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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M.)
HALEY, EXECUTIVE DIRECTOR,)
ex rel. ZACHARY LISZKA,)

Complainant,

v.

ASCHR Nos. J-07-191; J-07-208

HOOK LINE & SINKER, INC., d/b/a)
SUBZERO and HUMPY’S GREAT)
ALASKAN ALEHOUSE,)

Respondent.

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Zachary Liszka, hereby alleges the following against Respondent Hook Line & Sinker, Inc.:

1. Respondent Hook Line & Sinker, Inc. is an Alaska corporation that owns and operates SubZero, a bar located at 614 F Street in downtown Anchorage.

2. Respondent also owns and operates Humpy’s Great Alaskan Alehouse (Humpy’s), a restaurant and bar located on the same block as and adjacent to SubZero, at 610 West 6th Avenue in Anchorage.

3. On June 5, 2007, Zachary Liszka applied for employment with Respondent as a bartender. Mr. Liszka completed an employment application and submitted it to Respondent with a resume and cover letter.

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1 4. Mr. Liszka was not immediately hired by Respondent. Some time between
2
3 June 5, 2007, and August 13, 2007, Cyndi Ramirez, one of Respondent's managers,
4 interviewed Mr. Liszka for a bartender job.

5 5. On August 13, 2007, Mr. Liszka was hired by Respondent to work as a
6 bartender at its SubZero location.

7
8 6. After he was hired, Mr. Liszka completed, at Respondent's request, a
9 "Post-Hire Health Questionnaire." The questionnaire asked numerous health- and
10 medical-related questions, including whether Mr. Liszka had ever been hospitalized, was
11 taking any medications or drugs, and whether he had, or ever had, numerous diseases,
12 limitations, conditions, or injuries.

13
14 7. Mr. Liszka has a permanent impairment due to an arterial vein
15 malformation that causes him to have a slight weakness in his left hand.

16
17 8. Mr. Liszka did not disclose his impairment to Ms. Ramirez during his
18 interview. Mr. Liszka can perform all of the essential functions of Respondent's
19 bartender job without the need for an accommodation. There was, therefore, no need for
20 Mr. Liszka to disclose his impairment before or after he was hired.

21
22 9. Mr. Liszka did not indicate his impairment on Respondent's health
23 questionnaire; however, Mr. Liszka answered Respondent's questionnaire truthfully
24 because the questionnaire did not ask him to disclose his impairment.

25
26 10. On August 14, 2007, Respondent terminated Mr. Liszka's employment.
27 Ms. Ramirez told Mr. Liszka that he was being terminated because she did not believe he
28

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1 could perform the job because of his impairment.

2 11. Mr. Liszka filed a complaint with the Alaska State Commission for Human
3 Rights on August 17, 2007, alleging that Respondent discriminated against him because
4 of a perceived disability when Respondent terminated his employment.
5

6 12. Mr. Liszka's complaint was served on Respondent on August 28, 2007.
7

8 13. On August 30, 2007, Mr. Liszka and a friend went to Humpy's to eat
9 dinner. After being seated, Mr. Liszka was recognized by one of Respondent's
10 managers. The manager ejected Mr. Liszka from Respondent's premises and denied him
11 service because Mr. Liszka had filed a complaint against Respondent with the Human
12 Rights Commission.
13

14 14. Since August 30, 2007, and to the present, Respondent has represented that
15 Mr. Liszka is not welcome at Humpy's or SubZero and will be denied service in the
16 future because he filed a complaint of discrimination against Respondent.
17

18 **FIRST CAUSE OF ACTION—TERMINATION BECAUSE OF**
19 **DISABILITY**
20 **VIOLATION OF AS 18.80.220(a)(1)**

21 15. Paragraphs 1-14 above are realleged and incorporated herein.

22 16. Zachary Liszka is a person with a disability as that term is defined in AS
23 18.80.300(14)(C).
24

25 17. Mr. Liszka was and is qualified to perform all of the essential functions of
26 Respondent's bartender position.

27 18. Respondent terminated Mr. Liszka's employment because Mr. Liszka has
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1 a disability as defined in AS 18.80.300(14)(C).

2 19. Respondent's termination of Mr. Liszka's employment was discriminatory
3 and a violation of AS 18.80.220(a)(1).
4

5 20. As a result of Respondent's discriminatory discharge, Mr. Liszka has
6 suffered damages in the form of lost wages.
7

8 **SECOND CAUSE OF ACTION—ILLEGAL MEDICAL INQUIRIES**
9 **VIOLATION OF AS 18.80.220(a)(1)**

10 21. Paragraphs 1-14 above are realleged and incorporated herein.

11 22. On August 13, 2007, after Mr. Liszka was hired, Respondent required Mr.
12 Liszka to disclose confidential, medical information in its "Post-Hire Health
13 Questionnaire."
14

15 23. Respondent's requirement that Mr. Liszka complete the "Post-Hire Health
16 Questionnaire" was not job related and consistent with business necessity.
17

18 24. Respondent's requirement that Mr. Liszka complete the "Post-Hire Health
19 Questionnaire" constituted an improper and illegal medical inquiry in violation of AS
20 18.80.220(a)(1).
21

22 **THIRD CAUSE OF ACTION—RETALIATION**
23 **VIOLATION OF AS 18.80.220(a)(4)**

24 25. Paragraphs 1-14 above are realleged and incorporated herein.

25 26. Mr. Liszka filed a complaint of discrimination against Respondent with the
26 Alaska State Commission for Human Rights on August 17, 2007.

27 27. On or before August 28, 2007, Respondent became aware of Mr. Liszka's
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1 complaint.

2 28. In his complaint, Mr. Liszka alleged that Respondent terminated his
3 employment on the basis of a perceived disability in violation of AS 18.80.220.
4

5 29. On August 30, 2007, Respondent refused to serve Mr. Liszka and ejected
6 him from its premises because Mr. Liszka had filed an employment discrimination
7 complaint against Respondent.
8

9 30. Respondent's denial of services to Mr. Liszka and its ejection of Mr.
10 Liszka from its premises constitute retaliation by an employer that is prohibited by AS
11 18.80.220(a)(4).
12

13 31. Respondent's retaliatory treatment of Mr. Liszka is ongoing and continues
14 to the present.
15

16 **PRAYER FOR RELIEF**

17 Wherefore the Executive Director asks for the following relief:

18 1. That the Commission issue an order declaring that Respondent Hook Line
19 & Sinker, Inc., violated AS 18.80.220 by discriminating against Mr. Liszka when it
20 terminated his employment.
21

22 2. That the Commission issue an order declaring that Respondent retaliated
23 against Mr. Liszka in violation of AS 18.80.220 by denying him services normally and
24 regularly afforded to all members of the general public.
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1 3. That the Commission issue an order declaring that Respondent violated AS
2 18.80.220 by making illegal medical inquiries of Mr. Liszka when it required him to
3 complete its "Post-Hire Health Questionnaire."
4

5 4. That the Commission order Respondent to adopt and disseminate a
6 policy of nondiscrimination under the Alaska Human Rights Law that includes a
7 policy prohibiting discrimination against employees on the basis of a disability, and a
8 policy prohibiting retaliation for complaining about discrimination.
9

10 5. That the Commission order Respondent to obtain training for its managers
11 and supervisors on the provisions of the Alaska Human Rights Law that prohibit
12 discrimination in employment, with an emphasis on the prohibition against
13 discrimination based on disability and the prohibition against retaliation.
14

15 6. That the Commission order Respondent to immediately refrain from
16 making medical inquiries of employees unless such inquiries are job related and
17 consistent with business necessity.
18

19 7. That the Commission order Respondent to pay back wages to Mr.
20 Liszka, plus interest at the applicable legal rate, the exact amount of which will be
21 proven at hearing.
22

23 8. That the Commission order Respondent to immediately make accessible
24 to Mr. Liszka all of its goods, services, facilities, advantages, and privileges that are
25 normally afforded to members of the general public, and that Respondent inform its
26 managers, supervisors, and employees that its goods, services, facilities, advantages,
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and privileges that are normally afforded to members of the general public are to provided to Mr. Liszka.

Dated this 5th day of April 2010 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

_____/s/_____
Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M.)
HALEY, EXECUTIVE DIRECTOR,)
ex rel. ZACHARY LISZKA,)
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Complainant,)
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v.)
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HOOK LINE & SINKER, INC., d/b/a)
SUBZERO and HUMPY'S GREAT)
ALASKAN ALEHOUSE,)
)
Respondent.)
_____)

ASCHR Nos. J-07-191; J-07-208

SETTLEMENT AGREEMENT

Charges have been filed with the Alaska State Commission for Human Rights, hereinafter the Commission, by the above-named complainant against the above-named respondent, under the provisions of the Alaska Human Rights Law, AS 18.80.010-.300. The charges have been investigated, and substantial evidence to support the allegations of discrimination has been found.

I. GENERAL PROVISIONS:

A. All Parties:

1. It is agreed that this agreement constitutes a total settlement of the issues between the parties in this case.
2. It is understood that this agreement does not constitute an admission by the respondent of any violation of the Alaska Human Rights Law or other applicable federal and municipal civil rights laws. It is further understood that this agreement does not represent an admission or statement by any party relating to the requirements or remedies available pursuant to the Alaska Human Rights Law.
3. All parties agree that Commission staff, on request of any party or on its own motion, may review compliance with this agreement. As a

part of such review, Commission staff may, within ten days upon written notice, require written reports concerning compliance, inspect premises, examine witnesses, and examine and copy documents.

4. The Commission will submit this agreement, if applicable, to the agencies that also have accepted this complaint pursuant to worksharing agreements with the Commission.

B. Commission Staff:

1. Commission staff agrees to move for dismissal of the case and refrain from seeking other statutory remedies relating to the above-captioned complaint, subject to the parties' compliance with the terms of this agreement.
2. If respondent does not comply fully with the terms of this agreement by the dates established herein, the parties agree the agreement may be rescinded and full administrative remedies sought.

C. Complainant:

1. Complainant hereby agrees not to sue respondent with respect to any of the allegations of the above-captioned case, subject to the respondent's compliance with this agreement. Nothing in this paragraph or elsewhere in this agreement shall be interpreted to prohibit complainant from filing a charge or claim with the Commission pursuant to AS 18.80.220(a)(4) for any conduct by respondent occurring after execution of this agreement.
2. Complainant hereby waives all further administrative procedures before the Commission on this matter, including a Commission hearing.

D. Respondent:

1. Respondent hereby waives all further administrative procedures before the Commission on this matter, including a Commission hearing.
2. This agreement shall not be interpreted to mean that respondent is absolved from any duty to afford equal employment opportunities or affirmative action as may be required under other applicable laws and regulations.

II. ENFORCEMENT:

- A. The parties to this agreement agree that the terms of this agreement are legally binding in the same manner and to the same extent as a Commission order issued following a public hearing pursuant to AS 18.80.130. This agreement shall be enforceable in any court of competent jurisdiction.
- B. The parties agree that in the event of a party's noncompliance with this agreement, the Commission may elect to seek the remedies set forth in Section I.B of this agreement or it may seek to enforce the agreement in court.

III. REMEDIAL PROVISIONS:

- A. Respondent agrees and asserts its belief that discrimination based on race, color, sex, age, national origin, physical or mental disability, religion, pregnancy, parenthood, marital status, or changes in marital status has no place in the consideration of employees for positions, promotions, layoffs, terminations, or any other employment practices.
- B. Respondent also agrees and asserts its belief that to discharge, expel, or otherwise discriminate against a person because that person has filed a complaint, testified, or assisted in a proceeding filed under the Human Rights Law or because that person has opposed any practice forbidden under AS 18.80.200-.260 is to engage in unlawful retaliation.
- C. Respondent therefore agrees to adopt and disseminate to all employees an approved statement of corporate policy reflecting respondent's nondiscriminatory posture and opposition to any retaliatory practices within sixty days of the execution of this agreement. The statement shall provide that failure on the part of any employee to observe and implement such policy shall constitute grounds for disciplinary action, including dismissal. The statement shall also provide that any employee who believes he or she has been subjected to discrimination may contact the Alaska State Commission for Human Rights, at 274-4692 or 800-478-4692, to obtain information or file a complaint. Respondent shall send a copy of its proposed policy to the Commission for review and approval. The statement must be approved by Commission staff before it is adopted and disseminated.
- D. Respondent agrees to provide training to its managers and any employees who act in a supervisory capacity in the laws prohibiting discrimination in employment, with an emphasis on the prohibition on disability discrimination and retaliation, within sixty days of the execution of this agreement. The

emphasis on the prohibition on disability discrimination shall include a discussion on the permissibility of asking medical questions of employees and applicants for employment. The training shall be at least three hours in length and shall be conducted in person by a trainer approved by the Commission. Respondent shall send a copy of the resume of the person it proposes to conduct this training along with an outline of the proposed program and training materials to the Commission for review and approval at least fifteen days prior to the date of the training. Within fifteen days after the date the training session takes place, respondent shall submit a report on the training provided, including the subject matters covered and the names and job titles of the attendees; and respondent shall attach a copy of the training materials distributed to the attendees.

- E. Respondent agrees to immediately refrain from asking impermissible disability-related questions of job applicants, as those terms are defined in the Equal Employment Opportunity Commission's enforcement entitled "ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations," located at <http://www.eeoc.gov/laws/guidance/subject.cfm>. A copy of the enforcement guidance is attached to this Agreement as Exhibit 1
- F. Respondent also agrees to immediately refrain from making disability-related inquiries of employees unless such requests are job related and consistent with business necessity. Respondent agrees to carry out this provision consistently with the Equal Employment Opportunity Commission enforcement guidance entitled "Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)," accessible at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>. A copy of the enforcement guidance is attached to this Agreement as Exhibit 2.
- G. Respondent agrees that it will eliminate from complainant's personnel records all documents and entries relating to the facts and circumstances that led to the filing of the above-captioned charge of discrimination and the related events occurring thereafter. Respondent also affirms that no other employer or potential employer of complainant will be advised in any fashion of the facts or circumstances involved in this case.
- H. Respondent agrees to pay complainant the sum of \$5,000 in consideration for complainant's release of all claims made in this action. Respondent shall send a check to the Commission in the amount of \$5,000, made payable to Zachary Liszka within fifteen days after this agreement has been fully

executed and served on Respondent. Commission staff will forward the check to complainant.

- I. Respondent shall submit a report to Commission staff within seventy-five days of this agreement describing the manner in which it has carried out the undertakings herein outlined.

Date

Zachary Liszka, Complainant

Date

James Opinsky, Owner, for Respondent Hook Line & Sinker, Inc.

Date

Paula M. Haley, Executive Director, Alaska State Commission for Human Rights