

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TINA MICHELLE BRAUNSTEIN,

Plaintiff,

-against-

DAVID BARBER and BLUE HILL AT STONE  
BARNES, LLC,

Defendants.  
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**REPORT AND  
RECOMMENDATION**

06 Civ. 5978 (CS) (GAY)

TO THE HONORABLE CATHY SEIBEL, United States District Judge:

Tina Michelle Braunstein brings this action under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e to 2000e-17) and the New York Human Rights Law (N.Y. Exec. Law §§ 290-300). Plaintiff Braunstein asserts these claims against defendants David Barber and Blue Hill at Stone Barnes, LLC for allegedly harassing and discriminating against her because she is a woman, and retaliating against her when she complained internally of said acts.<sup>1</sup> Presently before this Court are defendants' motion to dismiss plaintiff's claims pursuant to Rule 56 of the Federal Rules of Civil Procedure ("FRCP"), on the grounds that plaintiff failed to state claims for which relief can be granted. For the reasons that follow, I respectfully recommend that defendants' motions be DENIED.

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<sup>1</sup> To the extent plaintiff alleges that defendants retaliated against her in subsequent employment after she filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), plaintiff filed a separate lawsuit to address this claim on March 22, 2007. Braunstein v. Barber, No. 07 Civ. 3391 (S.D.N.Y.). On November 7, 2007, District Judge Charles L. Brieant ordered said case dismissed with prejudice by stipulation and agreement of the parties. Id., Docket No. 15.

## I. BACKGROUND

The following facts are gathered from the parties' statements pursuant to Local Civil Rule 56.1 of the United States District Courts for the Southern and Eastern Districts of New York, from the pleadings and from affidavits, affirmations and exhibits submitted by the parties in support of their contentions. Any disputes of material fact are noted.

Plaintiff is female bartender who, at the time she commenced the instant action, resided in the Bronx, New York. Blue Hill at Stone Barns, LLC ("Blue Hill") is a "three-star" restaurant located in Pocantico Hills, Westchester County, New York. David Barber is an owner of Blue Hill. On January 24, 2004, plaintiff interviewed for a bartending position to work at the "front of the house" bar at Blue Hill. Philippe Gouze, Blue Hill's general manager, conducted plaintiff's interview. Gouze hired plaintiff and she began training on March 29, 2004. On this day, plaintiff received Blue Hill's employee handbook and server's manual. The employee handbook included information regarding Blue Hill's discrimination policies and procedures. The server's manual, among other things, required that servers convey a hospitable attitude towards customers.

Plaintiff's duties included requiring her to be knowledgeable about the wines Blue Hill served. As part of this duty, plaintiff took wine quizzes administered by Blue Hill's sommelier, Derrick Todd ("Todd"). Additionally, plaintiff served drinks and food to customers at the bar and lounge in the front of the restaurant. Defendants contend that plaintiff was also required to maintain and clean these areas, re-stock alcohol, and handle all cash transactions. Plaintiff asserts that when she was hired, Gouze

represented that she would have assistance from a barback who would assist her in stocking alcohol, glassware, and ice; and clear away dirty dishes. Plaintiff also asserts that the restaurant barista was to provide assistance at both the front and service bars.

Contrary to plaintiff's understanding, she contends that did not receive help from either a barback or the restaurant barista. Defendants assert that plaintiff did seek and sometimes received help from other managers and co-workers. Nonetheless, plaintiff alleges that she suggested to Gouze that service could be improved in her work area if she had assistance clearing dishes and Blue Hill hired a cocktail waitress for the lounge. Plaintiff alleges that Gouze reacted hostilely to her suggestions and said to her, "You are a terrible bartender. I can put one man up here who could bartend for the full establishment." Defendants' Ex. B, Braunstein Tr. 237:18-21.

The relationship between Gouze and plaintiff deteriorated. Defendants contend that plaintiff was unwilling or unable to discharge her job duties. Defendants allege that plaintiff often disappeared from the bar. Defendants also allege that Blue Hill received complaints from customers regarding plaintiff's rudeness. On the contrary, plaintiff contends that customers often praised her service and she was only aware of a single negative comment from a customer prior to her termination. Furthermore, plaintiff alleges that Gouze's poor treatment of her began because she received public attention for her service. Specifically, notable New York Times critic Frank Bruni mentioned plaintiff's name three times in his July 28, 2004 review of Blue Hill, Elizabeth Johnson commented on plaintiff's rhubarb cosmopolitan in a May 4, 2004 Journal News article of Blue Hill, and Martha Stewart called on plaintiff in late August/early September to provide a mojito recipe and then personally thanked her for said recipe. Plaintiff alleges

that Gouze regularly called her a “diva” and “bitch” as early as April or May of 2004, but said that such occurrences became more frequent after the Bruni review.

Plaintiff alleges that in early October, she spoke with David Barber about how Gouze treated her. She alleges that she told Barber that Gouze harassed her. Plaintiff asserts that she also said that Gouze called her a “bitch” and “diva.” She contends further that she told Barber that Gouze said to her that he could put a man at the front bar and lounge to do a better job. Plaintiff alleges that she explained to Barber that the situation made her “really uncomfortable.” Plaintiff alleges that Barber promised to take care of the situation. Plaintiff also alleges that Gouze saw her speaking with Barber. Plaintiff further alleges that, around the same time, she spoke with Irene Hamburger, Vice President of Operations at Blue Hill, about the alleged harassment.

On October 13, 2004, Gouze and plaintiff had an altercation surrounding plaintiff’s refusal to take a wine quiz from Todd. Plaintiff alleges that she requested that she take the quiz at another time in order to allow her time to prepare the bar and lounge prior to the restaurant opening for the evening. Allegedly, Todd denied plaintiff’s request and reported to Gouze. Plaintiff alleges that Gouze asked her to join him in the restaurant’s private dining room whereupon he told her that she had no choice about when to take the wine quiz. Gouze subsequently sent plaintiff home, allegedly telling her to “get the fuck out” of the restaurant and calling her a “real bitch.” Plaintiff contends that Gouze did not give her an opportunity to explain her position and denied her pay for the time she had already worked.

The next day, October 14, 2004, plaintiff arrived early for her shift to attend a wine tasting. Plaintiff asserts that she spoke with Barber about being sent home the

night before. She alleges that she told Barber that Gouze called her a “bitch” and “diva.” She also alleges that Barber instructed her to “work it out” with Gouze. Plaintiff contends that she did speak to Gouze later that day. She alleges that Gouze said, “Tina, I don’t like you. You are a real diva. You are a real egoist.” Subsequently, on October 15, 2004, plaintiff called Barber. She contends that she reaffirmed to him that she was concerned Gouze’s harassment would continue. Plaintiff asserts that Barber again reassured her that he would take care of the situation.

On November 14, 2004, Gouze terminated plaintiff. That evening plaintiff covered the service and front bar because Chris, the service bartender, did not show up to work. Allegedly, a couple in the front lounge became irate because of slow service. Plaintiff alleges that she sought Gouze’s assistance, but he ignored her. Plaintiff contends that she tried to take the couple’s order, but they instead chose to leave Blue Hill. Plaintiff alleges that another customer complimented plaintiff’s handling of the situation to another Blue Hill employee, Claire. Plaintiff also alleges that she advised Gouze’s assistant, John List, of the situation and he told her not to worry about it. Nonetheless, Gouze approached plaintiff at around 9:00 p.m. and brought her to the coat check room. Plaintiff alleges that Gouze said, “That’s it. I’m letting you go.” Plaintiff contends that although she tried to speak with Gouze, he was non-responsive. She asserts that Gouze again called her a “bitch” and said she was “bitchy to customers.”

Following plaintiff’s termination, Blue Hill hired a man to bartend at the front bar and lounge. Blue Hill also hired a cocktail waitress to serve customers in the lounge.

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