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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. KENYA R. MILLER,)
Complainant,)
v.)
D. OF ALASKA, INC., d/b/a DENNY'S)
RESTAURANTS,)
Respondent.)
_____)

ASCHR No. J-08-084

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Kenya R. Miller, hereby alleges the following against Respondent D. of Alaska, Inc., d/b/a Denny's Restaurants:

1. Respondent D. of Alaska, Inc., d/b/a Denny's Restaurants ("Denny's") is an Alaska corporation that owns and operates Denny's, a restaurant located at 2900 Denali Street in Anchorage.
2. Denny's employed Kenya R. Miller, who is African American and is hearing impaired.
3. Mr. Miller's hearing impairment causes him to be substantially limited in the major life activity of hearing and Mr. Miller is a person with a disability as that term is defined in the Human Rights Law, AS 18.80.100 - .300.
4. Mr. Miller began his employment with Denny's on October 20, 2007, as a

1 dishwasher and on or about December 1, 2007, Denny's promoted Mr. Miller to the
2 position of busser. Denny's terminated Mr. Miller's employment on April 10, 2008.

3
4 5. Upon hiring Mr. Miller, Denny's required him to complete a "Health
5 Questionnaire." It is Denny's practice to require all new employees to complete the same
6 questionnaire.

7
8 6. The Health Questionnaire instructs employees to refrain, "until employed,"
9 from answering the questions it contains.

10
11 7. The Health Questionnaire requires that employees disclose confidential
12 medical and disability-related information, such as whether the employee "ever had or"
13 had "ever been treated for" specific medical conditions and impairments, including, but
14 not limited to, epilepsy, diabetes, cardiac disease, "amputated foot, leg, arm, hand," loss
15 of sight, varicose veins, and heavy metal poisoning.

16
17 8. The Health Questionnaire also asks employees to "List surgery, illness or
18 injuries, [and to indicate the] name and address of hospital or physician."

19
20 9. The Health Questionnaire also directs employees to answer the following
21 questions: "Do you have any physical or any partial disability?"; "Do you have any
22 condition that may require a special work assignment?"; "Have you ever received a
23 partial disability?;" and "Have you ever been advised to have a surgical operation or
24 medical treatment that has not been done?"

25
26 10. Prior to and during Mr. Miller's employment with Denny's, it was common
27 practice for servers at Denny's to share their tips with bussers.
28

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d/b/a Denny's Restaurants, ASCHR No. J-08-084*

1 Health Questionnaire is not, and has never been, job related and consistent with business
2 necessity.

3
4 19. Denny's's requirement that Mr. Miller and other past employees complete the
5 Health Questionnaire, and its ongoing practice of requiring all other employees to complete
6 the Health Questionnaire, constitute past and ongoing and illegal medical and disability
7 inquiries, in violation of AS 18.80.220(a)(1).
8

9
10 **SECOND CAUSE OF ACTION:**
11 **DISCRIMINATION BECAUSE OF RACE AND DISABILITY,**
12 **A VIOLATION OF AS 18.80.220(a)(1)**

13 20. Paragraphs 1-13 above are realleged and incorporated herein.

14 21. Mr. Miller is African American.

15 22. Mr. Miller is a person with a physical disability because he is substantially
16 limited in the major life activity of hearing.

17 23. Mr. Miller was treated differently because of his race and because of his
18 disability when one of Denny's servers refused to share her tips with him

19
20 24. Mr. Miller complained to a Denny's manager about discrimination—
21 specifically, about a Denny's server's refusal to share tips with him because of his race
22 and because of his disability—but Denny's took no action in response to Mr. Miller's
23 complaint.
24

25 25. The failure of Denny's to investigate Mr. Miller's complaint of
26 discrimination by a coworker and to take any action to correct the discrimination violates
27 AS 18.80.220(a)(1).
28

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d/b/a Denny's Restaurants, ASCHR No. J-08-084*

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discrimination based on race and disability, and on the permissible scope of medical and disability-related information employers may request from applicants for employment, job offerees, and employees.

7. That the Commission order Denny's to pay lost tip income to Mr. Miller, plus interest at the applicable legal rate, for the period of December 1, 2007, to April 10, 2008, the exact amount of which to be proven at hearing.

Dated this 12th day of November 2010 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

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