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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. EVANJELINA GONZALEZ,)
)
Complainant,)
)
v.)
DUKE INVESTMENTS LLC,)
)
Respondent.)

ASCHR No. J-10-007

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Evanjelina Gonzalez, hereby alleges the following against Respondent Duke Investments LLC:

1. Respondent Duke Investments LLC (“Duke”) is an Alaska limited liability company that owned three “Chili’s” franchise restaurants in Anchorage, Wasilla, and Fairbanks. The three restaurants closed in March 2012.
2. Evanjelina Gonzalez was employed by Duke as a food and drink server in Duke’s Anchorage Restaurant (“Chili’s”) beginning on October 23, 2004.
3. In early September 2008, Ms. Gonzalez suffered a fall and injured her shoulder while working at Chili’s. She reinjured her shoulder later that month and filed worker’s compensation claims for each injury.

1 4. As a result of her injuries, Ms. Gonzalez's doctor limited her to lifting no
2 more than ten pounds. In response to the lifting restriction, Duke's Workers
3
4 Compensation Safety Specialist, Liz Garza-Cotton, advised Ms. Gonzalez on September
5 26, 2008, that Ms. Gonzalez could return to work and that Duke could provide her with
6 light duty work in accordance with her doctor's limitations.
7

8 5. Ms. Gonzalez returned to work with the understanding that she would be
9 provided with a light duty assignment as indicated by Ms. Garza-Cotton. The Chili's
10 manager did not reassign Ms. Gonzalez to a separate light duty position, although such
11 positions were available. Instead, Ms. Gonzalez was required to continue working as a
12 food and drink server. During this time she relied, as often as she was able, on
13 coworkers to help her lift objects that were too heavy for her to lift by herself.
14

15 6. In December 2008, Ms. Gonzalez's physical condition had not improved,
16 and she advised her supervisor that she would stop working until she had her
17 approaching surgery and could return to work.
18

19 7. Ms. Gonzalez thereafter underwent surgery on January 29, 2009. Her
20 condition did not significantly improve, however, and she remained subject to a ten
21 pound lifting restriction and was not immediately released to work.
22

23 8. On August 5, 2009, Ms. Gonzalez's doctor issued her a written release to
24 return to work, but indicated in the release that the ten pound lifting restriction was
25 permanent. Ms. Gonzalez attempted to return to work and provided a copy of the
26 medical release to Larry Gonzalez-Rivera, a manager at Chili's.
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Duke Investments LLC, ASCHR No. J-10-007*

1 17. Instead of engaging Ms. Gonzalez in the interactive process and returning
2 her to work with an accommodation, Duke terminated Ms. Gonzalez's employment.

3
4 18. Duke terminated Ms. Gonzalez's employment because of her disability.

5 19. Duke's termination of Ms. Gonzalez's employment constitutes a violation
6 of AS 18.80.220(a).

7
8 20. Because of Duke's termination of Ms. Gonzalez's employment, Ms.
9 Gonzalez has suffered harm in the form of lost wages, benefits, and other remuneration.

10 **SECOND CAUSE OF ACTION – TERMINATION BECAUSE OF DISABILITY**
11 **A VIOLATION OF AS 18.80.220(a)**

12 21. Paragraphs 1 to 11 above are realleged and incorporated herein.

13
14 22. In August 2009, Ms. Gonzalez was qualified to perform the essential
15 functions of her position.

16 23. In August 2009, despite the fact that Ms. Gonzalez was qualified to return to
17 work, Duke refused to allow her to return to work.

18
19 24. Instead of allowing Ms. Gonzalez to return to work, Duke terminated Ms.
20 Gonzalez's employment.

21 25. Duke treated Ms. Gonzalez as a person with a disability when it terminated
22 her employment.

23
24 26. Duke's termination of Ms. Gonzalez's employment constitutes a violation
25 of AS 18.80.220(a).

26
27 27. Because of Duke's termination of Ms. Gonzalez's employment, Ms.
28 Gonzalez has suffered harm in the form of lost wages, benefits, and other remuneration.

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Duke Investments LLC, ASCHR No. J-10-007*

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PRAYER FOR RELIEF

Wherefore the Executive Director asks for the following relief:

1. That the Commission issue an order declaring that Respondent violated AS 18.80.220 by terminating Ms. Gonzalez's employment.

2. That the Commission order Respondent to adopt and disseminate a policy of nondiscrimination under the Alaska Human Rights Law.

3. That the Commission order Respondent to obtain in-person training of at least three hours in length for its managers, supervisors, and employees on the provisions of the Alaska Human Rights Law that prohibit discrimination in employment, with an emphasis on disability-based discrimination, and that such order specify that the trainer and training curriculum be approved by the Executive Director prior to the training being conducted.

4. That the Commission order Respondent to eliminate from Ms. Gonzalez's personnel records all documents and entries relating to the facts and circumstances that led to Ms. Gonzalez's filing of the above-captioned charge of discrimination and any of the related events occurring thereafter.

5. That the Commission order Respondent to refrain from penalizing Ms. Gonzalez in any way in future considerations for employment and, if rehired, for transfers, promotions, or upgrading because Ms. Gonzalez complained about discrimination or because she filed a complaint with the Commission.

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1 6. That the Commission order Respondent to refrain from advising or
2 informing any other employer or potential employer of Ms. Gonzalez of the facts or
3 circumstances involved in this case.
4

5 7. That the Commission order Respondent to pay back pay to Ms. Gonzalez,
6 and any other benefits or remuneration to which she would have been entitled had she
7 not been terminated, for the period beginning on August 5, 2009, and ending on the date
8 of the Commission's order, plus interest at the applicable legal rate, the exact amount of
9 which will be proven at hearing.
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11 Dated this 10th day of May 2013 at Anchorage, Alaska.
12

13 ALASKA STATE COMMISSION
14 FOR HUMAN RIGHTS

15
16 By: 

17 Laura Clauson Ferree
18 Human Rights Attorney
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