

'Borgata Babes' Lose Sex Bias Suit Over Weight, Dress Rules

By **Abigail Rubenstein**

Law360, New York (July 23, 2013, 5:07 PM ET) -- A New Jersey court ruled Thursday that the Borgata Hotel Casino & Spa's dress and grooming rules for cocktail servers known as "Borgata Babes," which included sexy uniforms and prohibitions on gaining too much weight, did not constitute unlawful sex discrimination.

Superior Court Judge Nelson C. Johnson granted summary judgment to the Borgata's owner, Marina District Development Co. LLC, on claims brought by 22 women that the company's appearance policies forced them to work in an atmosphere of sexual objectification and to adhere to standards based on gender stereotypes, and that the casino only enforced the weight policies against women, in violation of state anti-discrimination law.

The judge ruled both that the casino's dress and grooming rules were reasonable and within the bounds of the law and that while the weight rules had only ever been enforced in cases involving female employees, the plaintiff had failed to provide evidence that discipline was ever warranted under the policy in situations involving male employees.

"We have long held that Borgata's personal appearance policy is lawful and reasonable," Joe Lupo, the Borgata's senior vice president of operations, said. "We are pleased that the court agrees."

An attorney for the plaintiffs was not immediately available for comment on Tuesday.

Judge Johnson noted that New Jersey's anti-discrimination law permits an employer to require its workers to adhere to reasonable workplace grooming, appearance and dress standards, as long as they do not violate other provisions of the law or other laws. And he concluded that despite the plaintiffs' claims that they were made to act as stereotypical sex objects to market the casino, the casino's requirements were reasonable.

The plaintiffs were all aware of what they were signing up for when they took the "Borgata Babe" job, and the casino made it clear that the position meant more than just serving drinks, the judge said.

“Whether they are referred to as 'Babes' or 'ambassadors' the duties plaintiffs signed onto at the time of being hired very much involved them making use of their attractive appearance,” the judge's opinion said. “Nonetheless, the plaintiffs ask the court to stretch far beyond existing jurisprudence to find that — despite being attractive females who accepted a position in which their good looks and physique were key to their hiring — they have been exploited via unlawful stereotyping by being asked to put on make-up, wear Zac Posen apparel and remain physically fit.”

The law only recognizes sex-stereotyping when employers use stereotypes to impose a professional disadvantage on one sex or punishes a trait in one sex that it praises in the other, but neither situation occurred at the Borgata, the judge ruled.

And as for the casino's policy forbidding the “Borgata Babes” from gaining more than 7 percent of the weight at which they were hired, the judge found that the policy itself, which contained exceptions for medical issues and pregnancy, was not unlawful and that the plaintiffs had not backed up their claim that it was only enforced against female employees with anything more than unverified anecdotes.

As such, the judge granted summary judgment to the employer on both the plaintiffs' challenge to its policies and to the way they were applied.

The plaintiffs are represented by Deborah L. Mains of Costello & Mains PC.

The Borgata is represented by Rene M. Johnson and Michelle Seldin Silverman of Morgan Lewis & Bockius LLP and Jeffrey R. Lindsay and Russell Lichtenstein of Cooper Levenson.

The case is Schiavo et al v. Marina District Development Co. LLC, case number ATL-L-2833-08, in the Superior Court of New Jersey.

--Editing by John Quinn.

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