

# Jury Must Decide the University Club's Liability For Banquet Captain's Alleged Conduct, Judge Says

BY DANIEL WISE

THE SEXUAL harassment claims of six female banquet servers must proceed to trial against the prestigious Uni-

versity Club, a Supreme Court justice in Manhattan ruled last week. Justice Paul G. Feinman rejected the 145-year-old club's

claim that it should be released from the suit because the plaintiffs complained about the acts of a 71-year-old banquet captain, Melquisedec Guzman, who was not a supervisor.



Justice Feinman

The women charged that Mr. Guzman had denied them work because they had refused his sexual advances. In 2005, Mr. Guzman was suspended after one of the plaintiffs complained about his alleged conduct to the general manager. Mr. Guzman later retired.

The plaintiffs were all part-time waitresses who were hired to work banquets held at the Italian Renaissance-style club at Fifth Avenue and 54th Street.

In 2005, when the litigation started, the women all worked fewer than 750 hours a year at the club and received no benefits. Since then, one of the women, Marilyn Rivas, has been promoted and receives benefits. A second, [REDACTED] has resigned and moved out of state. The remaining four con-

tinue to work at the club: Gladys Villanueva, Ruth Cuevas, Emilina Aportela and Claudia Cristancho.

In [REDACTED] *v. University Club*, 114951/05, Justice Feinman ruled that the plaintiffs could pursue their claims under the New York City Human Rights Law that they had been the victims of quid pro quo harassment and a hostile work environment.

With respect to both claims, Justice Feinman denied the club's motion for summary judgment because it had "not sufficiently established" that Mr. Guzman was "not functioning at least in a limited supervisory capacity." » Page 2

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The Manhattan Supreme Court decision will be published **tomorrow**.

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# Liability

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Under the City Human Rights Law, NYC Admin. Code §8-107(13)(b)(1-3), Justice Feinman wrote, employers can be held responsible for the discriminatory practices of employees "when they exercise managerial or supervisory responsibility."

"Although [Mr.] Guzman's authority was limited in nature," Justice Feinman held, "the fact that he had the power to pick and choose which workers would be asked to work, raises a question of fact as to whether he can be considered a supervisor under law and thus, whether defendant University Club should be held liable."

Justice Feinman also found that there was evidence, though it was disputed, that the club was aware of the women's complaints about the alleged improper conduct.

One of the plaintiffs, Ms. Aportela, contends that she approached the club's food and beverage director, Kevin Fiske, to complain about Mr. Guzman's

behavior in 2003. Justice Feinman described her as saying "she did not think it was fair that she would have to go out with [Mr.] Guzman to get enough hours" so she could qualify for benefits.

The club, however, contends that the record shows that Ms. Aportela did not complain to Mr. Fiske about alleged harassment.

The club also contended that its payroll records belied the plaintiffs' claims that Mr. Guzman denied them work assignments after they rebuffed his advances.

The hours worked by five of the women, the club maintains, increased in both 2004 and 2005, the period in which they say Mr. Guzman became increasingly insistent. The only plaintiff whose hours went down over that period, had traveled to Columbia for a month and found full-time employment with another company for 13 months before returning to work part-time at the club.

The women complained that the alleged harassment occurred as early as 1999 but escalated from 2003 through 2005. During that period two of

the women claimed that Mr. Guzman asked them to go to a hotel with him. Ms. Villanueva alleged that he assaulted her when she refused to go. Ms. Cuevas claimed that, after initially refusing, she agreed to go twice to a hotel with him after which she received more work.

Joshua Friedman, the attorney for the plaintiffs, said he had filed a criminal complaint with the Manhattan District Attorney's Office, but it had decided there was not enough evidence to bring a case.

Janine M. Masrasciullo and Jennifer E. Sherven, of Kaufman Dolowich, Voluck & Gonzo in Woodbury, N.Y., represented the club. Ms. Masrasciullo did not respond to a request for comment.

Daniel T. Hughes, of Litchfield & Cavo, who represented Mr. Guzman, did not respond to a request for comment.



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