

Four fired servers win lawsuit against Hilltop restaurant

By **David Liscio***Friday, July 28, 2006*

SAUGUS -- An Essex Superior Court jury has found that the Hilltop Steakhouse in Saugus illegally funneled waitress tips to managers and wrongfully fired four waitresses who complained about it.

Both practices could force the landmark restaurant to pay its wait staff more than \$2.5 million.

The waitresses were earning \$2.63 an hour plus tips, but the restaurant took a percentage of those gratuities, typically about four percent. Under Massachusetts law, restaurant owners are barred from distributing tip money to other employees, including managers, even if they also serve food and beverages.

Janet Calcagno, 45, 29 Howard St., was one of the four waitresses fired in January 2003, four months after she and the others complained. She had worked at the Hilltop for five years.

According to Calcagno, the company would not allow the wait staff to see the final bill of a dinner order.

"They took our money without telling us," she said. "One day one of us saw the bill and noticed that they were charging 18 percent to the customers, but we were not getting all of the gratuity. It was wrong."

Calcagno explained that she and the three others are working mothers from Saugus, Revere and Everett who together served dinner to thousands of patrons, including many celebrities and important people. "We're in this as a group and I'm the leader of the pack - the big mouth," she said. "This is a big thing. They played with our livelihood and when we questioned them they fired us."

Calcagno lives with her husband, Angelo, son Michael, a Saugus High freshman, and daughter Ashley, who begins nursing college in the fall.

"Once we complained, they fired us in person," she said. "They called us all into the office on the same day, and it happened to be my birthday."

That was more than three years ago. But on Tuesday, the situation was reversed, with the waitresses on the offensive, armed with a jury verdict from the Lawrence court.

"Hopefully this will make up for all those lost tips," Calcagno said. "Nursing schools costs a lot of money."

At the close of the trial, the Lawrence jury awarded \$125,000 each to three plaintiffs, and \$75,000 to a fourth. It also found the harm suffered by the waitresses merited the tripling of \$610,000 in damages.

Of that amount, \$160,000 will be shared by about 40 Hilltop banquet room workers who joined the class-action lawsuit, and since the overall award was tripled by the jury, their share is actually \$480,000, according to attorney Shannon Liss-Riordan, who represents the service

employees.

With the addition of attorney fees and interest, the final judgment is expected to increase beyond \$2.5 million, said Liss-Riordan, adding, "These waitresses made \$2.63 per hour plus a gratuity, but the managers who were getting their money were making several hundred dollars per week."

Attorney John Coyne, who represented the restaurant, declined comment. A lawyer for the Hilltop Steakhouse wait staff said that in some cases the help received 14 percent of the 18 percent gratuity that the restaurant automatically tacks on to each bill. The remaining four percent was paid to the managers.

The case was the first of 19 "tip cases" to go to trial in state after the Legislature amended Massachusetts law in 2002 to state that waitresses, waiters and bartenders are not legally required to share tips with kitchen staff or managers.

During the trial, Hilltop lawyers said restaurant managers were entitled to tips because they regularly served food and beverages.

A dozen lawsuits over tips are still pending in the state. Seven other cases have been settled. Restaurants across the country are facing similar lawsuits.

"Waitressing is a hard job," said Liss-Riordan. "If you're only getting paid \$2.63 an hour, which is the state's rate for service employees, you expect to get tips. The gratuities are your wages. Unfortunately, in this case, the Hilltop was subsidizing the managers' pay or their own bottom line."

Liss-Riordan said the court must enter a final judgment. "We don't know if the Hilltop will appeal," she said.

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