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COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
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Promoting Equality and Justice for all People

July 18, 2023

CHRO ex rel. Jenna Talbot v. Grant Brothers East, LLC, and Michael Grant, CHRO Nos. 1940452 & 1940453.

FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant, and respondent.

Very Truly yours,

Kimberly D. Morris
Secretary II

cc.

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STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities, ex rel. Jenna Talbot, Complainant	CHRO No. 1940452, 1940453
v.	
Grant Brothers East, LLC and Michael Grant, Respondents	July 18, 2023

FINAL DECISION

PRELIMINARY STATEMENT

Jenna Talbot filed her affidavit of illegal discriminatory practice with the commission on human rights and opportunities (commission) on June 24, 2019 against Grant Brothers East, LLC (Grant Brothers) (1940452) and Michael Grant (1940453) (collectively, complaints). In her affidavit against Grant Brothers, she alleged that it was her former employer and had committed an illegal discriminatory employment practice against her in violation of General Statutes § 46a-60 (b) (1), (4), and (8) and Title VII as enforced through General Statutes § 46a-58 (a). Ms. Talbot alleged that she was sexually harassed, retaliated against, and constructively terminated because of her sex (female) and previous opposition to Grant Brothers' discriminatory conduct.

In her affidavit against Mr. Grant, she alleged that he was a co-owner of Grant Brothers and had violated General Statutes § 46a-60 (b) (4) and (5) and Title VII as enforced through § 46a-58 (a) when he discriminated against her in the terms and conditions of her employment, subjected her to a sexually hostile work environment, and constructively terminated her in retaliation for her opposition to sexual harassment.

On March 3, 2020, the commission processed the complaints through its early legal intervention program, transferred the case to the office of public hearings, and deferred prosecution of the complaints to Ms. Talbot and her attorney. Grant Brothers and Mr. Grant filed their answers denying the allegations of illegal discrimination on April 20, 2020.

The public hearing was held on March 22, 23, and 24, 2023. By agreement of the parties, the hearings were conducted remotely via zoom. Briefs were due on May 16, 2023.

For the reasons set forth herein, the complaints are dismissed.

I
PARTIES

The parties to this action are the commission on human rights and opportunities, 450 Columbus Blvd., Hartford, Connecticut; Jenna Talbot, c/o Attorney Claire M. Howard, Madsen, Prestley & Parenteau, LLC, 402 Asylum Street, Hartford, Connecticut; and Michael Grant and Grant Brothers East, LLC, c/o Attorney Adam J. Teller, Leone, Throwe, Teller & Nagle, 33 Connecticut Blvd., East Hartford, Connecticut.

II
PARTIES' POSITIONS

Ms. Talbot's claims are not entirely clear nor consistent. She alleged in her complaints that she quit; that is, had been constructively terminated.[1] Her testimony, however, was consistent that she had been fired by Jason Markey, one of her

[1] Complaints, cover sheet, ¶¶ 4, 31.

supervisors, for calling the police.[2] She testified that she called the police because Mr. Grant allegedly put a knife to her face.[3] Her attorney also referred to Ms. Talbot as having been fired.[4] In her post-hearing brief, Ms. Talbot argued that her separation from employment was either a retaliatory termination by the respondents or a constructive termination by her.[5] Her retaliation claim is based on her having been terminated.[6] The attorney for Grant Brothers and Mr. Grant objected to referring to Ms. Talbot as having been fired.[7] Their position appears to be that Ms. Talbot voluntarily quit without cause.[8]

III
FINDINGS OF FACT

Based upon a review of the pleadings, exhibits, and transcripts, and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found. References to the transcript are designated by Volume number followed by the page number.[9] Exhibits are designated as C for Ms. Talbot and as R for Grant Brothers and Michael Grant followed by the exhibit number. The commission did not submit any exhibits.

1. Ms. Talbot worked as a bartender for Grant Brothers from November 1, 2013 to February 21, 2019 at Bricco Trattoria restaurant (Bricco) in Glastonbury, Connecticut. Complaints, Answers, ¶ 4; Vol 1 15, 20.

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[2] Vol 1, 58-59, 86, 88-90, 94-96.
[3] Vol 1, 51, 58.
[4] Vol 1, 63, 65.
[5] Complainant's post-hearing brief, 12-14.
[6] Complainant's Post-hearing brief, 14-19.
[7] Vol 1, 65.
[8] Vol 2, 17; R-6.
[9] The pagination for each volume begins at page 1. Volume 1 refers to the hearing held on March 22, 2023. Volume 2 refers to the hearing held on March 23, 2023; and Volume 3 refers to the hearing held on March 24, 2023.

2. Grant Brothers is a family-owned business. Complaints, Answers ¶ 2.
3. Michael Grant is one of three brothers who own Grant Brothers. Vol 2, 35-36.
4. During the relevant time period, Grant Brothers employed Joyce Raicik as its general manager.[10] Vol 1, 15-16, 94, 178.
5. During the relevant time period, Grant Brothers employed Jason Markey as its front house manager.[11] Vol 1, 94. He assisted Ms. Raicik. Vol 1, 178.
6. Ms. Raicik and Mr. Markey alternated as night manager. Vol 1, 178-179.
7. Ms. Raicik and Mr. Markey supervised Ms. Talbot. Vol 1, 16.
8. Prior to starting work at Bricco, Ms. Talbot had already known both Ms. Raicik and Mr. Markey. Ms. Raicik was a friend and confident of Ms. Talbot. Vol 1, 15-16; Vol 2, 30, 115.
9. Grant Brothers has a written policy prohibiting sexual harassment. According to the policy, employees who believe they have seen or experienced sexual harassment should report the harassment to at least two people in a supervisory or management position. R-12, pp. 11-12.
10. Ms. Talbot never sent an email or text to any manager or supervisor complaining about Mr. Grant's alleged behavior. Vol 1, 97.
11. Ms. Talbot never verbally reported to Ms. Raicik that she was being sexually harassed. Vol 2, 52. 79-80.

[10] Ms. Raicik testified at the hearing. At the time of the hearing, she was not employed by Grant Brothers. She had left Grant Brothers in March 2019. Vol 2, 49.
[11] Mr. Markey testified at the hearing. At the time of the hearing, Grant Brothers did not employ him. He had left on September 1, 2020. Vol 2, 114.

12. No staff member had ever complained to Ms. Raicik about being sexually harassed. Vol 2, 31.

13. Had Ms. Talbot or any employee reported being sexually harassed to Ms. Raicik, Ms. Raicik would have addressed the issue with the alleged harasser, whether the harasser was a worker, manager, or owner. Vol 2, 32, 36.

14. Had Ms. Talbot reported Mr. Grant's alleged behavior to Ms. Raicik, Ms. Raicik would have gone to Mr. Grant and his two brothers. Vol 2, 83.

15. Ms. Talbot never verbally reported to Mr. Markey that she was being sexually harassed. Vol 2, 117, 124-125

16. Ms. Talbot and Mr. Grant appeared to have a friendly relationship. Vol 2, 84.

17. On February 21, 2019, Ms. Talbot over-filled a carafe with an expensive wine. Mr. Grant reprimanded her for that. He left Bricco. Vol 1, 48-49.

18. Later that day, Mr. Grant returned to Bricco for supper. He was eating supper at the bar and Ms. Talbot was behind the bar serving as bartender. While carrying his plate and utensils into the kitchen, he resumed his reprimand of her over the over-filling of the carafe. He frequently used the F- word. Mr. Grant and Ms. Talbot were on opposite sides of the bar. Both Mr. Grant and Ms. Talbot were speaking loudly. Vol 1, 48-49; Vol 3, 11-23.

19. Ms. Talbot complained to Mr. Markey that Mr. Grant had threatened her with a knife and she was going to call the police. Vol 1, 51; Vol 2, 121.

20. Ms. Talbot went into a closet and called the police. Vol 1, 51.

21. The police arrived. C-5; R-13.

22. Ms. Talbot left Bricco. Vol 1, 53.

23. Mr. Grant did not put the knife to Ms. Talbot's face. Ms. Talbot did not appear to be in any danger. Vol 3, 13.

24. The following day, Ms. Raicik called Ms. Talbot. She asked Ms. Talbot to return to work, if she was coming into work, and whether it would be possible to talk through and work out what had transpired the night before. Vol 1, 92.

25. Ms. Talbot told Ms. Raicik that she was not coming back. Vol 2, 65.

26. Ms. Talbot told Ms. Raicik that Mr. Markey had fired her. Vol 1, 95.

27. Following her separation from Grant Brothers, Ms. Talbot applied for unemployment compensation. Grant Brothers contested her application. Vol 1, 63-64, 122; R-6.

IV
CAUSATION

Our appellate court in *Wallace v Caring Solutions, LLC,* 213 Conn. App. 605, 278 A.3d 586 (2022) discussed that the causation test for discrimination cases under Connecticut law is the motivating factor test; that is, a complainant must prove only that illegal discrimination was a cause in a respondent's adverse action.

V
TITLE VII AS ENFORCED BY § 46a-58 (a)

Ms. Talbot alleged that Grant Brothers and Mr. Grant violated Title VII as enforced by § 46a-58 (a). No evidence, however, was introduced that Grant Brothers or Mr. Grant met the definition of "employer" as defined in Title VII. That is, there is no evidence that Grant Brothers or Mr. Grant had "fifteen or more employees for each working day in each

of twenty or more calendar weeks in the current or preceding calendar year". 42 U.S.C. § 2000e (b). Further, there is no evidence that Grant Brothers or Mr. Grant engaged in commerce "among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof". 42 U.S.C. § 2000e (g). Since Grant Brothers and Mr. Grant were not employers as defined by Title VII, Title VII is inapplicable to them. As Title VII is inapplicable, they could not have violated Title VII. In the absence of a Title VII violation, no violation of § 46a-58 (a) occurred.

Therefore, the Title VII claims are dismissed.

VI
CONSTRUCTIVE TERMINATION
AND
SEXUAL HARASSMENT IN THE FORM OF A HOSTILE WORK ENVIRONMENT

Ms. Talbot alleged that she was constructively terminated[12] and subjected to sexual harassment in the form of a hostile work environment[13]. Ms. Talbot did not prove these claims by a preponderance of the evidence.

A
STATUTES

General Statute § 46a-60 provides that:

> (b) It shall be a discriminatory practice in violation of this section:
>
> (1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious

[12] Complainant's post-hearing brief, 12-14.
[13] Complainant's post-hearing brief, 20-25.

creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, including, but not limited to, blindness or status as a veteran . . . .

* * *

(8) For an employer, by the employer or the employer's agent, for an employment agency, by itself or its agent, or for any labor organization, by itself or its agent, to harass any employee, person seeking employment or member on the basis of sex or gender identity or expression. If an employer takes immediate corrective action in response to an employee's claim of sexual harassment, such corrective action shall not modify the conditions of employment of the employee making the claim of sexual harassment unless such employee agrees, in writing, to any modification in the conditions of employment. "Corrective action" taken by an employer, includes, but is not limited to, employee relocation, assigning an employee to a different work schedule or other substantive changes to an employee's terms and conditions of employment. Notwithstanding an employer's failure to obtain a written agreement from an employee concerning a modification in the conditions of employment, the commission may find that corrective action taken by an employer was reasonable and not of detriment to the complainant based on the evidence presented to the commission by the complainant and respondent. As used in this subdivision, "sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (C) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment . . . .

B
STANDARDS

1
SEXUAL HOSTILE WORK ENVIRONMENT CLAIM

Traditionally, a claim of sexual harassment under federal law has proceeded "on one of two theories: (1) quid pro quo—e.g., favorable treatment in return for sought sexual favors—or (2) hostile work environment." *Gallagher v. Delaney*, 139 F.3d 338, 346 (2d Cir. 1998); see *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 118 S.Ct. 2257, 2264,

141 L.Ed.2d 633 (1998). To establish a claim of hostile work environment, "the workplace [must be] permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.... *Harris v. Forklift Systems, Inc.,* 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993)...." (Internal quotation marks omitted.) *Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75, 118 S.Ct. 998, 1001, 140 L.Ed.2d 201 (1998). "[I]n order to be actionable ... a sexually objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.... [W]hether an environment is sufficiently hostile or abusive [is determined] by looking at all the circumstances...." (Citations omitted; internal quotation marks omitted.) *Faragher v. Boca Raton,* 524 U.S. 775, 118 S.Ct. 2275, 2283, 141 L.Ed.2d 662 (1998).

"A plaintiff pursuing a hostile work environment claim must establish a basis, rooted in common law agency principles, on which to hold an employer liable for the conduct of its employees. See *Meritor Sav [ings] Bank, FSB v. Vinson,* 477 U.S. 57, 72, 106 S.Ct. 2399, 2408, 91 L.Ed.2d 49 (1986)." *Gallagher v. Delaney,* supra, 139 F.3d at 348. "The law is clear that an employer may not stand by and allow an employee to be subjected to a course of ... [sexual] harassment by co-workers...." (Internal quotation marks omitted.) *Torres v. Pisano,* 116 F.3d 625, 636 (2d Cir. 1997). Accordingly, an employer will be held liable for harassment perpetrated by its employees if "the employer provided no reasonable avenue for complaint, *or* ... the employer knew (or should have known) of the harassment but unreasonably failed to stop it." (Emphasis in original; internal quotation marks omitted.) *Gallagher v. Delaney,* supra, at 348. Put another way, "once an employer has knowledge of a racially [or sexually] combative atmosphere in the work-place, he [or she] has a duty to take reasonable steps to eliminate it." *Snell v. Suffolk County,* 782 F.2d 1094, 1104 (2d Cir. 1986). "The standard is essentially a negligence one ... and reasonableness ... depends among other things on the gravity of the harassment alleged"; (internal quotation marks omitted) *Torres v. Pisano,* supra, at 638; "the severity and persistence of the harassment ... and ... the effectiveness of any initial remedial steps"; *Hirras v. National R. Passenger Corp.,* 95 F.3d 396, 400 (5th Cir. 1996); and "the nature of the work environment ... and the resources available to the employer." (Citation omitted.) *Snell v. Suffolk County,* supra, at 1104. An employer's response should be evaluated to determine how "prompt, appropriate, and adequate" it was. *Gallagher v. Delaney,* supra, at 348. "[T]o determine whether the remedial action was adequate, we must consider whether the action was reasonably calculated to prevent further harassment." (Internal quotation

marks omitted.) *Knabe v. Boury Corp.,* 114 F.3d 407, 412 (3d Cir. 1997). "[O]nce an employer has in good faith taken those measures which are both feasible and reasonable under the circumstances to combat the offensive conduct we do not think [it] can be charged with discriminating on the basis of race [or sex]." (Internal quotation marks omitted.) *Snell v. Suffolk County,* supra, at 1104. "Whether an employer has fulfilled [its] responsibility [to take reasonable steps to remedy a discriminatory work environment] is to be determined upon the facts in each case." *Id.*

Brittell v Dept. of Correction, 247 Conn 148, 165-169, 717 A.2d 1254 (1998).

"An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages.... The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.... No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment."

Id., n. 30.

"To establish a claim of hostile work environment, the workplace [must be] permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment...." (Internal quotation marks omitted.) *Brittell* v. *Department of Correction*, 247 Conn. 148, 166, 717 A.2d 1254 (1998). "In order to be actionable ... [the working] environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the [plaintiff] in fact did perceive to be so.... [W]hether an environment is sufficiently hostile or abusive [is determined] by looking at all the circumstances...." (Internal quotation marks omitted.) *Heyward* v. *Judicial Department*, supra, 178 Conn. App. 764.

"Whether the challenged conduct is sufficiently severe or pervasive depends on the totality of the circumstances.... The [United States] Supreme Court in *Harris* [v. *Forklift System Inc.*, 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 296 (1993)] established a non-exclusive list of factors ... to consider in this regard: (1) the frequency of the discriminatory conduct;

(2) its severity; (3) whether the conduct was physically threatening or humiliating, or a mere offensive utterance; (4) whether the conduct unreasonably interfered with plaintiff's work; and (5) what psychological harm, if any, resulted.... Our case law treats the first two of these factors–the frequency and the severity of the misconduct–as the principal focus of the analysis; the last three factors are specific considerations within the severity inquiry. Core hostile work environment cases involve misconduct that is both frequent and severe, for example, when a supervisor utters blatant racial epithets on a regular if not constant basis and behaves in a physically threatening manner." (Citations omitted; internal quotation marks omitted.) *Aulicino* v. *New York City Dept. of Homeless Services*, 580 F.3d 73, 82 (2d Cir. 2009). "Generally, unless an incident of harassment is sufficiently severe, incidents must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." (Internal quotation marks omitted.) *Gorzynski* v. *JetBlue Airways Corp.*, 596 F.3d 93, 102 (2d Cir. 2010).

Cooling v City of Torrington, Superior Court, judicial district of Litchfield at Torrington, Docket No. LLI-CV-19-6022035-s (March 23, 2002), 2022 WL 1051372, *6.

2

CONSTRUCTIVE TERMINATION / CONSTRUCTIVE DISCHARGE

"Normally, an employee who resigns is not regarded as having been discharged, and thus would have no right of action for abusive discharge.... Through the use of constructive discharge, the law recognizes that an employee's 'voluntary' resignation may be, in reality, a dismissal by an employer." (Citation omitted; internal quotation marks omitted.) *Seery v. Yale–New Haven Hospital,* 17 Conn. App. 532, 540, 554 A.2d 757 (1989). "Constructive discharge of an employee occurs when an employer, rather than directly discharging an individual, *intentionally* creates an intolerable work atmosphere that forces an employee to quit involuntarily." (Emphasis added.) *Chertkova v. Connecticut General Life Ins. Co.,* 92 F.3d 81, 89 (2d Cir. 1996); accord *Seery v. Yale–New Haven Hospital,* supra, at 540, 554 A.2d 757. "Working conditions are intolerable if they are so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." (Internal quotation marks omitted.) *Chertkova v. Connecticut General Life Ins. Co.,* supra, at 89. Accordingly, "[a] claim of constructive discharge must be supported by more than the employee's subjective opinion that the job conditions have become so intolerable that he or she was forced to resign." *Seery v. Yale–New Haven Hospital,* supra, at 540, 554 A.2d 757.

Brittell, supra, 247 Conn 178.

> "To plead a prima facie case of constructive discharge, a plaintiff must allege that (1) the employer intentionally created the complained of work atmosphere, (2) the work atmosphere was so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign, and (3) the plaintiff in fact resigned." *Karagozian* v. *USV Optical, Inc.*, 335 Conn. 426, 430, 238 A.3d 716 (2020). . . . . "We acknowledge the federal standard as to the conditions that may compel an employee to resign involuntarily ... is no different from Connecticut's standard," *Karagozian* v. *USV Optical, Inc.*, 186 Conn. App. 857, 869, 201 A.3d 500, 507 (2019), aff'd, 335 Conn. 426, 238 A.3d 716 (2020). "A constructive discharge claim must entail something more than what is required for an ordinary ... hostile-environment claim." (Internal quotation marks omitted.) *Bryant* v. *Greater New Haven Transit District*, 8 F. Supp. 3d 115 (D. Conn. 2014).

Cooling, supra, 2022 WL 1051372, *7.

C
ANALYSIS

1
SEXUALLY HOSTILE WORK ENVIRONMENT

Ms. Talbot did not establish her claim of a sexually hostile work environment by a preponderance of the evidence. The only testimony in support of Ms. Talbot's allegations came from her former boyfriend. He testified that Ms. Talbot talked and texted to him that she was being sexually harassed. Vol 1, 150-161; C-3. However, he never witnessed Mr. Grant's alleged harassing behavior. Tr. Vol 1, 165-166. No current or former employee of Grant Brothers provided corroborative testimony. The lack of corroboration does not prevent a finding of a sexually hostile work environment or a constructive termination. Issues of sexual harassment are frequently he-said, she-said situations occurring without witnesses but in which a complainant may, nevertheless, establish her claims by a preponderance of the evidence.

The difficulty in the present case, though, is that Ms. Talbot's complaints and her testimony make frequent reference to the public nature[14] of Mr. Grant's alleged behavior directed both at her[15] and co-workers[16].She did not, however, not provide names or supporting testimony of those former co-workers. Ms. Raicik and Mr. Markey, her former supervisors, credibly testified that Mr. Grant did not engage in the sexually harassing behavior alleged by Ms. Talbot. They credibly testified that Ms. Talbot never complained to them about any harassment.

Further, according to Ms. Talbot, on February 21, 2019, Mr. Grant entered Bricco through the kitchen and remarked to the head chef and kitchen staff that Ms. Talbot "'deserves a good spanking and should be bent over.'"[17] The head chef credibly testified that Mr. Grant never made that remark. Vol 3, 41.[18] According to Ms. Talbot, during the February 21, 2019 incident, Mr. Grant put a knife to her face during an argument. A patron was present at the bar having supper during the incident. He credibly testified that while Mr. Grant and Ms. Talbot were having a loud disagreement, and Mr. Grant was using profanity, Mr. Grant did not put a knife to Ms. Talbot's face or make a threatening gesture with the knife. Vol 3, 13. The patron testified that he did not think Ms. Talbot was in any danger. Vol 3, 13. He was still having supper when the police arrived in response to Ms. Talbot's call. To the patron, the interaction between Mr. Grant and Ms. Talbot "didn't seem like it was a 'police-calling' event." Vol 3, 25.

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[14] Complaints, ¶¶ 16, 17, 18, 19, 24; Vol 1, 16-17, 21-22, 40-41, 47, 76.
[15] Complaints, ¶¶ 6, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26; Vol 1, 16-17, 22, 38-39, 41, 75-76.
[16] Complaints, ¶¶ 7, 19; Vol 1, 16-17, 22, 47, 76.
[17] Complaints, ¶ 24.
[18] At the time of the hearing the head chef was no longer employed at Grant Brothers. He had left in September 2019. Vol 3, 39.

2
CONSTRUCTIVE TERMINATION

Ms. Talbot also did not establish by a preponderance of the evidence that she was constructively terminated. Constructive termination requires that she had quit her job because of an intolerable work environment. Her consistent testimony, however, was that she did not quit her job but rather was terminated for calling the police in response to an alleged physical threat by Mr. Grant regarding her over-filling a wine carafe.

VII
RETALIATION

In her post-hearing brief, Ms. Talbot asserts that Grant Brothers violated General Statute § 46a-60 (b) (4) when it terminated her employment in retaliation for her previous opposition to its alleged discriminatory practices.[19] To the extent that Ms. Talbot's allegation in her complaints that she quit (was constructively terminated) can be ignored in favor of her testimony that she was fired, she did not establish a claim of retaliatory termination by a preponderance of the evidence.

A
STATUTES

Section 46a-60 (b) (4) provides that it is a discriminatory employment practice

[19] In her brief, Ms. Talbot mentioned in a foot note that the Second Circuit has found that contesting a former employee's unemployment benefits is an adverse action for Title VII purposes. Complainant's post-hearing brief, 16 n. 2. As previously discussed, the Title VII claims have been dismissed. With respect to retaliation claims under § 46a-60. Ms. Talbot's application for unemployment compensation was not a protected activity and Grant Brothers' appeal of her application was not retaliatory. Grant Brothers' appeal of Ms. Talbot's application was, instead, a permissible exercise of its legal rights. *Mayo v Perez*, Superior Court, judicial district of New Britain, Docket No. HHB-CV-21-5030102-s, 2023 WL 1989113, *2 (February 6, 2023); *Reyes v. Dooney & Bourke, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-CV-14-6022743-s, 2015 WL 1500443, *5 (March 9, 2015) (59 Conn. L. Rptr. 954, 956). Further, there was no evidence that Grant Brothers treated Ms. Talbot's unemployment compensation claim differently than unemployment claims by other former employees.

> [f]or any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84 . . ..

B
STANDARD

> "In order for a plaintiff to prevail on a claim of retaliation under [§] 46a-60 (a) (4), he must initially establish a prima facie case by showing that (1) he participated in a protected activity, (2) the defendant knew of the protected activity, (3) he was subject to an adverse employment action, and (4) there was a causal connection between his protected activity and the adverse action." *Jones* v. *Department of Children & Families*, 172 Conn. App. 14, 35, 158 A.3d 356 (2017). "For the purposes of a retaliation claim, an adverse action must be materially adverse or harmful to the point that [it] could well dissuade a reasonable [employee] from making or supporting a charge of discrimination." (Internal quotation marks omitted.) *Boucher* v. *Saint Francis GI Endoscopy, LLC*, 187 Conn App. 422, 431, 202 A.3d 1056 (2019), overruled on other grounds by *Karagozian* v. *USV Optical, Inc.*, supra, 335 Conn. 426.

Cooling, supra, 2022 WL 1051372, *9.

C
ANALYSIS

Ms. Talbot did not establish a prima facie case of retaliation because she did not establish that her termination was the result of her participation in a protected activity. By her own repeated testimony, she was terminated for calling the police in response to her allegation that Mr. Grant had physically threatened her during an on-going argument over her over-filling a carafe of wine. She also did not establish that Grant Brothers' management knew she had engaged in a protected activity or knew of her claims that Mr. Grant was sexually harassing her.

VIII
AIDING AND ABETTING

In her affidavit against Mr. Grant, Ms. Talbot alleged he violated § 46a-60 (b) (5) by aiding and abetting Grant Brothers in its discrimination against her.

A
STATUTE

General Statute § 46a-60 (b) (5) provides that it shall be a discriminatory employment practice for

> any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or to attempt to do so . . . .

B
STANDARD

A complainant "cannot sustain a claim of aiding and abetting discriminatory conduct under General Statutes § 46a-60(a)(5) where she has failed to prove that any discriminatory conduct has occurred." *Natale v City of New Haven*, Superior Court, judicial district of New Haven at New Haven, Doc. No. NNH-CV-18-6079090s (October 29, 2019), 2019 WL 6245762, *7.

C
ANALYSIS

As Ms. Talbot did not establish her claims of discriminatory conduct by a preponderance of the evidence, she cannot sustain her claim of aiding and abetting.

IX
CONCLUSIONS OF LAW

1. Ms. Talbot did not establish by a preponderance of the evidence she had been sexually harassed by Mr. Grant.

2. Ms. Talbot did not establish by a preponderance of the evidence that her separation of employment from Grant Brothers was a constructive termination.
3. Ms. Talbot did not establish by a preponderance of the evidence that her separation of employment from Grant Brothers was a retaliatory termination.
4. Ms. Talbot did not establish by a preponderance of the evidence that she had previously opposed any discriminatory conduct by Grant Brothers or by Michael Grant.
5. Ms. Talbot did not establish by a preponderance of the evidence that Grant Brothers discriminated against her because of her sex.
6. Ms. Talbot did not establish by a preponderance of the evidence that she had been subject to a sexually hostile work environment.
7. Ms. Talbot did not establish by a preponderance of the evidence that she reported any sexual harassment to her supervisors pursuant to Grant Brothers' policy.

X
ORDER

The complaints are dismissed.

/s/ Jon P. FitzGerald
Jon P. FitzGerald
Presiding Human Rights Referee