

STATE OF NEW HAMPSHIRE  
COMMISSION FOR HUMAN RIGHTS

Case number ES (P) 0121-01

Karen Hayes v. Dino's Family Restaurant and  
Athina Evangeliou, Owner

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NH COMMISSION  
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**DECISION**

**Introduction:**

This charge of employment discrimination based on pregnancy was filed at the Commission on May 8, 2001. A finding of Probable Cause was issued by the investigating commissioner on April 17, 2003, and an Order of Notice was served on the parties. A public hearing was held on November 12, 2003, before Commissioners Hilson (Chair), Robertson-Allen, and Simoes.

This case was consolidated for hearing with *Robin Henry v. Dino's Family Restaurant et al.*, #ES (P) 0120-01, pursuant to Commission Rule Hum 209.15. Separate decisions are being issued.

All parties were represented by counsel. The following persons testified under oath: Karen Hayes, the complainant; Robin Henry (Pond); Jeremy Pond, Robin Henry's husband; Gary O'Brien, Hayes' former boyfriend; Lynnette Plaisted, former employee of respondent; Konstantino Evangeliou, Respondent's son; Athina Evangeliou; Kathryn Merrill, former employee; Colleen Guidi, former employee, and sister of Kathryn Merrill; Frederick Merrill, accountant (no relation to Kathryn Merrill).

In making its findings the Commission has considered (1) the testimony of the witnesses, (2) the *Verified Response of Athina Evangeliou d/b/a Dino's Family Restaurant*, with signed supporting statements from herself, her son, Kostas N. Evangeliou, Lynnette M. Plaisted and Kathy Merrill, filed 6/11/01, which is part of the record pursuant to NH Code of Administrative Rules, Part Hum 209.04 and Hum 209.17, and (3) the exhibits submitted by the parties, with the exception of Respondent's Exhibit #7.

**Findings:**

Dino's Family Restaurant was located in Rochester, New Hampshire and employed at least six persons at all relevant times. It was started in 1988 by the respondent Athina Evangeliou, her husband, and another couple. It closed in August 2001. From the time the events alleged in this charge took place until the restaurant closed, Athina Evangeliou managed the restaurant, was the sole owner and shareholder, and held all the officer positions in the corporation. (Respondent's Exhibit #2)

Dino's Family Restaurant Tax Return for 2001 (Respondent's Exhibit #1) shows that the corporation's total assets and its total liabilities and shareholders' equity were equal to one another at both the beginning and at the end of the tax year. The return reports assets and liabilities at the beginning of the year equal to \$40,268. each; the return reports assets and liabilities at the end of the year equal to \$7286. Schedule K-1 shows that Athina Evangeliou, as sole shareholder, received the total amount of ordinary income (\$3512) from the business, as well as a property distribution of \$21,961. resulting from the sale of the restaurant building on August 21, 2001. The total gain reported on the sale was \$30,120. (Respondent's Exhibit #1).

The restaurant was open seven days per week, serving breakfast, lunch, and dinner, except on Sundays, when the restaurant was open from 7 AM until 2 PM. Athina Evangeliou worked in the restaurant fulltime and was there every day from the time the restaurant opened until 8:30 PM, after closing. The restaurant seated approximately 140 people.

Initially, Mrs. Evangeliou did prep work and cooking, and her husband did bills and ordering. However, after her husband's death Mrs. Evangeliou took over all the duties of running the restaurant, assisted at various times by her daughter Maria and her son Konstantino (Kostas). Maria returned to Greece in 1999 or early 2000. Kostas was a fulltime student during the time in question, November 2000 – April 2001, but he testified that he returned home on weekends and sometimes assisted his mother in running the restaurant. Mrs. Evangeliou had sole authority to fire an employee.

On Monday through Friday the restaurant always had 2 waitresses until noon, and two more from noon until closing. On Saturdays, respondent testified that there were 2-3 waitresses, and on Sundays there were 3 waitresses.

Karen Hayes, aged 22, started working at Dino's Family Restaurant as a waitress in January 2000. The restaurant had no written policy regarding pregnancy or maternity leave. Hayes' employment at the restaurant ended in early December 2000, when the restaurant stopped scheduling hours for her, thus terminating her employment.

Complainant's schedule was Wednesdays from 11 AM until 7 or 8 PM; Saturdays from 8:30 AM until 7:30 PM; Sundays from opening until noon; and every other Friday. She stated that she also filled in for other people, and that she averaged 20-33 hours per week. Payroll records produced by respondent show Hayes averaged 25.5 hours per week in 2000, earning \$2.13 per hour plus an amount in tips roughly equal to her wages. (Plaintiff's Ex. #3)

The payroll documents appear to be incomplete. They show Hayes' work and payroll from February 2000 through the end of September on the front of a one-page document; Hayes apparently did not work in August 2000, since no hours are shown, although hours for July and September are shown. The back of the page shows entries for only two pay periods, ending 11/25 and 12/1/00, respectively. Because no one testified that complainant did **not** work in October or November, the Commission must assume that these records are incomplete.

Complainant testified at the hearing that she first learned she was pregnant in November 2000 and that she thought Robin [Henry] told respondent. She testified that she also had a paper from her health clinic showing her due date. Complainant gave birth to her child on July 5, 2001. (Plaintiff's Ex. #10)

Complainant testified that after her employer learned of her pregnancy, she made the following remarks: Telling her to wear black because it made her look thinner, and making comments about her weight, because complainant gained a lot of weight, going from 118 to 176 pounds. Complainant also testified that she had arguments with Kathy Merrill, that Kathy would leave and Hayes would end up covering her hours. Complainant stated that Mrs. Evangeliou would say that she needed Kathy. In her Rebuttal, submitted as Plaintiff's Exhibit #7, Hayes states: "*Concerning the problem between myself and Kathy, we never worked on the same shift. There was, however, an argument at the restaurant and Kathy never came back to work until the following week. After that argument, Mrs. Evangeliou told me she needed Kathy because I was pregnant and would need time off of work because I would get tired. She said Kathy had been there for years and was a fast waitress.*"

Complainant testified that she called in on a Friday evening, around December 1, 2000, because she was sick. She stated that Robin Henry answered the phone, that she told Ms. Henry she was sick, and that Robin told her she would cover for her on Saturday, her next scheduled shift. She said that later Kathy Merrill called her and told her not to come in on Sunday, that they would cover her hours. Then, sometime later, Tina Evangeliou, the owner, called and asked if complainant was planning on coming in on Wednesday. Complainant says she informed respondent Evangeliou that she would be in on Wednesday.

Complainant stated that on Tuesday, however, Robin Henry called her and said "Don't come in, we'll cover your shifts." Complainant says she asked to talk to Tina, but was told she was busy. Although she tried to reach Evangeliou, she never received a call back. Complainant alleges that she then called the NH Commission for Human Rights, which called her back the next day. The Human Rights Commission had called respondent and respondent had allegedly stated to the investigator that complainant had not been fired - "They had seen her at Wal-Mart but she could have her job back." When complainant then called respondent, Tina Evangeliou said she would give Hayes some hours to cover for other employees, but she never did. (Hayes testimony)

Hayes' Rebuttal statement (Plaintiff's Exhibit #7) is consistent with her testimony regarding the last days of her employment. In addition it states: "*On December 6 or 7, I contacted Mrs. Evangeliou and told her that I needed my job. I had bills to pay and I could not be out of work. She told me: 'I sorry. You pregnant. I need Kathy, but if somebody no coming in, I call you and you coming in.'*"

Complainant testified that she did not quit her job. She said she needed a job, her boyfriend's job was not consistent, and that she was in a custody battle for her other son and needed steady employment. She had bills and her termination caused problems in her relationship. She stated that she broke up with her boyfriend because "he was opposed to people on welfare and she had to get WIC and Medicaid. It was embarrassing."

Complainant's former boyfriend, Gary O'Brien, testified that he was living with Hayes when she was working at Dino's. He stated that she worked "a lot" and did not call in or miss work. He stated that after Hayes became pregnant in the fall of 2000 it seemed like her hours were cut away for no reason. He testified that she would show up, but the schedule changed and they didn't need her.

Konstantino Evangeliou testified at the hearing that he didn't remember Hayes, had had no complaints from her, and had no problems with her.

Kostas' sworn statement, part of Respondent's *Verified Response of Athina Evangeliou d/b/a Dino's Family Restaurant*, says that Hayes was a good waitress and that he had no performance problems with her. He acknowledges that at some point he and his mother learned that Hayes was pregnant and that after that she "*would occasionally call in or say she can't make it or that type of deal; that she wasn't feeling well or she had to go do something else prior to her job.*" His statement indicates that either he or Kathy Merrill could have made a phone call to Karen Hayes on December 6, 2000 asking her if she was going to be in for the weekend, but he wasn't sure because it was so long ago.

Kostas' sworn statement indicates that Robin Henry had no permission to call Hayes and tell her that her shifts were covered and she was not needed. Kostas states that he found out about the call a week or two later, because he was at school. "*When I came back, my mother had told me what happened and everything and that was that.*" Kostas suggests, without providing evidence to support the assertion, that Henry and Hayes did not like one another, and that it was "*retaliation*" for Henry to call Hayes and tell her she wasn't needed. With regard to how Hayes' termination came about, Kostas' statement says: "*She*

*just was unhappy with her hours, and she decided not to work here. And that was the last thing about anything.*” (Verified Response of Athina Evangeliou; statement of Kostas Evangeliou)

Athina Evangeliou confirmed that Hayes had worked at her restaurant from January 2000 until she “terminated before Thanksgiving.” Evangeliou thought it was the 10<sup>th</sup> or 15<sup>th</sup> of November when Hayes had left. She stated that Hayes’ performance was good, “her only problem was being absent – not showing up.” She stated that this had happened “two or three times.”

When asked whether she had ever said anything to complainant about this, Evangeliou testified that she had called complainant “on an occasion and asked her and she said she couldn’t show up.” Respondent also stated that Hayes used to talk to Kathy Merrill when the schedule was made up and “change the schedule.”

Respondent testified that she learned about Hayes’ pregnancy when she [Hayes] was no longer working there, and that it was Robin Henry who told her. When asked whether she ever said anything to Hayes about her pregnancy while Hayes was employed at the restaurant, Evangeliou responded, “Karen never came back.” When asked why, Evangeliou stated, “She said she was sick.” Later in her direct testimony, Evangeliou denied firing Hayes and stated that she did not know the reason why Hayes left. When asked whether complainant had asked for her employment back, Evangeliou stated she didn’t “recall her coming back.” When asked on cross-examination whether she had tried to call Karen to have her come back, Evangeliou stated, “I did not try to call – I don’t know whether Kathy, the head waitress, was trying.”

Mrs. Evangeliou testified that there were problems between Hayes and Merrill, the head waitress, but not so serious that they couldn’t work together.

Mrs. Evangeliou’s written statement, attached to her *Verified Response*, was prepared with the assistance of her son Kostas acting as translator, and provides additional information regarding the termination of Hayes. In it Mrs. Evangeliou indicates that she learned, at some point, that Hayes was pregnant, but she heard it from others, not directly from Karen. When asked whether there was any problem between her and Hayes after she learned that Hayes was pregnant, respondent answered, “No.” She stated that Hayes would call in sick, and that she, Evangeliou, had to get “another lady to take her job for that day, for that shift.” Mrs. Evangeliou stated that she did not really remember any actual conversation with Karen Hayes around December 4, 2000, but that she did recall her calling one time toward the end [of her employment]. She thought it was possible that it was Kostas who called.

Mrs. Evangeliou’s written statement also indicates that “she remembers Robin calling but she didn’t she didn’t understand why she was calling and Robin did not inform her why she was calling so she got off the phone with Karen.” Mrs. Evangeliou states that Henry did not have her permission to call Karen Hayes. When asked whether she asked her [Henry] to call Karen and tell her she no longer needed her, Kostas Evangeliou translated for respondent: “She says she doesn’t remember, she doesn’t think so.”

Mrs. Evangeliou denied making any remarks to Hayes regarding her pregnancy. Her position was that complainant quit her job of her own free will. She stated on cross-examination that she was not sure, but thought that Karen Hayes and Robin Henry were the first waitresses who became pregnant after she [Evangeliou] took over running the restaurant.

Robin Henry (now Pond), a former employee, testified that Hayes had replaced respondent’s daughter Maria in the beginning of 2000 when Maria returned to Greece. She testified she learned that Hayes was pregnant in November 2000 and then Mrs. Evangeliou said about her, “won’t be able to work – won’t last 2 months.” She testified that in December 2000 Mrs. Evangeliou had her “call Karen and tell

her she wasn't needed." Henry testified that the reason was that "she was pregnant and couldn't work." She testified that Hayes tried to call back but respondent said to tell Hayes that she was busy "taking the garbage out." Henry testified that she didn't talk with respondent about this because she was afraid. She had learned in December that she, too, was pregnant.

Henry testified that Hayes was a reliable employee and that she and Hayes covered for each other. They worked different shifts. Henry testified to her own treatment after respondent learned she was pregnant in January 2001. Her hours were cut and Evangeliou refused to resolve disputes between her and Merrill, stating that Henry was pregnant and she, Evangeliou, needed Kathy Merrill. Henry was forced to quit her job in April 2001.

Kathryn Merrill testified that she knew Hayes, who she said had worked "about six months." She said that Hayes did a very good job and at other times would be gossiping with customers and let other customers sit. When asked about Hayes' attendance, Merrill stated "She called out a couple of times." Merrill stated that Hayes did not arrange coverage for herself, but Merrill would do it. On cross-examination Merrill agreed that her relationship with Robin and Karen was not good at the end. She said she was "Not happy - I would have let them go - after 2 weeks of not showing - but I would have done it without Tina's approval." When asked whether she had ever asked or suggested to Tina that she fire Karen, Merrill said, "I may have."

When questioned by Commissioner Hilson, Merrill stated that the restaurant's policy on switching [hours] was "Good if you could get your own replacement - get Tina's approval, call 24 hours ahead." Although she initially said Hayes and Henry had caused problems by making changes to the schedule she, Merrill, had prepared, she later clarified that it was usually Robin and Karen switching with one another. Evidence was submitted showing that another waitress had made changes to the schedule, and that Merrill had written her a note on the schedule: "Hands off Lynnette." (Plaintiff's Exhibit #2) Merrill admitted that she had spoken to Lynette once about changing the schedule.

In her written, verified statement which is part of the *Verified Response of Athina Evangeliou d/b/a Dino's Family Restaurant*, Merrill states that she probably worked with Hayes about a year and a half. She indicates that she learned at some point from customers and staff that Hayes was pregnant. She denies that Hayes' hours were cut after she became pregnant. She indicates that "If the hours were cut, it was due to the fact that; we had a big problem with these two girls not showing up for work." She goes on to allege that they would wait to call in fifteen minutes before their shift started, and that there were various occasions "with both of these girls [referring also to Robin Henry], that they just did not bother to call or show up." "So, if, you know, we would actually ask what the problem was, why they didn't show up, if they said they were sick, they would have an extra day off to recuperate and then be back on track sort [sic] to speak."

Merrill's written statement indicates that Karen Hayes ended her employment by not "coming back." She indicates that as far as she knew Hayes had quit, and that when she asked Athina Evangeliou if she had "fired her" she said she had not. (Respondent's *Verified Response*)

#### Legal Standard:

A. NH RSA 354-A: 7 prohibits discrimination in employment on the basis of sex. The word "sex" includes pregnancy and medical conditions which result from pregnancy. It is an illegal discriminatory practice for an employer to refuse to hire or to discharge an employee or to treat an employee differently

in the terms and conditions of employment based on an employee's pregnancy, unless such treatment is based upon a bona fide occupational qualification.

An employer must permit a female employee to take leave of absence for periods of temporary physical disability resulting from pregnancy, childbirth, or related medical conditions. When the employee is physically able to return to work, her original job or a comparable position shall be made available to her unless business necessity makes this impossible or unreasonable. For all other employment related purposes, including receipt of benefits under fringe benefit programs, pregnancy, childbirth, and related medical conditions shall be considered temporary disabilities, and a female employee affected by pregnancy, childbirth, or related medical conditions shall be treated in the same manner as any employee affected by any other temporary disability.

B. In order to prove that a particular adverse employment action taken against her was discrimination because of her pregnancy, complainant must show that (1) she was pregnant at the relevant time, (2) her job performance was satisfactory, but (3) her employer took some adverse employment action against her while (4) treating non-pregnant employees differently. *Tara Gorski v. New Hampshire Department of Corrections*, First Circuit 2002; See also: *F.W. Morse & Co.*, 76 F.3d at 421.

Once the complainant has articulated this prima facie case, the respondent must articulate a legitimate non-discriminatory reason for its actions. The complainant must then be allowed to show that the respondent's stated reason(s) are a pretext for pregnancy discrimination. Using this legal framework, the burden of proof remains at all times on the charging party to establish her case by a preponderance of the evidence.

C. Harassment on the basis of pregnancy is also a violation of the law against discrimination. "When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). To show harassment on the basis of pregnancy, complainant would have to establish the following: (1) That she belongs to the protected class (sex/pregnancy); (2) that she was subjected to harassing conduct; (3) that the conduct was based on complainant's pregnancy; (4) that the conduct affected a term, condition, or privilege of employment in that it was sufficiently severe or pervasive to create a work environment that a reasonable person in the complainant party's position would find offensive, it had the purpose or effect of unreasonably interfering with the complainant's work performance, or it otherwise adversely affected the complainant's employment opportunities; and (5) there is some basis for employer liability.

The determination whether a complainant has established the existence of a hostile or abusive workplace depends on a consideration of all the circumstances, particularly those concerning: frequency of the discriminatory conduct, its severity, whether it was physically threatening or humiliating rather than a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance.

With respect to conduct between fellow employees, an employer is liable for harassment when the employer knew or should have known of the harassing conduct and failed to take appropriate remedial action.

#### Findings and Conclusions:

1. Complainant has not established that she was harassed on the basis of her pregnancy. The remarks made to her by Mrs. Evangeliou were not severe and were not frequent enough over a long

enough period of time to create a hostile work environment for a reasonable person in the complaining party's position.

2. With respect to discrimination on the basis of her pregnancy, the complainant has established a *prima facie* case:

a. She was pregnant and her employer was aware of that fact in late November or early December 2000. Mrs. Evangeliou's testimony that she only learned of complainant's pregnancy from other employees after Hayes left is not credible in light of all the other evidence offered.

b. She was performing her job adequately. This is not meant to be a particularly onerous evidentiary hurdle. The general testimony of all the witnesses was that Hayes was a good waitress most of the time, at least no worse than any of the other waitresses who were employed by respondent and who seemed to squabble with one another frequently.

c. Respondent stopped scheduling hours for complainant after she called in sick on or about December 1, 2000. Her last pay, according to the documents produced by respondent, was for the period ending December 1. She worked 21 hours that week.

d. Respondent reduced complainant's hours because she missed work on December 2, first telling her that her hours for Sunday would be covered, even though she had only called in sick for Saturday. Then respondent, or someone calling on respondent's behalf, called again to inquire whether she would be in on the following Wednesday. Although complainant said she would, another employee [Henry] called after that and told complainant the owner had said she was not needed. When complainant tried to contact the owner, no one would take her call and no one called her back. (Testimony Hayes, Henry) Complainant was not replaced; her hours were given to the other, non-pregnant waitresses. (Testimony, Merrill)

Respondent's non-discriminatory defense to complainant's *prima facie* case is so inconsistent as to be not credible. First respondent denied that complainant's hours were cut and says that complainant quit of her own free will. On the other hand, Kostas and Merrill indicated that when complainant missed work because of sickness, they would give her an extra day off to "recuperate," a practice that is illegal, if complainant's sickness was pregnancy-related. This is in fact what happened after Hayes called in on December 1 regarding December 2.

Respondent argues that Hayes quit, but then states that Robin Henry did not have the owner's permission to call Hayes and essentially terminate her employment. If Hayes was told not to come back by Henry, that her hours "were covered," then Hayes did not quit. The testimony of Evangeliou, Merrill, and her son indicates that no one took any action to reverse Henry's allegedly unauthorized action, even though they all knew of it. Respondent did not rebut complainant's testimony that she contacted the Human Rights Commission, who in turn contacted Mrs. Evangeliou about getting complainant's hours back for her. Even after a call from the Commission, Evangeliou never called Hayes to give her any hours. The Commission is unable, on this evidence, to credit respondent's position that complainant "quit." The Commission finds that Evangeliou more likely than not directed Henry to call Hayes and tell her not to return and that Evangeliou ratified Henry's action by doing nothing to reverse it, even after receiving a call from a Commission investigator.

Respondent offers evidence that Hayes was not a good employee, in particular that she would not show up for work. Merrill offered testimony on this point, but could specify only that Hayes "called in a couple of times." Since respondent did not fire or discipline Hayes for this alleged behavior, it seems that

it is relevant only on the issue of whether complainant ended her employment by, once again, being a "no show." This is not credible, based on all the evidence and for the reasons discussed above.

The preponderance of the evidence supports a finding that respondent believed that Hayes' illness on December 1, 2000 was related to her pregnancy. In particular, the evidence of respondent's remarks regarding Hayes' ability to work once she was pregnant (Henry testimony), and Merrill's and Kostas Evangeliou's written statements that at some point after they learned that Hayes was pregnant, Hayes would occasionally call in or say she couldn't make it because she wasn't feeling well or she had something she had to do, support a finding that respondent viewed complainant's absences after they learned of her pregnancy, as pregnancy-related.

The respondent undoubtedly had her hands full and worked very hard to run her business. It is clear from the evidence that the employees who worked at Dino's often had disputes with one another over hours and schedules. It is also clear however, that when disputes involved pregnant employees, Mrs. Evangeliou chose to resolve them by siding with the non-pregnant employee, whom she saw as more likely to be available for work than a pregnant employee, whom she saw as "pregnant, unable to work."

The Commission finds that respondent has discriminated against the complainant by failing to return her to her normal hours after she called in sick December 1, 2000, because of her pregnancy, in violation of NH RSA 354-A:7, VI (b). The Commission finds that the respondent terminated complainant's employment because of her pregnancy, shifting her hours to its remaining, non-pregnant employees, in violation of NH RSA 354-A: 7, I and VI (a).

The Commission finds respondents Dino's Family Restaurant and Athina Evangeliou jointly and severally liable for said discrimination. The Commission finds on all the evidence that Athina Evangeliou is the alter ego of the corporation and holds her liable in this matter. Her closure of the restaurant and sale of its building (whose proceeds were distributed to her as the sole shareholder) on August 21, 2001, four months after the charge was filed in this matter, together with the fact that the company had no excess capital over its debts absent the building proceeds, left the corporation undercapitalized at the time. Not piercing the corporate veil in this case would effectively deprive the complainant of relief, and thus undermine the public policy set forth in RSA 354-A.

#### Damages:

Karen Hayes has made no claim for lost wages in this matter, and therefore is awarded no lost wages. Karen Hayes has made a claim for compensatory damages for the stress caused by respondent's discrimination, and the Commission awards her \$250. for the injury done to her when she was unfairly terminated because of her pregnancy. The Commission awards Karen Hayes her reasonable and necessary attorney's fees and costs in bringing this action. Her counsel shall file a Motion for Attorney's fees, with an itemized statement showing his charges, within 20 days of his receipt of this order. Respondent shall file its objection with 10 days of receipt of said Motion.

#### Rulings on Specific Requests of the Parties:

- A. Complainant's Requests for Findings and Rulings:
1. Complainant's requests numbered 1-15 are granted.
  2. Complainant's request number 16 is denied.
  3. Complainant's requests numbered 17-20 are granted.
  4. Complainant's request number 21 is denied.
  5. Complainant's requests numbered 22-23 are granted.
  6. Complainant request number 24 is denied.

7. Complainant's requests numbered 25-30 are granted.
8. Complainant's request number 31 is granted as follows: "Karen experienced harm as a result of the discriminatory treatment, including embarrassment."
9. Complainant's request number 32 is denied.
10. Complainant's request number 33 is granted.

B. Complainant's Requests for Rulings of Law:

1. Requests A through D are granted.
2. Request E is granted.

C. Respondent's Requests for Findings and Rulings:

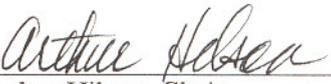
1. Requests numbered 1-3 are denied.
2. Request number 4 is granted as follows: Robin Pond was forced to quit her employment with Dino's Family Restaurant, in part because her hours were being reduced and in part because she was being harassed.
3. Request number 5 is granted.
4. Requests number 6-17 are denied.
5. Requests numbered 18-22 are granted.
6. Requests numbered 23 and 24 are denied.
7. Request number 25 is granted.
8. Request number 26 is denied.
9. Request number 27 is granted.
10. Request number 28 is denied.

D. Respondent's Requests for Rulings of Law:

1. Requests numbered 29-40 are denied.
2. Request number 41 is granted.
3. Requests numbered 42-44 are denied.
4. Request number 45 is granted.
5. Request number 46 is denied because "clear and convincing proof" is not the burden of proof which is required in hearings before the Commission.
6. Request number 47 is denied.
7. Request number 48 is granted.
8. Requests numbered 49 and 50 are denied.

So Ordered.

Dated: 6/7/04

  
\_\_\_\_\_  
Arthur Hilson, Chair

On behalf of himself, and

Nancy Robertson-Allen, Comm.

Laura Simoes, Comm.

Who concur in this Decision.

Copies to:

Edgar D. McKean, III  
Robert A. Shaines

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