

## Baristas' suit against Starbucks may proceed as class action in Mass. federal court

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Lichten & Liss-Riordan's  
Shannon Liss-Riordan

A Boston federal judge has certified a Massachusetts class action against Starbucks Corp. over its tip policy on the same day plaintiffs appealed a New York federal court's judgment on the same policy to the U.S. Court of Appeals for the 2d Circuit.

A March 18 order by District Judge Nathaniel Gorton in *Matamoros v. Starbucks Corp.* certified a class action against the coffee company for allegedly violating the Massachusetts Tips Law.

Also on March 18, Shannon Liss-Riordan, who represents the plaintiffs in both cases, filed a brief in the 2d Circuit in *In re Starbucks Employee Gratuity Litigation*. In that case, name plaintiffs Jeana Barenboim and Jose Ortiz are appealing District Judge Laura Taylor Swain's December 2009 summary judgment ruling for Starbucks.

In the Massachusetts case, Gorton's order accepted two recommendations by Magistrate Judge Leo Sorokin. His order denied the defendant's summary judgment motion and granted the plaintiff's partial summary judgment motion by ruling that Starbucks shift supervisors are barred by the state's tip laws from receiving any money from tip pools at the coffeehouse chain.

Hernan Matamoros sued Starbucks in March 2008 in Massachusetts state court on behalf of baristas who had worked at Starbucks in the prior six years over its policy of distributing customers' tips to baristas and shift supervisors.

The case was removed to federal court a couple of months later. Two other former baristas, Sharon Sam Chan and Kate Petersen, subsequently joined the case as named plaintiffs.

The Massachusetts Tips Law "is clear on its face," said Liss-Riordan of Boston's Lichten & Liss-Riordan. "We are looking forward to recovering money the Starbucks baristas should have received because their tip pool was diluted," Liss-Riordan said. "The legislature has made clear that the supervisors' pay should come entirely out of company's pocket and not the tip pool."

Liss-Riordan also said Gorton "made an apt observation in affirming the magistrate judge's ruling that denying a class in this case would be an end run around the tips law, which the Massachusetts Supreme Judicial Court has said is not allowed."

In the case before the 2d Circuit, the plaintiffs' brief argues that the New York labor law's plain language prohibits wait staff employees from being required to share tips with supervisors. Instead of analyzing that language, the brief states that the district court relied on "prior federal district court decisions that had erroneously applied the less protective federal law standard regarding waitstaff's tips under the [Fair Labor Standards Act]."

Although the New York and Massachusetts laws are written somewhat differently, "we believe that they should reach the same result," Liss-Riordan said.

"The New York law uses slightly different language that signifies the same important point that supervisors are not to share in tip pools," Liss-Riordan said. "Their money must come entirely from employers."

Minnesota's federal court dismissed a similar case in December, *Delsing v. Starbucks Coffee Corp.*, after the parties settled. The plaintiffs' lawyers at Minneapolis' Nichols Kaster could not be immediately reached for comment.

Starbucks declined to comment because both the Massachusetts and New York cases are in active litigation. Lawyers at Akin, Gump, Strauss, Hauer & Feld who represent Starbucks in the Massachusetts and New York cases — and represented the company in the Minnesota case — did not return calls for comment.

Baristas won big, then lost at the appellate level, in the best-known lawsuit against Starbucks for its tips policies. In June 2009, San Diego's 4th District Court of Appeal overturned an \$86 million verdict for the employees in *Chau v. Starbucks Corp.* In that case, the trial court ruled that Starbucks violated California's unfair competition law by allowing shift supervisors to share employees' tips.

The award topped \$100 million with interest. The appellate court ruled that Starbucks did not violate state law because shift supervisors share some of the same duties as baristas and the tips are gathered collectively and shared equally

A group of assistant store managers have filed a separate New York federal case, *Winans v. Starbucks Corp.*, asserting that the New York labor law gives them a right to share tips.

The parties in Winan are finished briefing the court on the class certification question and expect a ruling in the next several months, said the plaintiffs' lawyer, Adam Klein, who chairs the class action practice group at New York employment law firm Outten & Golden. "We'll proceed after that fact on the merits," Klein said.

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