

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

PAULA M. HALEY, EXECUTIVE)
DIRECTOR, ALASKA STATE)
COMMISSION FOR HUMAN RIGHTS)

Complainant,)

ASCHR No. J-07-233

v.)

OAH No. 10-0145-HRC

HARBOR CROWN SEAFOODS, INC.)

Respondent.)
_____)

FINAL ORDER

In accordance with AS 18.80.130 and 6 AAC 30.480, the Hearing Commissioners, having reviewed the hearing record, now ORDER that the Administrative Law Judge's Recommended Decision of September 24, 2010 is hereby ADOPTED by the Commission in its entirety.

As recommended in the Recommended Decision, the Commission finds that Harbor Crown Seafoods, Inc. violated AS 18.80.220(a)(1) by discriminating against its Filipino employees in the terms and conditions of employment on the basis of their race, Asian/Pacific Islander, and their National Origin, Filipino, by creating a hostile work environment.

The Commission imposes the following remedies:

1. Harbor Crown shall refrain from discriminating against Filipino employees in the terms and conditions of employment;
2. Before conducting any further business in Alaska, Harbor Crown must adopt and disseminate a policy of nondiscrimination that incorporates the Alaska Human Rights Law and that includes, but is not limited to, a policy prohibiting discrimination because of race or national origin, and that the policy be approved by the Executive Director prior to its dissemination;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Before conducting any further business in Alaska, Harbor Crown must provide training to its managers, supervisors, and employees in the laws prohibiting discrimination in employment, that the training be at least three hours in length, and that it shall be conducted in person by a trainer approved by the Executive Director prior to the commencement of the training; and
4. The Executive Director may review and seek to enforce compliance with its order and that as part of any review the Executive Director may require written reports concerning compliance, inspect premises, examine witnesses, and examine and copy documents.

IT IS SO ORDERED.

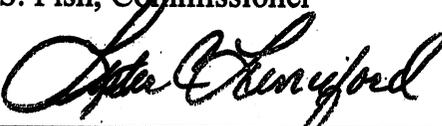
Judicial review is available to the parties pursuant to AS 18.80.135 and AS 44.62.560-.570. An appeal must be filed with the superior court within 30 days from the date this Final Order is mailed or otherwise distributed to the parties.

DATED: April 7, 2011



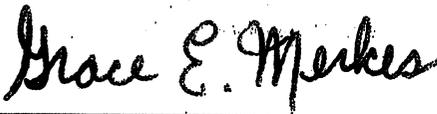
Mark S. Fish, Commissioner

DATED: April 7, 2011



Lester C. Lunceford, Commissioner

DATED: April 7, 2011



Grace E. Merkes, Commissioner

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS**

PAULA M. HALEY, Executive Director, Alaska)
State Commission for Human Rights,)
)
Complainant,)
)
v.)
)
HARBOR CROWN SEAFOODS, INC.,)
)
Respondent.)

OAH No. 10-0145-HRC
ASCHR No. J-07-233

RECOMMENDED DECISION

I. INTRODUCTION

Paula M. Haley, in her capacity as the Executive Director of the Alaska State Commission for Human Rights, filed an Accusation against Harbor Crown Seafoods, Inc. (Harbor Crown). The Accusation alleges that Harbor Crown discriminated against Filipino employees in the terms and conditions of employment by creating a hostile work environment. The Executive Director met her burden of proving discrimination. Accordingly, the Commission should find that discrimination occurred and order Harbor Crown to adopt and disseminate a policy of nondiscrimination and provide training on the laws prohibiting discrimination.¹

II. FACTS

Harbor Crown is incorporated in the State of Alaska, and Kenneth Dorris is its registered agent.² Mr. Dorris also has a 33% ownership interest in Harbor Crown.³ Ralph Punzalan, a Filipino, was an employee of Harbor Crown and was a lead supervisor from 2005 through 2009.⁴ During most of Mr. Punzalan's employment with Harbor Crown, James Nordin was the Plant Manager with the power to hire and fire employees.⁵

¹ As discussed below, Harbor Crown is no longer in business. The recommended relief would only be required if Harbor Crown resumed business in Alaska.

² Exhibit 2 to Complainant's Motion for Default. This document is hearsay, but it is admissible as a public record pursuant to Evidence Rule 803(8).

³ *Id.*

⁴ Affidavit of Ralph Punzalan, ¶ 3 (attached as Exhibit 4 to Complainant's Motion for Default).

⁵ Punzalan Affidavit, ¶ 6. Mr. Nordin was terminated during the summer of 2009. Punzalan Affidavit, ¶ 17.

Each day, Mr. Nordin would walk through the plant for about an hour.⁶ During these walk throughs, Mr. Nordin made racist comments about minorities, including Filipinos. He would yell “f—ing Filipinos” for no reason, call them stupid, and say that “all Filipinos are lazy.”⁷

In March of 2005, Mr. Nordin placed his hands around Mr. Punzalan’s neck and squeezed tightly.⁸ Mr. Nordin told Filipino workers that they could not visit certain businesses in town when the workers were off duty.⁹ Mr. Punzalan’s testimony was confirmed by the testimony from another Harbor Crown supervisor, Raul Carpentero.¹⁰

On March 29, 2010, the Executive Director filed an Accusation with the Alaska State Commission for Human Rights. The Accusation alleged that Mr. Nordin discriminated against Filipino employees because of their race and national origin, and subjected them to severe and pervasive discriminatory harassment.¹¹

A Notice of Case Planning Conference was issued on April 9, 2010. This notice indicated that the telephonic conference would be held on April 30, 2010, and that each party should provide a telephone number to be used for this conference. Harbor Crown did not enter an appearance or provide a telephone number. After Harbor Crown failed to appear at the first conference, the Office of Administrative Hearings issued a Notice of Rescheduled Case Planning Conference. Harbor Crown did not enter an appearance or provide a telephone number for this conference either. At this second Case Planning Conference, the undersigned ALJ was able to contact an attorney for Harbor Crown owner Kenneth Dorris. This attorney indicated that he represented Mr. Dorris in a bankruptcy proceeding only, and that he did not represent Harbor Crown in this Human Rights Commission matter.

By this time, the Executive Director had in her file two letters that confirm Harbor Crown had notice of this proceeding. The first is a letter from Mr. Dorris to the Executive Director claiming that Harbor Crown was out of business, and had no owners, management, or employees.¹² The second was from Robert Storm and was also sent to the Executive Director. Mr. Storm states that he had been employed by Harbor Crown as a “middle manager” but that he

⁶ Punzalan Affidavit, ¶ 7.

⁷ *Id.*

⁸ Punzalan Affidavit, ¶ 9.

⁹ Punzalan Affidavit, ¶ 13.

¹⁰ Submitted as an Addendum to the Motion for Default.

¹¹ Accusation, ¶ 3.

¹² Exhibit 5 to Motion to Dismiss.

could not speak or respond on behalf of the company.¹³ The Accusation had been served on Mr. Storm at the Dutch Harbor address for Harbor Crown, and on Mr. Dorris at an Idaho address.¹⁴

The record establishes that Harbor Crown did receive notice of the Accusation and has had a full opportunity to respond. Because Harbor Crown did not respond, the Executive Director filed a Motion for Entry of Default along with a Memorandum of Default, on August 23, 2010. The Certificate of Service indicates that these documents were served on Mr. Dorris at his Idaho address. Harbor Crown has not responded to the Motion for Entry of Default.

III. DISCUSSION

A. Authority to Enter A Default Order

Commission hearings are governed by the Administrative Procedure Act¹⁵ as well as by the procedural regulations adopted by the Commission.¹⁶ In this case, Harbor Crown did not respond to the Accusation and did not otherwise appear in this matter. Accordingly, the Commission may

take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without notice to the respondent.¹⁷

B. Applicable Law

It is unlawful for an employer to discriminate against a person in a "term, condition, or privilege of employment because of the person's race . . . or national origin."¹⁸ The Alaska Supreme Court has held that discriminatory behavior that is sufficiently severe or pervasive such that it creates a hostile work environment violates AS 18.80.220.¹⁹ In *Veco, Inc. v. Rosebrock*,²⁰ the Alaska Supreme Court considered evidence of an employee subjected to a series of offensive sexual comments and held that a jury could conclude that this series of comments constituted a

¹³ Exhibit 6 to Motion to Dismiss.

¹⁴ Certificate of Service to Referral of Complaint to Hearing, which indicates that both the Referral and the Accusation were served simultaneously.

¹⁵ AS 18.80.120(b).

¹⁶ 6 AAC 30.410 – 497.

¹⁷ AS 44.62.530. The Executive Director relies on Civil Rule of Procedure 55 as authority to take action in the absence of a response from Harbor Crown. Civil Rule 55 is not one of the rules of procedure adopted by reference in the Commission's regulations (6 AAC 30.435(a) adopts the "rules . . . for motions in civil proceedings," but for a number of reasons, including the fact that default under Rule 55 is not obtained by "motion," Rule 55 cannot be among the rules incorporated by reference). Since there is a statute directly applicable to this situation, the Commission should rely on that statute in entering any order in this case.

¹⁸ AS 18.80.220(a)(1).

¹⁹ *French v. Jadon, Inc.*, 911 P.2d 20, 28 (Alaska 1996).

²⁰ 970 P.2d 906 (Alaska 1999).

pattern of harassment which could be regarded as either sufficiently severe or sufficiently pervasive to alter the conditions of employment.²¹ The *Veco* court also noted that the required showing of severity was less as the pervasiveness of the conduct increased.²²

When a supervisor engages in harassment that creates a hostile work environment, the employer can be held vicariously liable for that harassment regardless of whether management level employees were aware of the harassment.²³ This form of vicarious liability only applies, however, when it is the victim's supervisor who is engaged in the harassing activity.²⁴

C. *Harbor Crown Violated AS 18.80.220*

The affidavits filed in this case establish that Harbor Crown's plant manager created a hostile work environment and that Harbor Crown is liable for his actions.

Mr. Nordin was the plant manager, and had the authority to fire employees.²⁵ He made offensive comments directed at Filipino employees on a daily basis.²⁶ Mr. Nordin would say that these employees were lazy and stupid, and he would yell "f—ing Filipinos" for no reason. These comments are at least as severe and pervasive as the comments at issue in the *Veco* case. Mr. Nordin also told Filipino employees they could not visit certain businesses during their time off.²⁷ This additional conduct further aggravated the hostile work environment created by Mr. Nordin's insults.

Harbor Crown can be held liable for the conduct of Mr. Nordin because Harbor Crown invested in him the power to fire employees. Thus, regardless of whether Mr. Nordin was a management-level employee or a low level supervisor, he had sufficient authority to alter the terms and conditions of employment of the employees working under him at Harbor Crown's plant.²⁸ Because Mr. Nordin created a hostile work environment, Harbor Crown has violated AS 18.80.220(a)(1).

//

//

//

²¹ *Veco, Inc.*, 970 P.2d at 916.

²² *Id.*

²³ *Veco, Inc.*, 970 P.2d at 914.

²⁴ *Veco, Inc.*, 970 P.2d at 915.

²⁵ Punzalan Affidavit, ¶ 6.

²⁶ Punzalan Affidavit, ¶ 7.

²⁷ Punzalan Affidavit, ¶13.

²⁸ *Veco, Inc.*, 970 P.2d at 912.

D. Remedies

When there is a finding that a person has engaged in a discriminatory practice, the Commission is required to order the person to refrain from that practice.²⁹ In addition, the Commission has the discretion to order any additional appropriate relief including training of the employer and its employees, posting of signs, back pay, or front pay.³⁰

In this case, the only remedies requested by the Executive Director are for Harbor Crown:

1. Order Harbor Crown Seafoods, Inc. to refrain from discriminating against Filipino employees in the terms and conditions of employment.
2. Adopt and disseminate a policy of nondiscrimination that is approved by the Commission;
3. Provide training to its employees, managers, and supervisors in the laws prohibiting discrimination, and that this training be at least three hours in length and be provided by a trainer approved by the Commission; and
4. Be subject to further review by the Commission, provide any requested written reports, and allow inspection of the premises, inspection and copying of documents, and examination of witnesses.

These requested remedies are proposed to be conditional, and would only apply if Harbor Crown seeks to conduct any further business in Alaska.

The accusation in this case was not filed on behalf of any employee, and there is no evidence in this matter as to the amount of lost wages, if any. Accordingly, the Executive Director has appropriately not requested an award of either back pay or front pay in this case. The Executive Director has requested that Harbor Crown be subject to certain conditions if it resumes business in Alaska. Those remedies are appropriate here. Harbor Crown is not currently conducting business in Alaska, so there is no ongoing problem that needs to be corrected. On the other hand, Harbor Crown's violation was severe and occurred over a long period. If it resumes business in Alaska, it should take steps to ensure that similar violations do not re-occur.

IV. CONCLUSION

The Commission should enter an order finding that Harbor Crown Seafoods, Inc. violated AS 18.80.220(a)(1) by discriminating against its Filipino employees in the terms and conditions of employment on the basis of their race, which is Asian/Pacific Islander, and their National Origin, which is Filipino, by creating a hostile work environment.

²⁹ AS 18.80.130(a).

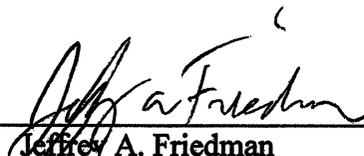
³⁰ As 18.80.130(a)(1).

In addition, the Commission should impose remedies aimed at preventing any future violation. The Commission's order should state that:

1. Harbor Crown shall refrain from discriminating against Filipino employees in the terms and conditions of employment;
2. before conducting any further business in Alaska, Harbor Crown must adopt and disseminate a policy of nondiscrimination that incorporates the Alaska Human Rights Law and that includes, but is not limited to, a policy prohibiting discrimination because of race or national origin, and that the policy be approved by the Executive Director prior to its dissemination;
3. before conducting any further business in Alaska, Harbor Crown must provide training to its managers, supervisors, and employees in the laws prohibiting discrimination in employment, that the training be at least three hours in length, and that it shall be conducted in person by a trainer approved by the Executive Director prior to the commencement of the training; and
4. the Executive Director may review and seek to enforce compliance with its order and that as part of any review the Executive Director may require written reports concerning compliance, inspect premises, examine witnesses, and examine and copy documents.

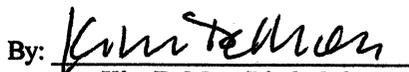
DATED this 24th day of September, 2010.

By: _____


Jeffrey A. Friedman
Administrative Law Judge

Certificate of Service: The Undersigned certifies that on the 24th day of September, 2010, a true and correct copy of this document was mailed to the following: Kenneth Dorris, Harbor Crown Seafoods, Inc.; Lauri Owen, Human Rights Advocate, ASCHR.

By: _____


Kim DeMoss/Linda Schwass