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IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JO-ANN MERON,)
)
)
 Plaintiff,) COMPLAINT AND JURY DEMAND
)
 v.) **2 0 2 C V - 0 6 6 8 DAK**
)
 DATAMARK INC. a Delaware corporation)
 doing business in the State of Utah, ARTHUR) Case No.
 BENJAMIN, and TOM DEARDEN,)
)
 Defendants.) Judge

Plaintiff, Jo-Ann Meron (“Jo-Ann”), complains of defendants, DataMark Inc. (“Datamark”), Arthur Benjamin (“Benjamin”) and Tom Dearden (“Dearden”) as follows:

1. This is a civil rights action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. and other pendant state claims.
2. This Court has jurisdiction pursuant to the provisions of Title VII of the Civil Rights Act of 1964 and over the state claims pursuant to the Court’s pendant jurisdiction.

3. Venue is appropriate because plaintiff resides in this district, defendants' worksite is in this district, unlawful employment practices occurred within the district and the defendants are subject to personal jurisdiction in this district.

4. Jo-Ann filed a simultaneous charge with the Utah Antidiscrimination and Labor Division and the Equal Employment Opportunity Commission ("EEOC") and received a Notice of Right to Sue from the EEOC on May 25, 2002.

5. Jo-Ann is a female citizen of the United States and a resident of Salt Lake County, Utah.

6. Datamark is a Delaware corporation maintaining its principal offices and conducting business in Salt Lake City, Utah.

7. Benjamin is a citizen of the United States and a resident of Salt Lake County, Utah.

8. At all relevant times, Benjamin was president, chief executive officer and chairman of the board of directors of Datamark.

9. Dearden is a citizen of the United States and a resident of Salt Lake County, Utah.

10. At all relevant times, Dearden was vice-president, chief operating officer ("COO") and a member of the board of directors of Datamark.

11. Benjamin has engaged in a pattern and practice of sexual harassment, assault and rape against female students, employees and others over a period of approximately twenty years, including at least the following incidents:

a. Benjamin has admitted to having a sexual relationship with a Watterson College 19-20 year old student while he was president of that school.

b. Benjamin has admitted to having a sexual relationship with a Watterson

College employee, Trish Pene, while he was president of that school.

c. Benjamin has admitted to being the subject of a complaint of sexual harassment made by a receptionist at a previous employment in approximately 1982.

d. Benjamin has admitted to being the subject of a complaint of sexual harassment made by another woman at the same previous employment.

e. Benjamin has admitted to being the subject of a complaint of sexual harassment made by a subordinate female employee at Dover Business College during a previous employment.

f. In 1995, Benjamin raped a female employee of Watterson College, Debbie Juarez, while Benjamin was president of that school.

g. In 1995, Benjamin sexually harassed and inappropriately touched Diane Hospodar, a vendor of Watterson College while Benjamin was president of that school.

h. In 1997, Benjamin sexually harassed Joy Hedgecock Grimshaw, a 19 year old employee at DataMark Systems, Inc. while Benjamin was president of that company.

i. In approximately 1997, Benjamin sexually harassed and inappropriately touched Marienela "Maggie" Gerhardt Cook, Benjamin's personal assistant at DataMark Systems, Inc. while Benjamin was president of that company.

j. In 1999, Benjamin sexually harassed, inappropriately touched and retaliated against Connie Hollingshead, a sales representative at the DataMark Division of Focus Direct Inc. while Benjamin was president of the DataMark Division.

k. Benjamin sexually harassed Melanie Wilcox, a sales representative of the DataMark Division of Focus Direct Inc. while Benjamin was president of the DataMark Division.

l. In approximately 1997, Benjamin sexually harassed Christina Barnes, a sales representative of the DataMark Division of Focus Direct Inc. while Benjamin was president of the DataMark Division.

m. In 1998, Benjamin raped Stacy Stanbrough.

n. In 1999, Benjamin sexually harassed, sexually assaulted and raped Angela Allen Stoll ("Allen"), Benjamin's executive assistant while he was president of the DataMark Division.

o. In 2000, Benjamin sexually harassed, sexually assaulted and raped Jeanette Borthick ("Borthick"), Benjamin's subordinate employee while he was president of the DataMark Division.

12. By at least August 2000, Allen and Borthick had complained about Benjamin's conduct to Datamark.

13. In September 2000, Allen and Borthick each commenced a legal action against Benjamin and Datamark for sexual assault.

14. Prior to October 2001, Datamark learned of and knew about Benjamin's extensive history of sexual harassment, assault and rape, including the 15 victims identified above, through discovery conducted in the Allen and Borthick litigation.

15. Datamark employed Jo-Ann as an Account Executive on approximately August 1, 2000.

16. From August 2000 to October 2001, Benjamin selected and groomed Jo-Ann as another victim of his pattern and practice of sexual harassment and assault.

17. In October 2001, Jo-Ann traveled with Benjamin and other Datamark employees to the Washington D.C. area to make a sales and training presentation to a Datamark client,

Strayer University.

18. The sales presentation was completed on October 22, 2001 and all Datamark employees returned to their home offices except Jo-Ann and Benjamin. Jo-Ann and Benjamin remained in the Washington D.C. area for two additional days to complete the training presentation with Strayer University.

19. On the morning of October 23, 2001, just prior to leaving for the training presentation, Benjamin telephoned Jo-Ann's hotel room and claimed that he had lost his glasses. Benjamin needed his glasses during the training presentation. Benjamin requested Jo-Ann's assistance in searching his hotel room for the glasses.

20. Jo-Ann went to Benjamin's hotel room and assisted in searching the room for Benjamin's glasses. While searching, Jo-Ann knelt on the floor to look under Benjamin's bed. While looking under the hotel bed, Benjamin approached Jo-Ann from behind, grabbed Jo-Ann by the arm(s), pulled her up to face him and while holding her arm(s) Benjamin pressed his body up against Jo-Ann.

21. While pressing his body up against Jo-Ann's, Benjamin said something like, "you have been very tense about Strayer lately, maybe I can calm you down before we leave."

22. Jo-Ann pushed Benjamin away, told him to stop, told him she had no interest in him and immediately left Benjamin's room.

23. Dearden facilitated Benjamin's assault of Jo-Ann and participated in trying to cover up Benjamin's conduct.

24. Jo-Ann initially arranged the sales and training presentation with Strayer University for October 15, 2001.

25. Immediately prior to October 15, 2001, Jo-Ann was scheduled to be in Maine for

a vacation.

26. Jo-Ann arranged to travel directly from Maine to the Washington D.C. area for the sales and training presentation with Strayer University at the end of her vacation.

27. Prior to scheduling the sales and training presentation for October 15, 2002, Jo-Ann solicited and obtained her immediate supervisor's approval.

28. With her immediate supervisor's approval and at his direction, Jo-Ann cleared the October 15, 2001 date with Strayer University.

29. With her immediate supervisor's approval and at his direction, Jo-Ann booked a travel reservation with Datamark's travel agent, allowing her to travel from Maine at the end of her vacation directly to the Washington D.C. area.

30. With her immediate supervisor's approval and direction, and pursuant to company procedure, Jo-Ann prepared a travel request slip and solicited Dearden's approval of the travel plan.

31. Dearden refused to approve the travel plan. Instead, Dearden required Jo-Ann to return to Salt Lake City at the end of her vacation and travel to Washington D.C. the following week.

32. This new travel plan required that Jo-Ann remain in the Washington D.C. area with Benjamin and without other Datamark employees for an additional two days to complete the training presentation with Strayer University.

33. The visit to Strayer University, as originally planned, did not include any time in the Washington D.C. area with Benjamin and without other Datamark employees. Had Jo-Ann visited Strayer University as originally planned, Benjamin would not have had the opportunity to assault her.

34. Jo-Ann returned to Salt Lake City from the sales and training presentation with Strayer on October 25, 2001.

35. On November 2, 2001, Datamark fired Jo-Ann because she refused to submit to Benjamin's sexual advances and to cover up Benjamin's inappropriate and unlawful conduct.

FIRST CAUSE OF ACTION

36. Jo-Ann incorporates by reference paragraphs 1 through 35.

37. Jo-Ann is an "employee" within the meaning of 42 U.S.C. § 2000e(f).

38. Datamark is an "employer" within the meaning of 42 U.S.C. § 2000e(b) inasmuch as it is a "person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year."

39. Benjamin's sexual advance was unwelcome.

40. Defendants' conduct was based on Jo-Ann's sex.

41. Defendants' actions created and Jo-Ann was subjected to a hostile work environment sufficiently severe and pervasive as to alter the conditions of her employment.

42. The actions of Benjamin, Dearden and Datamark constitute a willful and intentional violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et. seq.*

43. Datamark is strictly liable for the actions of Benjamin and Dearden because of their status as a high ranking officer and director of Datamark.

SECOND CAUSE OF ACTION

44. Jo-Ann incorporates by reference paragraphs 1 through 43.

45. Jo-Ann is an "employee" within the meaning of 42 U.S.C. § 2000e(f).

46. Datamark is an "employer" within the meaning of 42 U.S.C. § 2000e(b) inasmuch

as it is a “person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.”

47. Jo-Ann was subjected to quid pro quo sexual harassment.

48. Benjamin’s sexual advance was unwelcome.

49. Jo-Ann refused to submit to Benjamin’s sexual advance.

50. Datamark fired Jo-Ann because she refused to submit to Benjamin’s sexual advance.

51. The actions of Benjamin, Dearden and Datamark constitute a willful and intentional violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et. seq.*

52. Datamark is strictly liable for the actions of Benjamin and Dearden because of their status as a high ranking officer and director of Datamark.

THIRD CAUSE OF ACTION

53. Jo-Ann incorporates by reference paragraphs 1 through 52.

54. Benjamin has engaged in a pattern and practice by which he targets female employees over which he has authority as victims of sexual harassment, assault and rape.

55. By at least October 2001, Dearden knew about the pattern and practice in which Benjamin engaged.

56. By at least October 2001, Dearden knew or should have known that Benjamin posed a serious danger and threat to other female Datamark employees, including Jo-Ann.

57. Dearden failed to take any steps to protect Datamark’s female employees, including Jo-Ann, from the danger and threat posed by Benjamin.

58. Not only did Dearden fail to take any steps to protect Jo-Ann, but also he placed

her in a position by which Benjamin could sexually assault and harass her.

59. Benjamin took advantage of the opportunity created by Dearden and sexually assaulted Jo-Ann.

60. As a direct and proximate result of Dearden's conduct, Jo-Ann was injured and damaged.

61. Dearden's conduct was intentional and/or reckless.

FOURTH CAUSE OF ACTION

62. Jo-Ann incorporates by reference paragraphs 1 through 61.

63. Benjamin has engaged in a pattern and practice by which he targets female employees over which he has authority as victims of sexual harassment, assault and rape.

64. By at least October 2001, Datamark knew about the pattern and practice in which Benjamin engaged.

65. By at least October 2001, Datamark knew or should have known that Benjamin posed a serious danger and threat to other female Datamark employees, including Jo-Ann.

66. Datamark failed to take any steps to protect Datamark's female employees, including Jo-Ann, from the danger and threat posed by Benjamin.

67. Not only did Datamark fail to take any steps to protect Jo-Ann, but also Datamark, through its Vice President, COO and board member, Dearden, placed her in a position by which Benjamin could sexually assault and harass her.

68. Benjamin took advantage of the opportunity created by Datamark and sexually assaulted Jo-Ann.

69. As a direct and proximate result of Datamark's conduct, Jo-Ann was injured and damaged.

70. Datamark acted with a conscious and deliberate intent directed to the purpose of inflicting an injury.

FIFTH CAUSE OF ACTION

71. Jo-Ann incorporates by reference paragraphs 1 through 70.

72. Benjamin acted, intending to cause offensive contact with Jo-Ann or imminent apprehension of such contact.

73. As a result of Benjamin's conduct, Jo-Ann was placed in imminent apprehension of offensive contact.

74. Jo-Ann suffered injuries proximately caused by Benjamin's conduct.

SIXTH CAUSE OF ACTION

75. Jo-Ann incorporates by reference paragraphs 1 through 74.

76. Benjamin touched Jo-Ann with the intent of bringing about either offensive contact or apprehension of offensive contact.

77. Benjamin acted without privilege or consent.

78. Jo-Ann suffered injuries proximately caused by Benjamin's conduct.

SEVENTH CAUSE OF ACTION

79. Jo-Ann incorporates by reference paragraphs 1 through 78.

80. Benjamin's and Dearden's conduct was outrageous.

81. Benjamin and Dearden intended to cause Jo-Ann emotional distress or they acted with reckless disregard of the probability of causing Jo-Ann emotional distress.

82. Jo-Ann suffered and suffers severe emotional distress that was proximately caused by Benjamin's and Dearden's conduct.

EIGHTH CAUSE OF ACTION

83. Jo-Ann incorporates by reference paragraphs 1 through 82.

84. Benjamin and Dcarden should have realized that their conduct involved an unreasonable risk of causing Jo-Ann emotional distress.

85. Jo-Ann suffered and suffers emotional distress that was proximately caused by Benjamin's and Dearden's conduct.

NINTH CAUSE OF ACTION

86. Jo-Ann incorporates by reference paragraphs 1 through 85.

87. Benjamin acted, intending to confine or restrain Jo-Ann.

88. Benjamin's restrained Jo-Ann.

89. Jo-Ann was conscious of the confinement or restraint (or was harmed by it.).

90. Benjamin restrained Jo-Ann without reasonable or lawful justification and without her consent.

TENTH CAUSE OF ACTION

91. Jo-Ann incorporates by reference paragraphs 1 through 90.

92. Jo-Ann and Datamark were parties to an employment contract by which Datamark agreed to pay Jo-Ann a salary and commissions.

93. Datamark was also bound by an implied duty of good faith and fair dealing with Jo-Ann under the employment contract.

94. Defendants' conduct breached the implied duty of good faith and fair dealing and Datamark's employment agreement with Jo-Ann.

95. Jo-Ann has suffered damage and loss because of defendants' breach. Jo-Ann has and will continue to lose salary and commissions due under the employment agreement. In addition, Datamark continues to assert its right to enforce a non-compete clause against Jo-Ann.

As a result, Jo-Ann is unable to engage in her chosen employment.

ELEVENTH CAUSE OF ACTION

96. Jo-Ann incorporates by reference paragraphs 1 through 95.

97. Jo-Ann and Datamark were parties to an employment contract by which Datamark agreed to pay Jo-Ann a salary and commissions.

98. Benjamin and Dearden knew of Jo-Ann's agreement with Datamark.

99. Benjamin and Dearden intentionally induced Datamark to breach its agreement with Jo-Ann.

100. Benjamin and Dearden caused Datamark to breach its agreement with Jo-Ann.

101. Jo-Ann has suffered damage and loss because of Benjamin's and Dearden's conduct in causing Datamark to breach the agreement. Jo-Ann has and will continue to lose salary and commissions due under the employment agreement.

JURY DEMAND

Jo-Ann hereby demands a jury.

PRAYER FOR RELIEF

Jo-Ann prays for relief as follows:

1. Equitable relief including compensation for back pay, interest on back pay, forward pay, lost commissions, lost benefits, medical expenses, costs and all other relief to which she is entitled pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(g), in amounts to be determined at trial.

2. Compensatory damages in an amount to be determined at trial.

3. Punitive damages in an amount to be determined at trial.

4. Prejudgment and postjudgment interest.

5. Special damages against defendants, including medical and counseling expenses, lost wages and commissions, in an amount to be determined at trial.
6. Declaratory relief preventing Datamark from enforcing its non-compete clause.
7. Costs and Attorneys' fees.
8. All other relief deemed appropriate by the Court.

DATED: July 18, 2002

By



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and
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