

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

PAULA M. HALEY <i>ex rel.</i>)	
CASSANDRA WEBB,)	
Complainant,)	
v.)	
DIET-FAST, INC, et al.,)	
Respondents.)	OAH No. 06-0491-HRC
<hr/>		ASCHR No. C-04-146
PAULA M. HALEY <i>ex rel.</i>)	
ERICA CORIA,)	
Complainant,)	
v.)	
DIET-FAST, INC, et al.,)	
Respondents.)	OAH No. 06-0492-HRC
<hr/>		ASCHR No. C-05-070
PAULA M. HALEY <i>ex rel.</i>)	
MALYNN GIBSON,)	
Complainant,)	
v.)	
DIET-FAST, INC, et al.,)	
Respondents.)	OAH No. 06-0493-HRC
<hr/>		ASCHR No. C-02-321
PAULA M. HALEY <i>ex rel.</i>)	
JENNIFER SCOLLAN,)	
Complainant,)	
v.)	
DIET-FAST, INC, et al.,)	
Respondents.)	OAH No. 06-0494-HRC
<hr/>		ASCHR No. C-02-311
PAULA M. HALEY <i>ex rel.</i>)	
KIRA LAMB,)	
Complainant,)	
v.)	
DIET-FAST, INC, et al.,)	
Respondents.)	OAH No. 06-0495-HRC
<hr/>		ASCHR No. C-05-010

RECOMMENDED DECISION AND ORDER

I. INTRODUCTION

The complainants in this case are former workers at the Women's Nautilus Club, a fitness gym in Anchorage. The respondents, Diet-Fast, Inc., d/b/a Women's Nautilus Club and John Sankey d/b/a/ Women's Nautilus Club, admit they violated the complainants civil rights while in respondents' employ.¹ Respondents submitted complainants Coria, Gibson, Scollan, and Webb to sexual harassment and retaliation in violation of AS 18.80.220(a)(1) and (4), which resulted in their discharge, either constructive or actual.² Respondents discriminated against Complainant Lamb on the basis of race in violation of AS 18.80.220(a)(1) when they improperly terminated her employment.³ Therefore, the only remaining issues are the appropriate monetary and equitable relief to be ordered.

The commission has the discretion to order any legal or equitable relief "which is reasonably calculated to prevent future violations of a similar nature or which reasonably compensates the complainant...for losses incurred as a result of the unlawful conduct...".⁴ The equitable relief requested by all of the complainants, such as removal of certain records from personnel files, is reasonably calculated to prevent future violations and should be granted as to all of the complainants.

However, not all complainants have established that they incurred economic loss as a result of the unlawful conduct. Complainants Scollan and Gibson have not brought forward evidence of economic loss and none should be awarded. Conversely, complainants Webb Lamb, and Coria have presented undisputed evidence of their respective economic losses attributable to respondents' unlawful conduct. The back-pay relief requested reasonably compensates them for their economic losses and should be granted.

¹ See Amended Complaint; Order Deeming Admitted All Allegations in the Amended Complaint dated December 26, 2006.

² *Id.*

³ *Id.*

⁴ 6 AAC 30.480(b).

II. SUMMARY JUDGMENT

The complainants have filed an application for entry of default for respondents' failure to participate or otherwise defend the allegations against them.⁵ They have also filed an application for entry of default judgment supported by affidavits and payroll exhibits.⁶ The respondents have not filed an opposition or challenged the evidence submitted by complainants in support of their claim for damages.

When, as here, there are no factual disputes and the evidence presented remains unchallenged, summary adjudication is appropriate.⁷ Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁸ It should be granted if no genuine dispute as to any material fact exists and the complaint may be resolved as a matter of law.⁹

The undisputed evidence supports monetary relief in the form of back pay less mitigation to complainant Webb in the amount of \$6,073.13, to complainant Lamb in the amount of \$21,532.89, and to complainant Coria in the amount of \$88,734.63. The complainants are also entitled to prejudgment interest at a rate that will reasonably compensate them for lost use of the money owed.¹⁰

III. FACTS

Complainants Scollan and Gibson both worked for the respondents at the same time. Both resigned within a day of each other because of respondent Sanekey's behavior. Complainant Scollan she was told that she needed a man to tell her what to do and was asked whether she was moody because she did not "get laid enough..."¹¹ She resigned when her general manager told her that respondent Sankey referred to everyone as "dirty whores" and was

⁵ Application for Entry of Default; Memorandum of Default.

⁶ *Id.*

⁷ AS 18.80.120(e) "At any time after the issuance of an accusation, the executive director or the person charged in the accusation may petition for a summary decision on the accusation. The commission shall grant a petition if, after a reasonable opportunity for discovery, the record shows that there is no genuine issue of material fact and that the petitioner is entitled to an order under AS 18.80.130 as a matter of law."

⁸ *See, e.g., Schikora v. State, Dept. of Revenue*, 7 P.3d 938 (Alaska 2000).

⁹ *E.g., Smith v. Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990); AS 18.80.130(a).

¹⁰ *Pyramid Printing Co. v. Alaska State Commission for Human Rights*, Supreme Court No. S-12046 Op. No. 6112, slip op. at 15 (Alaska 2007) citing *Liimata v. Vest*, 45 P. 3d 310, 322 n.44 (Alaska 2002).

telling other employee's that she would not perform her job duties because she would rather perform oral sex.¹²

Complainant Gibson was the target of respondent Sankey's repeated unwelcome remarks. She was called "slut" and "whore."¹³ Respondent Sankey repeatedly made comments about the size of his penis and that his employee's would rather perform oral sex than clean the lavatory. When complainant Gibson told respondent Sankey that his comments were inappropriate and offensive, she was terminated.¹⁴

Complainant Webb was terminated by respondent Sankey after objecting to his remarks about various sexual positions, her sex life, and her breasts.¹⁵ Respondent Sankey terminated Complainant Webb saying he was over-staffed. However, at the time of her termination Respondent Sankey was under-staffed.¹⁶ When terminated, her average semi-monthly earnings were \$1,004.41.¹⁷ Complainant Webb was able to obtain employment earning an average of \$785.40 semi-monthly.¹⁸ She remained in that position until June 1, 2005 when the position was terminated.¹⁹ Complainant Webb is not seeking damages for the period after June 1, 2005.

Complainant Lamb is the only black complainant. She was terminated the first time she called in sick.²⁰ Respondent Sankey informed her that if she couldn't make it to work he did not need her and she should not bother coming in anymore.²¹ He did not terminate non-black employees who called in sick. Respondents paid Complainant Lamb \$927.92 per pay period.²² When terminated, she was seventeen years old and had not graduated from high school. Finding work was difficult. In the 9 months following her termination she applied to over 40 different

¹¹ Scollan Sworn Complaint of Discrimination.

¹² *Id.*

¹³ Gibson Sworn Complaint of Discrimination.

¹⁴ *Id.*

¹⁵ Webb Sworn Complaint of Discrimination.

¹⁶ *Id.*

¹⁷ Affidavit of Susan Gress and Attachments C & D.

¹⁸ Affidavit of Webb and Attachments.

¹⁹ *Id.*

²⁰ Lamb Sworn Complaint of Discrimination.

²¹ *Id.*

²² Affidavit of Susan Gress and Attachments A & B.

employers without success.²³ During this time she earned G.E.D.²⁴ She finally was able to secure employment at Nordstrom earning \$10.50 per hour and 3% commission working 30 hours a week.²⁵ This exceeded her semi-monthly wages earned working for respondents.

Complainant Coria worked for the respondents for less than two weeks before she was terminated. During her short period of employment, complainant Coria was subject to unwelcome sexual advances including touching and offensive sexual comments.²⁶ When she complained, she was fired.²⁷ At the time of termination she was earning \$2,539.51 semi-monthly. She attempted to find work that paid similar wages but was unsuccessful.²⁸ She found a temporary job as a hotel front desk clerk for \$9.50 per hour.²⁹ She also painted houses earning \$294.12 semi-monthly. She continued to paint houses until her doctor told her to stop due to pregnancy.³⁰ When she was able to return to work, complainant Coria found a temporary position with the Municipality of Anchorage, working 26 hours per week at \$11.00 per hour.³¹ She found a temporary position with the Community Service Patrol working 40 hours per week at \$12.00 per hour.³² Almost a year and a half after she was terminated by respondent, complainant Coria was able to obtain permanent employment working 40 hours per week earning \$15.00 per hour.³³

IV. ANALYSIS

A. Legal Status of John Sankey and Diet- Fast, Inc.

From the time the first complaints were filed by complainants Scollan and Gibson, respondent's legal form has changed several times. The original employer was an Alaska corporation, Diet-Fast, Inc. d/b/a Women's Nautilus Club. Diet-Fast, Inc., obtained a business license in the name of "Women's Nautilus Club" on September 6, 2002. Diet-Fast, Inc., was

²³ Affidavit of Lamb.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Coria Sworn Complaint of Discrimination.

²⁷ *Id.*

²⁸ Affidavit of Coria and Attachments.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

involuntarily dissolved on October 31, 2003 and its business license expired on December 31, 2003. Respondent Sankey was the sole shareholder and president of Diet-Fast, Inc. He is the assignee of and successor to Diet-Fast, Inc., and has been the owner of Women's Nautilus Club since Diet-Fast, Inc., dissolved on October 31, 2003. Respondent Sankey is in bankruptcy.³⁴ He originally filed a Chapter 11 reorganization petition on March 12, 2003.³⁵ His Chapter 11 petition was converted to a Chapter 7 liquidation petition on December 1, 2006.³⁶

The fact that Respondent Sankey's bankruptcy was converted to a liquidation proceeding does not bar an order from the commission granting equitable relief. It does, however, impact the complainants' economic losses.

B. Economic Loss

1. Method of Calculation

Economic loss in the form of back pay is calculated from the date the respondents' actions caused the loss to the date the employee leaves the industry or reasonable expectation of employment with the employer ends, such as when the business closes.³⁷ When respondent Sankey's bankruptcy petition was converted from reorganization to liquidation, any reasonable expectation of rehire or reemployment ended and with it the back pay ceased accruing. Back pay also terminates if the complainant obtains comparable or higher paying employment.

The burden of establishing economic loss is on the complainant. Here, not all of the complainants have presented evidence of economic loss. Without evidence of an economic loss incurred as a result of respondents' illegal acts, back pay cannot be awarded. Complainant Scollan and complainant Gibson have not provided evidence of economic loss, and, therefore are not entitled to monetary relief.

³³ *Id.*

³⁴ *In Re Sankey*, No. 03-00237 (Bankruptcy D. Alaska).

³⁵ The commission may take official notice of Respondent Sankey's bankruptcy proceedings. "In reaching a decision official notice may be taken, either before or after submission of the case for decision, . . . of a fact that is judicially noticed by the courts of the state." AS 44.62.480. Respondent Sankey's bankruptcy proceeding and its procedural history is the type of fact that is judicially noticed by the courts of the state. A party objecting to the taking of official notice of these facts may file an objection and submit evidence or authority to refute the officially noticed facts.

³⁶ *Id.*

³⁷ See Donald T. Kramer, J.D., Annotation, *Period of Time Covered by Back Pay Award Under Title VII of Civil Rights Act of 1964* (42 U.S.C.A. §§ 2000e et seq.) 137 A.L.R. Fed. 1 §13 (Originally published in 1997).

When calculating the amount of economic loss to recognize and award, the commission's goal is to make the unlawfully terminated employee whole. The commission cannot order punitive damages.³⁸ An award of back pay must be reduced by mitigation. Mitigation is the amount the employee did earn or could have earned by making reasonably diligent efforts to obtain similar employment. To compensate an employee for the time value of money, prejudgment interest is provided for by regulation and will continue to accrue at a reasonable rate until the commission enters summary judgment.³⁹

The regulation in effect at the time complainants Webb and Lamb's civil rights were violated, former 6 AAC 30.480(b), provided that the commission had the discretion to select any pre-judgment interest rate as long as the rate reasonably compensated complainant Webb and complainant Lamb for the lost use of their money. On December 29, 2004, 6 AAC 30.480(b) was amended to recognize that the floating statutory rate of interest⁴⁰ applied by the courts found at AS 09.30.070(a) was an interest rate that would reasonably compensate complainants. Therefore, it is reasonable to infer that when applying former 6 AAC 30.480(b), the rate of interest assigned by AS 09.30.070(a) at the time the judgment is entered will "reasonably compensate" complainant Webb and complainant Lamb. In 2007 the statutory pre-judgment interest rate is 9.25%.⁴¹ Accordingly, when calculating interest owed for complainant Webb, complainant Lamb, and complainant Coria, the commission should apply the statutory pre-judgment interest rate of 9.25%.

When expressed as mathematical formulas:

Economic Loss = (Back Pay – Mitigation) + Interest Due

Interest Due = Interest Per Day x Number of Days Owed.

Interest Per Day = [(Back Pay – Mitigation) x .0925]/365

³⁸ AS 18.80.120(a).

³⁹ Before a complainant to be made whole and fully compensated for economic loss, he or she must to receive interest as compensation for the time value of money. 6 AAC 30.480(b).

⁴⁰ AS 18.80.130(f) provides, "The interest rate for an award under this section is determined in the manner provided in AS 09.30.070." AS 09.30.070(a) establishes a floating prejudgment interest rate tied to the Federal Reserve discount rate in effect on January 2, of the year in which the judgment is entered.

⁴¹ AS 09.30.070(a).

2. Cassandra Webb

Based on complainant Webb’s work history with respondents, her average semi-monthly income per pay period was \$1,004.41. Had she remained in respondents’ employ, complainant Webb would have earned \$13,760.45. She was able to mitigate her losses by \$8,639.40. As of March 31, 2007, total interest due is \$952.08. Interest continues to accrue at \$1.55 per day until the commission orders summary judgment. As of March 31, 2007, complainant Webb has incurred total economic loss in the amount of \$6,073.13.⁴²

Quarter	Pay Periods Per Quarter	Back Pay @ \$1004.41 per pay period	Mitigation ⁴³	Back Pay Less Mitigation	Interest Per Day ⁴⁴	Days ⁴⁵	Interest Due ⁴⁶	Economic Loss Award ⁴⁷
11/05/04 – 12/31/04	3.7	\$3,716.32	\$1,570.80	\$2,145.52	\$0.54	820	\$442.80	\$2,588.32
1/1/05 – 3/31/05	6	\$6,026.46	\$4,712.40	\$1,314.06	\$0.33	730	\$240.90	\$1,554.96
4/1/05 – 6/1/05	4	\$4,017.67	\$2,356.20	\$1,661.47	\$0.42	639	\$268.38	\$1,929.85
Cumulative Totals								
as of								
3/31/07		\$13,760.45	\$8,639.40	\$5,121.05	\$1.29		\$952.08	\$6,073.13

⁴² \$13,760.45-\$8,639.40+\$952.08=\$6,073.13.

⁴³ See Webb Aff., Exhibits and Attachments thereto.

⁴⁴ [(Back Pay – Mitigation) x.0925]/365.

⁴⁵ Interest is calculated from the first day after the quarter ends. For example, quarter ending June 30 interest calculation commences July 1. Interest calculated through March 31, 2007.

⁴⁶ Interest Per Day x Days.

⁴⁷ (Back Pay – Mitigation) + Interest Due.

3. Kira Lamb

Based on complainant Lamb's work history with respondents, her average semi-monthly income per pay period was \$927.92. Complainant Lamb made numerous attempts to mitigate her losses but was unable to find other employment for nine months. As of March 31, 2007, total interest due is \$3,438.45. Interest continues to accrue at \$4.59 per day until the Commission orders summary judgment. As of March 31, 2007, complainant Lamb has incurred total economic loss in the amount of \$21,532.89.⁴⁸

Quarter	Pay Periods Per Quarter	Back Pay @ \$927.92 per pay period	Mitigation ⁴⁹	Back Pay Less Mitigation	Interest Per Day ⁵⁰	Days ⁵¹	Interest Due ⁵²	Economic Loss Award ⁵³
9/1/04 – 9/30/04	2	\$1,855.84	\$0.00	\$1,855.84	\$0.47	912	\$428.64	\$2,284.48
10/1/04 – 2/31/04	6	\$5,567.52	\$0.00	\$5,567.52	\$1.41	820	\$1,156.20	\$6,723.72
1/1/05 – 3/31/05	6	\$5,567.52	\$0.00	\$5,567.52	\$1.41	730	\$1,029.30	\$6,596.82
4/1/05 – 6/16/05	5.5	\$5,103.56	\$0.00	\$5,103.56	\$1.29	639	\$824.31	\$5,927.87
Cumulative Total as of 3/31/07		\$18,094.44		\$18,094.44	\$4.58		\$3,438.45	\$21,532.89

⁴⁸ \$18,094.44-\$0.00 +\$3,438.45= \$21,532.89.

⁴⁹ See Lamb Aff., Exhibits and Attachments thereto.

⁵⁰ [(Back Pay – Mitigation) x.0925]/365.

⁵¹ Interest is calculated from the first day after the quarter ends. For example, quarter ending June 30 interest calculation commences July 1. Interest calculated through March 31, 2007.

⁵² Interest Per Day x Days.

⁵³ (Back Pay – Mitigation) + Interest Due.

4. Erica Coria

Based on complainant Coria’s work history with respondents, her average semi-monthly income per pay period was \$2,639.51. Had she remained in respondents’ employ, complainant Coria would have earned a total of \$95,550.26 in wages up through the date Respondent Sankey’s bankruptcy was converted to chapter 7. She was never able to obtain employment that paid the same or more than she earned while working for respondents. She was able to mitigate her loss by \$14,890.76. When reduced to account for mitigation, respondents owe complainant Coria \$80,659.50 in back pay plus interest. As of March 31, 2007, total interest due was \$8,075.13. Interest continues to accrue at \$20.44 per day until the Commission orders summary judgment. As of March 31, 2007, complainant Coria has incurred total economic loss in the amount of \$88,734.63.⁵⁴

Quarter	Pay Periods Per Quarter	Back Pay @ \$2639.51 per pay period	Mitigation ⁵⁵	Back Pay Less Mitigation	Interest Per Day ⁵⁶	Days ⁵⁷	Interest Due ⁵⁸	Total Back Pay Award ⁵⁹
4/10/05 – 6/30/05	5.2 ⁶⁰	\$13,725.45	\$1,520.00	\$12,205.45	\$3.09	639	\$1,974.51	\$14,179.96
7/1/05 – 9/30/05	6	\$15,837.06	\$2,696.48	\$13,140.58	\$3.33	547	\$1,821.51	\$14,962.09
10/1/05 – 12/31/05	6	\$15,837.06	\$1,764.72	\$14,072.34	\$3.57	455	\$1,624.35	\$15,696.69
1/1/06 – 3/31/06	6	\$15,837.06	\$1,764.72	\$14,072.34	\$3.57	365	\$1,303.05	\$15,375.39
4/1/06 – 6/30/06	6	\$15,837.06	\$1,764.72	\$14,072.34	\$3.57	247	\$881.79	\$14,954.13
7/1/06 – 9/30/06	3 ⁶¹	\$7,918.53	\$580.12	\$7,338.41	\$1.86	182	\$338.52	\$7,676.93
10/1/06 – 12/1/06	4	\$10,558.04	\$4,800.00	\$5,758.04	\$1.46	90 ⁶²	\$131.40	\$5,889.44
Cumulative Total as of 3/31/07		\$95,550.26	\$14,890.76	\$80,659.50	\$20.44		\$8,075.13	\$88,734.63

⁵⁴ \$95,550.26-\$14,890.76+\$8,075.13 = \$88,734.63.

⁵⁵ See Coria Aff., Exhibits and Attachments thereto.

⁵⁶ [(Back Pay – Mitigation) x.0925]/365.

⁵⁷ Interest is calculated from the first day after the quarter ends. For example, quarter ending June 30 interest calculation commences July 1. Interest calculated through March 31, 2007.

⁵⁸ Interest Per Day x Days.

⁵⁹ (Back Pay – Mitigation) + Interest Due.

⁶⁰ Complainant Coria was terminated April 9,2005. This left approximately 5.2 pay periods in the remaining quarter.

⁶¹ Complainant Coria was on maternity leave for three pay periods and would was unavailable to work.

⁶² As counted from the first day after the fourth quarter ended, January 1, 2007.

C. *Equitable Relief*

The commission may order equitable relief to prevent Mr. Sankey from similar violations of AS 18.80 *et. seq.* in the future. The equitable relief requested by all complainants: training, removal of certain records from personnel files, etc., is reasonably calculated to prevent future violations. In light of the legal status of respondents, it would be appropriate for the commission to order the following equitable relief:

1. elimination from complainants' personnel records all documents and entries relating to the facts and circumstances that led to the filing of the above charges of discrimination and the related events occurring thereafter; and
2. not to advise or disclose to their employers or potential employers of their complaints in any fashion or the facts and circumstances involved in these matters.

Moreover, should respondent Sankey open, own, or run a business in the future, the commission should order that he be required to post and provide all employees and future applicants a copy of the Commission's human rights poster regarding sexual harassment; and that his compliance be monitored for compliance with the commission's order for a period of not less than 5 years.

V. RECOMMENDED ORDER AND AWARD

IT IS HEREBY ORDERED that Cassandra Webb, Kira Lamb, and Erica Coria's, requests for monetary damages is GRANTED. As calculated through March 31, 2007 complainant Webb is awarded back-pay less mitigation plus interest in the amount of \$7,243.65; complainant Lamb is awarded back-pay less mitigation plus interest in the amount of \$21,532.89; and complainant Coria is awarded back-pay less mitigation plus interest in the amount of \$88,732.64. Interest shall continue to accrue at 9.25% from April 1, 2007 through date of judgment. Jennifer Scollan and Malynn Gibson's requests for monetary damages are DENIED.

IT IS FURTHER ORDERED that respondents Diet-Fast, Inc., d/b/a Women's Nautilus Club and John Sankey d/b/a/ Women's Nautilus Club shall eliminate from complainants' personnel records all documents and entries relating to the facts and circumstances that led to the filing of the above charges of discrimination and the related events occurring thereafter.

Respondents Diet-Fast, Inc., d/b/a Women's Nautilus Club and John Sankey d/b/a/ Women's Nautilus Club shall not advise or disclose to any of the complainants' employers or potential employers of their complaints in any fashion or the facts and circumstances involved in these matters.

IT IS FURTHER ORDERED that should respondent Sankey open, own, or run a business in the future he shall adopt appropriate policies and procedure to prohibit retaliation against any employee for engaging in an activity protected by AS 18.80.220; shall require training on the provisions of AS 18.80. et. seq. with specific emphasis on the provisions prohibiting discrimination based on sexual harassment and retaliation; shall refrain from disclosing to complainants' employers or potential employers in any fashion or the facts and circumstances involved in these matters; and shall be monitored for compliance with the commission's order for a period of not less than 5 years.

DATED this 5th day of April, 2007.

By: Signed
Rebecca Pauli
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
800 A Street, Suite 204
Anchorage, Alaska 99501-3669
(907) 276-7474 FAX (907) 278-8588

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

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M. HALEY,)
EXECUTIVE DIRECTOR, *ex rel.*)
Erica Coria,)
Complainant,)

v.)

DIET-FAST INC., d/b/a WOMEN'S)
NAUTILUS CLUB and JOHN SANKEY)
d/b/a WOMEN'S NAUTILUS CLUB)
Respondent.)

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M. HALEY,)
EXECUTIVE DIRECTOR, *ex rel.*)
Malynn Gibson,)
Complainant,)

v.)

DIET-FAST INC., d/b/a WOMEN'S)
NAUTILUS CLUB and JOHN SANKEY)
d/b/a WOMEN'S NAUTILUS CLUB)
Respondent.)

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M. HALEY,)
EXECUTIVE DIRECTOR, *ex rel.*)
Kira Lamb,)
Complainant,)

v.)

DIET-FAST INC., d/b/a WOMEN'S)
NAUTILUS CLUB and JOHN SANKEY)
d/b/a WOMEN'S NAUTILUS CLUB)
Respondent.)

Received

JAN 01 2008

State of Alaska
Office of Administrative Hearings

ASCHR No. C-05-070
OAH No. 06-0492-HRC

ASCHR No. C-02-321
OAH No. 06-0493-HRC

ASCHR No. C-05-010
OAH No. 06-0495-HRC

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
800 A Street, Suite 204
Anchorage, Alaska 99501-3669
(907) 276-7474 FAX (907) 278-8588

1 ALASKA STATE COMMISSION FOR)
2 HUMAN RIGHTS, PAULA M. HALEY,)
3 EXECUTIVE DIRECTOR, *ex rel.*)
4 Jennifer Scollan,)
5 v.)

6 DIET-FAST INC., d/b/a WOMEN'S)
7 NAUTILUS CLUB and JOHN SANKBY)
8 d/b/a WOMEN'S NAUTILUS CLUB)
9 Respondent)

ASCHR No. C-02-311
OAH No. 06-0494-HRC

9 ALASKA STATE COMMISSION FOR)
10 HUMAN RIGHTS, PAULA M. HALEY,)
11 EXECUTIVE DIRECTOR, *ex rel.*)
12 Cassandra Webb,)
13 v.)

14 DIET-FAST INC., d/b/a WOMEN'S)
15 NAUTILUS CLUB and JOHN SANKEY)
16 d/b/a WOMEN'S NAUTILUS CLUB)
17 Respondent.)

ASCHR No. C-04-146
OAH No. 06-0491-HRC

18 FINAL ORDER

19 In accordance with AS 18.80.130 and 6 AAC 30.480, the Hearing
20 Commissioners, having reviewed the hearing record, now ORDER that the
21 Administrative Law Judge's Recommended Decision and Order of April 5, 2007,
22 is hereby ADOPTED by the Commission as revised. The Hearing Commissioners
23 have deleted footnotes 7, 35, 38 and 40 of the Recommended Decision. In all
24 other respects, the Recommended Decision and Order is adopted in its entirety.
25
26
27
28

Final Order
ASCHR, Paula M. Haley, Executive Director *ex rel.* Corta, Gibson, Lamb, Scollan, & Webb v.
Diet-Fast, Inc. d/b/a Women's Nautilus Club and John Sankey d/b/a Women's Nautilus Club

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
800 A Street, Suite 204
Anchorage, Alaska 98501-3669
(907) 276-7474 FAX (907) 278-8588

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

Accordingly, based upon the adopted decision and order of the Administrative Law Judge, the commission orders that:

Respondents Diet-Fast, Inc., d/b/a Women's Nautilus Club and John Sankey d/b/a Women's Nautilus Club shall pay monetary damages to Cassandra Webb, Kira Lamb, and Erica Coria as follows. As calculated through March 31, 2007 complainant Webb is awarded back-pay less mitigation plus interest in the amount of \$7,243.65; complainant Lamb is awarded back-pay less mitigation plus interest in the amount of \$21,532.89; and complainant Coria is awarded back-pay less mitigation plus interest in the amount of \$88,732.64. Interest shall continue to accrue at 9.25% from April 1, 2007 through date of judgment. Jennifer Scollan and Malynn Gibson's requests for monetary damages are DENIED.

Respondents Diet-Fast, Inc., d/b/a Women's Nautilus Club and John Sankey d/b/a Women's Nautilus Club shall eliminate from complainants' personnel records all documents and entries relating to the facts and circumstances that led to the filing of the charges of discrimination and the related events occurring thereafter. Respondents Diet-Fast, Inc., d/b/a Women's Nautilus Club and John Sankey d/b/a Women's Nautilus Club shall not advise or disclose to any of the complainants' employers or potential employers of their complaints in any fashion or the facts and circumstances involved in those matters.

IT IS FURTHER ORDERED that should respondent Sankey open, own, or run a business in the future that he shall adopt appropriate policies and

Final Order
ASCHR, Paula M. Haley, Executive Director ex rel. Coria, Gibson, Lamb, Scollan, & Webb v. Diet-Fast, Inc. d/b/a Women's Nautilus Club and John Sankey d/b/a Women's Nautilus Club

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
800 A Street, Suite 204
Anchorage, Alaska 99501-3669
(907) 276-7474 FAX (907) 278-8588

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

procedures to prohibit retaliation against any employee for engaging in an activity protected by AS 18.80.220; shall require training on the provisions of AS 18.80 et. seq. with specific emphasis on the provisions prohibiting discrimination based on sexual harassment and retaliation; shall refrain from disclosing to complainants' employers or potential employers in any fashion or the facts and circumstances involved in these matters; and shall be monitored for compliance with the commission's order for a period of not less than 5 years.

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: December 27, 2007



Commissioner Barbara I. "Tornia" Miller

DATED: December 27, 2007



Commissioner Karen Rhoades

DATED: December 27, 2007



Commissioner Robert E. Sawyer, Jr.

Final Order
ASCHR, Paula M. Haley, Executive Director ex rel. Corla, Gibson, Lamb, Scollan, & Webb v. Diet-Fast, Inc. d/b/a Women's Nautilus Club and John Sankey d/b/a Women's Nautilus Club