st Restaurant Corp. (“Beyoglu”), makes the following exceptions to the April 19, 2014 decision of Administrative Law Judge Raymond P. Green. (“D.”).

ALLEGED UNFAIR LABOR PRACTICES

1. Beyoglu excepts the finding that the General Manager of Beyoglu, Raspudic, is a supervisor within the meaning of Section 2 (11) of the NLRB Act. (D. p. 2:5). Raspudic did not have any individual authority, in the interest of Beyoglu, to hire, suspend, lay-off, recall or promote any employee of Beyoglu, without the prior consent of the restaurant owner, Yulian Betulovici.

2. Beyoglu excepts the finding that there is no evidence, in this case, to show that the bookkeeper, Anna, that Petitioner was having an affair with, gave rise to a problem, because she was in control of Petitioner’s books. (D. p. 2:20). The evidence is that Petitioner’s personnel

file was the only file discovered to be missing when the former bookkeeper Marta Sikora returned to take over for Anna.

3. Beyoglu excepts the finding that Petitioner continued to work without incident from May 25, 2013, the date when Betulovici told Raspudic to fire petitioner, and June 25, 2013. (D. P. 2: 40). Petitioner did not continue to work without incident until June 25, 2013. In fact, Petitioner had a contentious relationship with Marta regarding his relationship with the bookkeeper and Petitioner's missing personnel files until the date a few days prior to June 25, 2013, when he was asked to stay at home until Mr. Betulovici's return.

4. Beyoglu excepts the finding that he was first told not to come back to work on June 25, 2013, the day that Beyoglu was served with the lawsuit. (D. p.3: 20- 4:5). The testimony of Betulovici, corroborated by Raspudic, confirms that Petitioner was terminated a few days prior to June 25, 2013, as a result of his contentious relationship with Marta.

5. Beyoglu excepts the finding that Petitioner was terminated on June 25, 2013. (D. p.4: 10). Petitioner was, in effect, supposed to be terminated on May 25, 2013. Petitioner was terminated on or about June 23, 2013.

6. Beyoglu excepts the conclusion that Petitioner was fired because he filed an FLSA lawsuit. (D. p.4: 20). Petitioner was fired because he engaged in a prohibited relationship with the bookkeeper Anna, and conspired to steal, and did steal, his personnel file in an effort to frustrate the defense of the FLSA action.

7. Beyoglu excepts the conclusion that the transgressions that occurred in May, 2013, were not sufficient reasons to fire Petitioner. (D. p. 4:20-25). Betulovici fired Petitioner for engaging in prohibited sexual conduct. This behavior alone is sufficient to justify termination of

Petitioner. Petitioner would have been fired, and was to have been fired, regardless of the FLSA suit. Therefore, the termination is not a violation of the NLRB Act.

8. Beyoglu excepts to the conclusion that when the FLSA Complaint was received and read, Betulovici believed or at least suspected that Petitioner was engaged in concerted group action. (D. P.5: 20-25). Betulovici did not read the Complaint until he was back in New York because the fax machine was down. He was only told, over the phone that Petitioner filed a lawsuit.

9. Beyoglu excepts the citing of NLRB v. Scrivner, 415 U.S. 177 (1972); and Trayco of S.C., 297 NLRB 630 (1990) for the proposition that if an employer believes or suspected that an employee was engaged in concerted activity, the activity is protected by the act. (D. P. 5: 20-25) NLRB v. Scrivner and Trayco, do not address the issue nor are they on point as to this issue. The Second Circuit and the federal case law for New York are binding on this issue. The test is whether the employee was engaged in protected activity, not if the employer believed the employee to be engaged in protected activity. The conclusion that the termination was unlawful, based on Respondent's belief of protected activity, is incorrect as a matter of law. Moreover, Administrative Law Judge Green specifically found, that petitioner, **was not, engaged in protected activity.**

10. Beyoglu excepts the recommendation that Beyoglu, its officers, agents, and representatives, shall cease and desist from (a) Discharging employees because they engage in protected concerted activities, including the filing of a lawsuit regarding the wages of themselves and other employees; (b) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act. (D. p. 5:35-40). There is no appropriate remedy as there was no violation of the Act.

11. Beyoglu excepts the recommendation that Beyoglu offer Petitioner full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or to any other rights or privileges previously enjoyed. (D. p. 5:45-50). There is no appropriate remedy as there was no violation of the Act.

12. Beyoglu excepts the recommendation that Beyoglu make Petitioner whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. (D. p. 6:5). There is no appropriate remedy as there was no violation of the Act.

13. Beyoglu excepts the recommendation that Beyoglu reimburse Petitioner an amount equal to the difference in taxes owed upon receipt of a lump sum back pay payment and taxes that would have been owed had there been no discrimination against him. (D. p. 6:10). There is no appropriate remedy as there was no violation of the Act.

14. Beyoglu excepts the recommendation that Beyoglu submit the appropriate documentation to the Social Security Administration so that when back pay is paid to Petitioner it will be allocated to the appropriate periods. (D. p. 6:10-15). There is no appropriate remedy as there was no violation of the Act.

15. Beyoglu excepts the recommendation that Beyoglu remove from its files any reference to the unlawful action against Petitioner and further excepts to the recommendation that Beyoglu notify Petitioner in writing that this has been done, and that the termination will not be used against him in any way. (D. p.6: 15). There is no appropriate remedy as there was no violation of the Act.

16. Beyoglu excepts the recommendation that Beyoglu provide a reasonable place designated for the Regional Director, for good cause shown, to review all payroll records, social security payment records, timecards, personnel records and reports, and all other records,

including an electronic copy of such records, if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order. (D. p. 6:25-20). There is no appropriate remedy as there was no violation of the Act.

17. Beyoglu excepts the recommendation that Notices be posted at Beyoglu and mailed to former and current employees of Beyoglu. (D. p. 6:25-35). There is no appropriate remedy as there was no violation of the Act.

Dated: New York, New York
May 22 2014

Respectfully submitted,

By: 

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