

4 Sri Lankan trainees sue Hub firm

By David Abel, Globe Staff, 8/28/2003

The ad in the Sri Lankan newspaper promised "Free! Restaurant Training in the USA."

Of thousands of ambitious hospitality students who responded, Dev Srilan and 14 others won slots in what was described as an 18-month "training course" with Finagle a Bagel, the award-winning Boston-based franchise, which said it was seeking managers to run new sandwich shops in Asia.

Instead, after obtaining special visas for training programs and moving into company-provided housing here last September, Srilan said, he and the other Sri Lankans were required by the company to work as much as 75 hours a week for under \$300 -- less than minimum wage -- at jobs ranging from cashiers to bagel makers.

When he and others complained about the lack of training, they said, the company fired two of them, and threatened to call the Department of Homeland Security to deport them if they did not leave the country immediately.

"I was made to feel like I was their slave -- we couldn't question anything," Srilan said.

Yesterday, he and three other Sri Lankans filed a class-action lawsuit in federal court against Finagle a Bagel, alleging the company broke minimum wage and overtime laws, unfairly terminated their employment, threatened them and their families in Sri Lanka with retaliatory action, and violated the terms of their H-3 visas, which specifically prohibit "productive employment" or a position "in the normal operation of the business."

They also filed complaints against the company with the US Equal Employment Opportunity Commission, the Wage and Hour Division of the US Department of Labor, the Massachusetts Commission Against Discrimination, and the state attorney general.

Company officials yesterday denied the allegations and called the four employees who filed the suit "dissidents" in an otherwise well-regarded program.

"We believe we were in accordance with the law," said Nancy Sterling, a spokeswoman for Finagle a Bagel, which has net sales of about \$18 million a year and in 1998 was named the Greater Boston Chamber of Commerce's small business of the year.

Working in the bagel shops, Sterling said, provides a valid educational experience for the participants. "The only way you can learn how to operate a bagel facility, whether it be a production facility or a store, is through hands-on training. That's the training they received."

That's not what the Sri Lankan plaintiffs say they signed up for.

As evidence, they cite a petition for their visas the company filed in August 2002 with the US Immigration and Naturalization Service. In it, the company described the training program as three six-month phases, each of which would include "formal instructional exercises" and "classroom lectures."

"The trainees will not engage in productive employment," wrote Heather Robertson, the company's director of marketing and human resources, in the petition, which was reviewed by the Globe. "The trainee's level of knowledge and experience would not permit his or her active participation in or contribution to the work of the employees."

Srilan and the others said the few hours of training they received was limited to meetings about preventing sexual harassment, helping a person who is choking, and keeping the restaurants clean -- the basic training required for all the company's managers.

Sterling disputed that, saying the training was more extensive. "Managers do go through similar training," Sterling said, "but there was more emphasis on customer service, financial service, and cash handling -- things people from Sri Lanka are less familiar with."

The Sri Lankan plaintiffs, according to time sheets provided to the Globe, spent as much as 75 hours a week working, without overtime. No matter how many hours they worked, they said, each earned just \$287.50 a week.

Before recently moving to a job cutting vegetables and making change in one of the bagel shops, Srilan, 28, said he spent most of his time on an assembly line in the company's South Boston factory, adding poppy and sesame seeds to bagel dough.

Vindu Gayan, 25, also fired, said he worked as an assistant manager in nine restaurants. Kevin Dirckze, 25, said he often worked 75 hours a week as a manager. Thanuja Kumari, 24, who says she was suspended and threatened with dismissal after making a math error, worked mostly as a sandwich maker. "They didn't treat us as human beings," said Kumari, the only woman in the program.

All the work, their attorney said, is banned by the terms of their visa.

"The visa explicitly prohibits them from doing the same work as other employees -- and any on-the-job training must be 'incidental' to the experience," said Shannon Liss-Riordan, an attorney referred to the Sri Lankans by the state's Department of Labor and Workforce Development. "The bottom line is the company used these well-educated, English-speaking employees as cheap labor, because they come from a country where the wages are much lower than here."

The H-3 visa's prohibition on productive labor, immigration-law specialists said, means a trainee may only serve as an observer to the labor process. If the trainees help make bagels, for example, the bagels can't be sold.

"Trainees shouldn't be doing anything to bring financial benefit to the employer," said Greg Siskind, an attorney in Tennessee who specializes in such visas.

Sri Lanka, an island off the southeast coast of India, is home to about 19 million people who earn, on average, the equivalent of \$3,700 a year. Finagle a Bagel, or Finagle Lanka, as it's known there, employs nearly 200 people at a large bakery in Colombo, the capital, where bread products are baked and sold locally.

In the Boston area, the company employs 450 people at 17 locations.

The company's owners, Alan Litchman and Laura B. Trust, who have relatives in Sri Lanka, plan to eventually sell bagels there, too. Many of the 15 Sri Lankans they brought to Boston were hoping to open sandwich shops upon returning home, and signed up for the program to

learn how to do so.

But after Srilan and the others complained, company officials told the trainees they planned to end the entire program. The company has not taken that action.

Still, many in the program remain hopeful of future employment with the company and express gratitude for the opportunity. In interviews conducted this week in the presence of a company lawyer, who did not allow the employees to be interviewed alone, two Sri Lankans denounced their colleagues who filed the suit, and praised Finagle a Bagel.

"We are treated very well -- they give us everything we want," said Mahesh Wigetunga, 32, noting that the company provided them housing in Quincy.

He and Vishwaka Binduhewa, 22, said they do perform the same job as other managers in the company. But Binduhewa said: "I want the hands-on experience."

The Sri Lankans suing Finagle a Bagel said they didn't mind the hands-on experience, either. But they said they expected to gain more management experience, beyond serving sandwiches or making change, and say it's unfair that they earn significantly less than employees who perform the same jobs.

In the past few weeks, since they hired an attorney, conditions have improved, they said. The Sri Lankans said they have been told to work only 40 hours a week, and they've heard the company is preparing seminars and may provide more training.

Still, the workers feel their status is uncertain. "I'm working under the constant fear of them trying to frame me," said Dirckze, who said he was recently accused of stealing and mishandling cash. "They obviously don't want me."

As for Dev Srilan, who now lives with scores of other homeless men at Father Bill's Place in Quincy, everything rides on the lawsuit. Without employment, he worries whether he'll be sent home and forced to pay a \$12,000 bond. Participants in the program, and their family members, signed an agreement stipulating that the participant would successfully complete the program and return home to Sri Lanka upon its conclusion or the family would pay the company the value of the bond.

"My life, my future, has been put on hold," he said. "There's just a lot of anxiety and uncertainty right now."

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