

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION AGAINST  
DISCRIMINATION, SHELLY NEUMANN, and  
ALYSSA PATRYN,  
Complainants

v.

Docket Nos. 99-SEM-0278  
99-SEM-0322

RED ROCKS PIZZA, EFTHIMIOS RIZOS,  
and ANTONIOS RIZOS,  
Respondents

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER OF THE HEARING OFFICER**

Appearances: Thomas Lesser, Esq., for Complainants  
William J. O'Grady, Esq., for Respondents

**I. PROCEDURAL HISTORY**

On April 25, 1999, Complainant Shelly Neumann ("Neumann") filed a complaint (No. 992300322), with the Massachusetts Commission Against Discrimination (the "Commission") claiming that her former employers, Red Rocks Pizza,<sup>1</sup> Efthimios Rizos, and Antonios Rizos, subjected her to unlawful sexual harassment and retaliation in violation of M.G.L. c. 151B, §§ 4(1), (4), and (16A). On April 25, 1999, Complainant Alyssa Patryn ("Patryn") filed a similar complaint against Red Rocks and Efthimios Rizos (No. 992300278) that likewise alleged Respondents had engaged in unlawful sexual harassment and

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<sup>1</sup> The parties stipulated that Complainants were employed by A.E.K. Enterprises, Inc., doing business as "Red Rocks Pizza." To maintain consistency with the pleadings, A.E.K Enterprises, Inc., shall be referred to as "Red Rocks" or "Respondent", for purposes of this decision. Red Rocks, Efthimios Rizos, and Antonios Rizos shall be referred to collectively as "Respondents."

retaliation. The cases were consolidated for investigatory and evidentiary purposes.<sup>2</sup>

On February 18, 2001, the Commission found probable cause to credit both Neumann and Patryn's allegations of sexual harassment and retaliation. On July 24, 2002, the Commission certified the cases for Public Hearing. A consolidated Public Hearing was held before me on January 23, 2003, in Springfield, MA. In deciding this matter, I have considered the entire record, including the testimony and exhibits introduced at hearing, and the stipulations of the parties. I have likewise considered the proposed Findings of Fact and Conclusions of Law submitted by the parties after the Public Hearing. To the extent that the proposed findings and conclusions are in accord with the findings herein, they are accepted; to the extent that they are not, they are rejected. Certain proposed findings have been omitted as not relevant or necessary to a proper determination of the material issues presented.

## **II. FINDINGS OF FACT**

### **A. THE PARTIES**

1. Complainant Alyssa Patryn presently resides in Chesterfield, MA with her husband.<sup>3</sup> In 1996, Patryn began working for Respondents as a phone attendant as part of a work-study program at Hampshire Regional High School. At the time of the commencement of her employment, Patryn was only fifteen (15) years old. By early 1998 and continuing to February 1999, Patryn worked for Respondents

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<sup>2</sup> Neumann and Patryn shall be referred to collectively as the "Complainants."

<sup>3</sup> Since the filing of her complaint, Patryn has married and presently goes by her married name, "Alyssa Dawson." To maintain consistency with the pleadings and to avoid confusion, the parties have continued to refer to her by her maiden name.

as a waitress. Patryn is an employee within the meaning of M.G.L. c. 151B, § 1(6).

2. Complainant Shelly Neumann presently resides in Florence, MA with her two children. From November 1998 to February 1999, Neumann worked for Respondents as a waitress. Neumann is an employee within the meaning of M.G.L. c. 151B, § 1(6).

3. The parties stipulated that Complainants both worked for A.E.K. Enterprises, Inc., doing business as “Red Rocks Pizza”, which owns and operates a pizza restaurant located in Southamptn, MA. Efthimios Rizos (“Efthimios” or “Thimios”) and Antonios Rizos (“Antonios” or “Tony”) are brothers and served as officers of the corporation, each holding fifty (50%) percent of the shares of the corporation’s stock. At all pertinent times hereto, Efthimios and Antonios Rizos operated and managed the business and supervised all of Red Rocks’ employees, including Complainants. Efthimios worked in the front of the restaurant and managed the service staff. Antonios worked in the kitchen and supervised the kitchen staff. Antonios acknowledged that at all times pertinent hereto, Red Rocks did not have a written sexual harassment policy. Red Rocks had more than six (6) employees and is, therefore, an employer within the meaning of M.G.L. c. 151B, § 1(5).

**B. PATRYN COMPLAINT**

4. As an initial matter, based on my observations of Patryn’s appearance and demeanor, as well as from the testimony of all the witnesses, it is clear that Patryn was a relatively unsophisticated and vulnerable teenager during the time of her

employment with Respondents. In addition, all the witnesses testified that Patryn was a shy and quiet person.

5. Patryn testified that the first incident of sexual harassment she experienced occurred in August 1998 during a basketball game in Easthampton involving approximately ten Red Rocks employees, including her boss, Efthimios Rizos. She testified that at one point during the game, Efthimios ran into her with his two hands straight out and put one hand on each of her breasts. Afterwards, Patryn claimed she got extremely upset and stopped playing basketball. Although Efthimios admitted to playing in the basketball game, he denied inappropriately touching Patryn. I credit Patryn's testimony.

6. Patryn testified that in September 1998, she worked at Respondents' restaurant five or six shifts per week. She claimed that during this period, she became increasingly aware of the sexual nature of the work environment at Red Rocks. In particular, she noticed that Red Rocks' male employees made progressively more sexual comments toward both the female wait staff and female customers. At Red Rocks, men held all the kitchen staff positions except for only one female dishwasher, while women held all the service staff positions with the lone exception of one male waiter. Patryn testified that the comments, which pertained to women's bodies and clothes, such as "she has a nice ass," made her feel uncomfortable and embarrassed. According to Patryn, either Efthimios or Antonios Rizos were present when the male employees made the profane comments, but neither did anything to stop the employees from making these remarks. In addition, she believed many of the male employees looked at her all

the time. For example, she claimed that male employees would often whistle or make a comment about her “ass” when she bent over. Antonios Rizos admitted that employees at the restaurant engaged in activities and made jokes with sexual overtures. I credit Patryn’s testimony.

7. In October 1998, Patryn learned that her senior class was planning a trip to Florida. Although she would have to pay for the trip, her work-study advisor told her and the other students that sometimes work-study employers donated money for the trip. Consequently, Patryn approached Efthimios Rizos and asked him if he would be willing to donate money for her trip to Florida. She claimed he responded by stating: “If I give you a bonus, you’ll have to give me a bonus.” Patryn believed Efthimios’ response was a request for a sexual favor. She testified that she then told Efthimios that employees do not give bonuses to their bosses, but he did not respond. Efthimios corroborated Patryn’s testimony about their conversation; however, he denied that he intended the remark as a request for a sexual favor. I credit Patryn’s testimony that she construed Efthimios remark as a request for a sexual favor. However, I also credit Efthimios’ testimony that he did not make the comment with that intention.

8. Patryn testified that in November 1998, while she worked at the cash register at the front of the restaurant, Efthimios Rizos came up behind her, put his hand on top of her head, and then brought it slowly down her back, onto her buttocks. She stated that he then left his hand on her buttocks for approximately ten seconds. Patryn claimed this incident left her extremely upset. She testified that she spoke with Antonios Rizos about it and asked Antonios to tell his brother to

leave her alone. Antonios acknowledged that Patryn spoke to him about this incident. He further admitted that she was “upset.” Efthimios denied that he touched Patryn in an inappropriate manner. Patryn testified that after this incident, Efthimios’ attitude toward her changed. Specifically, she claimed that prior to this incident, Efthimios always smiled and acted in a friendly manner, but afterwards, he became rude and condescending. I credit Patryn’s testimony.

9. Patryn stated that in December 1998, a male cook named “Izzy” stated to her that he wanted to be a pen in her pocket so he could touch her breast. She further testified that later that same month, Izzy came up from behind and touched her buttocks. Patryn claimed that she did not report these incidents to either Efthimios or Antonios Rizos because she feared doing so would jeopardize her job. I credit Patryn’s testimony.

10. Patryn claimed that by February 1999 the number of sexually charged comments and incidents at the restaurant had increased. For example, in January 1999, Efthimios told her she had a “nice ass.” In addition, she stated that on Valentine’s Day, she and the other female waitresses had to wear skirts and, on two occasions, a male cook named Eric, tried to lift up her skirt with a broom handle. She also claimed that Paul Chang, another male cook, tried to lift up her skirt with his hands. Furthermore, later that same evening, she asked Chang to hand her some sour cream, but he told her to get it herself because he wanted to watch her bend over in front of him. Patryn testified that these incidents made her feel embarrassed, but she “laughed it off.” She claimed that either Antonios or Efthimios Rizos were present when these comments were made, but took no

action. She also stated that her immediate supervisor, Sharon Raymond, heard Chang make the remark about bending over and Sharon told her, "You don't have to take that." In addition, Patryn claimed that another head waitress, Sue LaValley, overheard Chang's comment and saw Eric try to lift up her skirt. Antonios Rizos acknowledged that Shelly Neumann told him about the "bend over" comment Chang had made to Patryn. He testified that he then spoke to Chang and told him to cease making those types of comments. Efthimios Rizos stated that he never observed any employee touch Patryn in an inappropriate manner. Efthimios also claimed that he only became aware of these incidents after being served with Patryn's complaint. I credit Patryn's testimony regarding these incidents.

11. Patryn stated that on February 15, 1999, she received a call at her home from the Southampton Police Department, requesting that she come to the police station and provide a statement about her work experience at Red Rocks. She eventually learned that the police were investigating an assault and battery complaint filed by Shelly Neumann against Efthimios Rizos. She then went to the police station and gave the police a statement that outlined the incidents of sexual harassment she experienced at the restaurant. After speaking with the police, she also spoke with representatives of the Commission about filing a sexual harassment complaint. She claimed she contacted the Commission because she feared she would lose her job for reporting the on-going harassment to the police. I credit Patryn's testimony.

12. Patryn testified that on the morning of February 19, 1999, she learned that Antonios Rizos had fired Shelly Neumann. Later that morning, Patryn received a

message at her home to call the restaurant. She then returned the call and spoke with LaValley. Patryn claimed that LaValley requested that she report to work at 2:00 pm, two hours before her regular 4:00 pm start time. Patryn stated that LaValley neither told her why she had to come to work early, nor indicated whether she would be paid for those hours. According to Patryn, she felt apprehensive about going to work early and unsure of what to do considering that Respondents had just fired Neumann; consequently, she called the Southampton Police Dept and a police officer told her that she did not have to go into work early. Patryn then called LaValley at the restaurant and told her she would be in for work at 4:00 pm. I credit Patryn's testimony.

13. Patryn testified that when she arrived at work later that day, she noticed that sexual harassment posters had been placed on the walls. She claimed Red Rocks had never previously posted any such notices. Patryn also noticed on the work schedule for the coming week that her work shifts had been reduced from her usual and anticipated five or six shifts per week to only one shift. While working the evening of February 19, 1999, Patryn stated that no one mentioned or discussed her failure to come in early as LaValley had requested that morning. However, she was told to train a new employee, Marina, for the position of telephone attendant. Patryn testified that at 8:30 pm, Efthimios then told her that she was no longer needed and her shift was over. She testified that Efthimios' action surprised her since she was scheduled to work to 10:30 pm and the restaurant was still busy. I credit Patryn's testimony.

14. The next morning, February 20, 1999, Sharon Raymond telephoned Patryn at her home and told her that Respondents had terminated her employment. Antonios Rizos acknowledged that he asked Raymond to call Patryn. According to Patryn, no one associated with Red Rocks gave her any reason as to why they had terminated her employment. I credit Patryn's testimony.

15. Antonios Rizos testified that Patryn was a good worker. He also admitted that he never received any complaints about her work. In addition, Antonios acknowledged that on February 18, 1999 – the day before he and Efthimios terminated Patryn's employment – he became aware that Patryn had made a sexual harassment complaint with the Commission. Antonios claimed that they decided to fire her solely because she did not come in early on February 19. He stated that he wanted to meet with Patryn prior to her shift so he could tell her to keep the MCAD proceeding out of the workplace and "just come in and do [your] work." I find Antonios Rizos' testimony on this matter lacked credibility and, therefore, I refuse to credit Respondents' reason for terminating Patryn's employment.

16. Respondents called Lynn Graves to testify at the hearing. She worked as a dishwasher in 1999 and she socialized with Patryn outside of work at that time. According to Graves, Patryn informed her in February 1999 about the alleged sexual harassment at Red Rocks and the statement she had given to the Southampton Police Dept. She further claimed that Patryn had told her on the telephone, "I am going to own the restaurant and going to get lots of money", and "I've got them by their Greek balls." On cross-examination, however, it became

readily apparent that Graves' testimony lacked credibility. Specifically, Graves incredulously could not recall certain highly damaging comments she made about Efthimios Rizos in a similar statement she gave to the Southampton Police Department on February 16, 1999. In her statement, Graves largely corroborated Patryn's allegations of sexual harassment. For example, Graves described how Efthimios had stated, "He liked young girls and liked blow jobs." She also astonishingly did not recall telling the police that she observed Efthimios grabbing Patryn's ass and breast at the basketball game. Moreover, Graves wrote in her statement that Efthimios said, "I bet Alyssa gave good blowjobs." Lastly, she did not mention anything to the police about the comments Patryn made to her over the telephone, including Patryn's remark that she would "own the restaurant." For these reasons, I do not credit to Graves' testimony.

17. After being terminated by Respondents, Patryn remained out of work for several weeks. She eventually got a job as a phone attendant at Zoe's Fish and Chop House, a restaurant in Easthampton, MA. She initially worked at Zoe's only ten hours per week. After six months at Zoe's, she eventually began working the same amount of hours and earning the same rate of pay that she had previously received at Red Rocks. Patryn claimed to have lost \$3,000 to \$4,000 in wages during this six-month period. In addition, during this period she had to perform additional secretarial work at school for her work-study program to make up for the lost hours of work. I credit Patryn's testimony.

18. Patryn testified that the termination greatly upset her. She also claimed that the sexually hostile work environment negatively affected her attitude toward men

and resulted in her being unable to trust men for an extended period of time. She stated that she felt comfortable working at Zoe's because a woman owned and ran the restaurant. Moreover, she felt that Efthimios and Antonios Rizos had betrayed her, since she had worked at Red Rocks for over two years and had done her job well. Patryn emphasized that Red Rocks was her first job and her success there gave her a genuine sense of pride. In addition, she often socialized with the other waitresses and, thus, she felt the loss of their friendship. Lastly, she testified sincerely about the importance of her job to her emotional well-being. In particular, the job was necessary both for the money she earned and for the work-study credits she received at school. I credit Patryn's testimony regarding the emotional distress she suffered as a result her termination.

**C. NEUMANN COMPLAINT**

19. From November 1998 to February 1999, Shelly Neumann worked as a waitress for Respondents. She typically worked 25 to 30 hours per week. Neumann testified that she particularly liked the job because the hours fit in with her ability to obtain childcare for her two children.

20. Neumann corroborated Patryn's testimony that male employees at Red Rocks often made sexual comments about female waitresses and customers. She stated that these remarks typically included references to a woman's body or clothes. In addition, Neumann testified that the male staff would often touch her and the other younger female waitresses when they walked past them. She claimed she found this conduct offensive, but tolerated the environment by ignoring the comments, laughing, or walking away. Neumann also stated that she

sometimes attempted to deflect these comments by participating in the banter to some degree.

21. Neumann stated she complained at least four or five times to Efthimios Rizos about the sexual conduct, and complained to Sue LaValley on two occasions. Despite her complaints, she claimed that she never noticed any change in her co-workers' conduct. As stated above, Antonios Rizos admitted that jokes and other activities with sexual overtures occurred at the restaurant. Although Efthimios Rizos denied that Neumann ever complained to him, Antonios Rizos testified that she complained to him on one occasion about a male co-worker's inappropriate conduct toward Alyssa Patryn. However, Antonios denied that Neumann ever complained to him about being the subject of any sexual remarks or inappropriate conduct. I decline to credit Neumann's testimony that she complained to Efthimios Rizos and Sue LaValley on multiple occasions.

22. Neumann testified that on January 23, 1999, at approximately 10:00 pm, she was making pizza boxes at a table where Antonios Rizos was seated. A new employee, nicknamed Shorty, who was a dwarf, entered the area. Antonios then stated, "Shorty was just the right height to perform oral sex on you." She testified that Antonios' comment made her very upset and she relayed this to him. Antonios admitted that he made the comment about performing oral sex. However, he claimed that after he made the comment, Neumann never objected to the remark and continued to stay and work at the table. In addition, Antonios claimed that he made the joke about Shorty only because Neumann had engaged in sexual banter and made sexual jokes the previous night when Red Rocks' employees socialized

after work at the restaurant. Antonios testified that Neumann had initiated many of the sexual stories the previous evening and laughed the loudest at the sexual jokes. According to Antonios, she also commented that she had previously worked at a strip bar and stated, “too bad the bar [at Red Rocks] is not longer, [because] I would strip on the bar.” Neumann did not rebut Antonios’ statements with respect to her conduct the previous evening. Consequently, I credit Antonios’ testimony with respect to this particular matter.

23. Neumann stated that during the last two weeks of January 1999, male Red Rocks employees subjected her to a number of incidents of inappropriate sexual conduct. Specifically, she claimed a cook named Vince called her and the other waitresses “pork chops” and then commented that her “legs were pretty beefy.” In addition, she stated that another cook, Eric, made an inappropriate sexual comment to her. She claimed she then told Eric he could not talk to her like that, but he responded that cooks have more clout than waitresses. She also testified that after she inadvertently bumped into another cook, Chris, he told her that she had better be careful or he was going to put her over his knee and spank her. Lastly, she claimed that a driver, nicknamed Gumby, told her that if she broke down pizza boxes for him, he would perform oral sex on her. Although Neumann never complained to Antonios or Efthimios Rizos about these particular comments, she claimed that Antonios either witnessed or overheard all of these remarks. I credit Neumann’s testimony that male co-workers engaged in the above-described offensive conduct; however, I do not credit her statements that she ever expressed any objection to the conduct.

24. Although Antonios acknowledged that sexual jokes and banter occurred in the workplace, both he and Efthimios claimed that Neumann joined in this banter and initiated some of the sexual comments. As described above, Antonios testified that during an evening when many of the employees were socializing and drinking after work at the restaurant, Neumann told many sexual stories and laughed the loudest at the sexual jokes. On cross-examination, Neumann admitted that she might have initiated some sexual banter in the workplace, but claimed she did not tell sexual jokes or stories. She also acknowledged that she considered Paul Chang a friend despite his having engaged in unwanted sexual conduct on numerous occasions while working at Red Rocks. Moreover, she stated that she had gotten along well with Efthimios Rizos prior to February 7, 1999, notwithstanding her allegations that he engaged in inappropriate sexual conduct. In fact, she admitted to socializing with Efthimios on one occasion prior to February 7, 1999, when they had drinks together at various bars and restaurants. I credit Antonios and Efthimios Rizos' testimony on this matter.

25. On February 7, 1999, Neumann planned to celebrate her birthday after work with some friends. She claimed that during work that evening, Efthimios persistently sought out information from her regarding her plans after work. She testified that she neither planned on celebrating her birthday with Efthimios, nor expected him to join her in the festivities. However, Efthimios stated that Neumann had asked him to go out with her that night. Both Sherry Post and Sue LaValley corroborated Efthimios' testimony. Specifically, Post, who worked as a bartender at Red Rocks on the night of February 7, testified that Neumann announced many

times that it was her birthday and Thimios was taking her out. LaValley claimed that Neumann mentioned during the evening that “I am going to make Thimios take me out.” LaValley also stated that she heard Neumann ask him repeatedly to go out later that night. I credit Efthimios Rizos, Post, and LaValley’s testimony on this particular matter.

26. Neumann testified that after she finished her shift, she went to a bar in Southampton called Buckwheat’s, where she met her friend Jason. From Buckwheat’s, she had planned to go to meet another friend, Ellen. Sometime later that evening, Efthimios arrived at Buckwheat’s and socialized with Jason and Neumann. Jason then stated he could not go out, but Efthimios offered to drive Neumann in his car and she accepted. Neumann and Efthimios then went to a number of bars in Springfield and drank considerable amounts of alcohol.<sup>4</sup> They eventually ended up at a bar, Geraldine’s, in West Springfield, where they met Ellen and her friends. Neumann admitted that she, Efthimios, Ellen and her friends had a good time drinking, dancing, and talking until the bar closed. Neumann and Efthimios then went to Denny’s to get something to eat. The events of this night, up to this point, were not seriously disputed. Neumann claimed that after they left Denny’s, Efthimios drove his vehicle as he had the entire night and they drove back to Buckwheat’s, where she had left her car. She testified that while they drove through the back roads of Southampton, she told Efthimios of her concern that Antonios wanted to fire her. She claimed that Efthimios assured her he would not let this happen. According to Neumann, Efthimios remarked that she looked

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<sup>4</sup> Although it is unclear exactly how much alcohol she had consumed that evening, Neumann did not rebut Efthimios’ testimony that she had eleven drinks that night.

beautiful and he then reached over, grabbed her groin, and asked if she gave oral sex. She testified that she pushed his hand away, but he squeezed her hand really hard. Neumann claimed that she then bit his hand, but he still continued to grab her groin. She stated that he tried to grab her for approximately two to three minutes. He eventually stopped and they rode the rest of the way back to Buckwheat's in silence. Contrary to Neumann's account of this incident, Efthimios claimed that after they left Denny's, she drove his car back to Buckwheat's. He stated that he got in the back seat of his car, where he passed out from the alcohol. He recalled only waking up after they arrived back at Buckwheat's where, after he opened the door to get out of the car, he threw up. Although I generally found Neumann to be more credible than Efthimios Rizos, I believe she was heavily intoxicated at the time of the alleged assault and, therefore, her recollection of the events was unreliable and untrustworthy.

27. Neumann testified that by the time she exited Efthimios car, she was extremely upset and shaking. She then got into her car and drove home. When she got home, she told her husband Todd, who was babysitting, what had happened. Todd told her he would get her the phone number of the MCAD. On February 9, 1999, she claimed she called the Commission, but the person who she was supposed to talk to, Paul Brandoli, was not in. She stated that she then spoke to Brandoli the next day, February 10. According to Neumann, Brandoli advised her to report the matter to the police. On February 11, Neumann gave a statement regarding the incident with Efthimios Rizos to the Southampton Police Dept. Throughout the week, she continued to work at Red Rocks, but she claimed she

tried to avoid Efthimios as much as possible. I credit Neumann's testimony with respect to her filing complaints with the Commission and the Southampton Police Department.

28. On February 18, 1998, Red Rocks opened their new addition. As part of the grand opening, the wait staff had to wear vests, bow ties, and white shirts. Neumann claimed that as she was trying on her vest, which was too small, Efthimios wanted to see how tightly it fit, so he came over and tried to button it for her. She further testified that after she put on a bigger vest, Efthimios tried to put on her bow tie and button her collar. Neumann stated that she felt trapped by Efthimios. She further testified that later that same day, Efthimios made sexual grunting noises as she walked by him. Efthimios denied making any such noises and further claimed that Neumann came to him and asked for his help in tying the bow tie. LaValley likewise testified that Neumann asked Efthimios to adjust her bow tie. Efthimios did not recall anything with respect to his allegedly buttoning her vest. I credit LaValley and Efthimios Rizos' testimony with respect to this particular matter.

29. After Neumann completed her shift on February 18, 1999, she went to a bar in Northampton where she met Paul Chang. She stated that Chang told her that Efthimios and Antonios knew that she had filed complaints against them. Shortly thereafter, Neumann and Chang went to Buckwheat's. Antonios arrived at Buckwheat's a short time thereafter. Neumann testified that after Antonios arrived, he asked Felicia, another waitress from Red Rocks, to go outside with him. According to Neumann, it appeared to her that Antonios and Felicia were in a

heated argument, so she opened the outside door to the bar and asked, "Is there a problem?" She claimed Antonios responded by telling her if she didn't like his establishment, she should go work elsewhere. Neumann testified that she then told Antonios that she didn't plan on leaving and she hadn't done anything wrong. She stated that Antonios remarked that he knew she had filed sexual harassment charges against him. She claimed that he then started to scream at her and eventually told her that she was fired. Contrary to Neumann's version of this incident, Antonios testified that he was outside the bar talking to Felicia when Neumann opened the door and commented, "Why are you here?" He claimed that he and Neumann then began to argue. According to Antonios, during the argument Neumann called him a "Fucking Greek", and stated, "You don't belong in this country." Antonios testified that as a result of these ethnic slurs, he told her she was fired. He claimed that she responded by stating, "You can't fire me", and "if you do, you would owe me \$20,000." Although it is likely that both Neumann and Antonios Rizos exchanged profanities and possibly ethnic slurs during the argument, I find Neumann's version of this incident more credible.

30. On the morning of February 19, 1998, Sue LaValley called Neumann to confirm that she had been terminated. LaValley also told her that Antonios and Efthimios were going to obtain a trespass order against her. Antonios acknowledged that he instructed LaValley to call Neumann. Antonios claimed that he fired Neumann because she had used highly insulting language the previous night and not as a result her going to the police or contacting the Commission. I

find Antonios Rizos' testimony lacked credibility with respect to his reason for terminating Neumann's employment.

31. As a result of her termination, Neumann claimed she experienced significant financial strain. She testified that it took her a substantial amount of time to find a comparable job because she needed to take care of her two children and, thus, had limited time to look for work. She also claimed she went to six or seven prospective employers, but they would not hire her because they heard she had been fired from Red Rocks. She stated that to make ends meet, she started doing side jobs, such as painting, pruning, or day care. Neumann testified she made less than \$150 per week until she found a job as a bartender in November 1999, when she started to earn wages comparable to those she received at Red Rocks. She estimated that she lost \$4,800 in wages during the eight-month period from February 19, 1999 to November 1999. I credit Neumann's testimony on this matter.

32. Neumann also claimed that she became extremely upset over the loss of her job. She testified that Respondents actions made her feel degraded and hurtful. Without providing many specific details, Neumann stated that the loss of her job at Red Rocks caused her a tremendous amount of emotional strain.

### **III. CONCLUSIONS OF LAW**

#### **A. SEXUAL HARASSMENT**

Massachusetts General Laws, c. 151B, § 4(16A) prohibits sexual harassment in employment. "Sexual harassment" is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a

sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment." M.G.L. c. 151B, § 1(18); College-Town Division of Interco v. MCAD, 400 Mass. 156, 165 (1987); see, Massachusetts Commission Against Discrimination Sexual Harassment in the Workplace Guidelines, at 2, 4 (2002) ("Sexual Harassment Guidelines").

Each Complainant has alleged that Respondents engaged in quid pro quo sexual harassment within the meaning of c. 151B, § 1(18)(a). In order to establish a case of quid pro quo sexual harassment, each Complainant must establish by a preponderance of the evidence that (a) she was subjected to a supervisor's unwelcome sexual advances; (b) the terms or conditions of her employment were then adversely changed; and, (c) the change was causally connected to her rejection of the sexual advances. Rushford v. Bravo's Pizzeria and Restaurant, 23 MDLR 171, 173 (2001), Hinojosa v. Durkee, 19 MDLR 14, 16 (1997).

In addition, each Complainant has alleged that Respondents created a hostile work environment within the meaning of § 1(18)(b). In order to establish a case of hostile work environment sexual harassment, each Complainant must establish by a preponderance of the evidence that (a) she was subjected to unwelcome verbal or physical conduct of a sexual nature; (b) the words or acts

were sufficiently severe or pervasive to alter her conditions of employment and create an abusive working environment; and, (c) the harassment was carried out by an employee with a supervisory relationship to Complainant, or Respondents knew or should have known of the harassment and failed to take prompt remedial action. College-Town, 400 Mass. at 162. Each Complainant's claims will be analyzed separately.

1. **ALYSSA PATRYN**

I find that Patryn has failed to establish a prima facie case of quid pro quo sexual harassment. Patryn's quid pro quo claim is solely based on a single statement made by Efthimios Rizos in October 1998, after she asked him if he would be willing to donate money toward her school trip to Florida. She testified that he responded by stating: "If I give you a bonus, you'll have to give me a bonus." Although I credited her testimony that she believed Efthimios' response was a request for a sexual favor, I do not believe such comment could objectively be considered such a request. Moreover, even if it Efthimios' remark could be construed as a request for a sexual favor, Patryn has not submitted any credible evidence that the terms or conditions of her employment were adversely affected by her rejection of his request. Consequently, she has failed to establish a prima facie case of quid pro quo sexual harassment.

However, I do find that Patryn has established that Respondents engaged in unlawful sexual harassment by creating a hostile work environment. First, Respondents subjected her to unwelcome conduct; meaning conduct that she subjectively found to be hostile and abusive. College-Town, 400 Mass. at 162;

Ramsdell v. Western Mass. Bus Lines, 415 Mass. 672, 677 (1993); see Harris v. Forklift Sys., Inc., 510 U.S. 17, 21-22 (1993) (“if the victim does not subjectively perceive the environment to be abusive, the conduct had not actually altered the conditions of the victim’s employment”). In addition, Complainant established that the unwelcome advances and remarks rose to the level of severe and pervasive conduct. In determining whether a work environment is sufficiently hostile or abusive “all of the circumstances [must be looked at], including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating (or a mere offensive utterance), and whether it unreasonably interferes with an employee’s work performance.” Faragher v. City of Boca Raton, 524 U.S. 775, 787-788 (1998), Williams v. Karl Storz Endovision, 24 MDLR 91, 107 (2002).

Specifically, I credited Patryn’s testimony that Efthimios Rizos touched her in an inappropriate and offensive manner in August 1998, when he deliberately grabbed her breasts during a basketball game involving Red Rocks’ employees. In addition, in November 1998, Efthimios ran his hand along her back and buttocks while Patryn worked at the cash register in the front of the restaurant. She testified credibly that she then spoke with Antonios Rizos about this incident and asked him to tell Efthimios to leave her alone. Antonios acknowledged that Patryn spoke to him about Efthimios’ conduct and he admitted that she was “upset” over the incident. Despite her complaints to Antonios, Efthimios did not desist in his inappropriate behavior. For example, in January 1999, Efthimios inappropriately remarked to Patryn that she had a “nice ass.”

Moreover, various male employees on numerous occasions at work touched Complainant's buttocks, made sexually suggestive comments, and tried to lift up her skirt. Patryn and other witnesses also testified credibly that male employees regularly made profane sexual comments about females employees and female customers. Antonios Rizos admitted that employees engaged in activities and made jokes with sexual overtures. Considering that Efthimios and Antonios Rizos owned the restaurant, fostered and tolerated the inappropriate and offensive sexual conduct, and failed to take prompt effective action in response to Patryn's complaints, I conclude that their conduct created a particularly abusive, intimidating, humiliating, and sexually offensive work environment for her. Patryn has, therefore, established that Respondents engaged in unlawful sexual harassment in violation of M.G.L. c. 151B, § 4(16A).

## **2. SHELLY NEUMANN**

Neumann's quid pro quo sexual harassment claim is based entirely on the alleged assault upon her by Efthimios Rizos on February 7, 1999. Although, generally, I found Neumann to be more credible than Efthimios Rizos, I cannot credit her testimony regarding this incident. First, I found her testimony lacked credibility with respect to the events that occurred earlier that evening at the workplace. Specifically, Neumann claimed that she did not encourage or want Efthimios to go out with her; however, I believe the testimony from the other witnesses' supports the finding that she solicited his company. More importantly, because Neumann was clearly heavily intoxicated at the time of the alleged assault, I find her testimony regarding this incident to be unreliable and untrustworthy.

While it is entirely possible that Efthimios did make a sexual advance or engaged in inappropriate or offensive conduct on this occasion, Neumann has failed to prove by a preponderance of the evidence that the alleged assault occurred as she had described it. Consequently, she has failed to establish a claim of quid pro quo sexual harassment.

Neumann has also failed to prove a claim of hostile work environment. As stated above, Efthimios and Antonios Rizos fostered and tolerated a considerable amount of sexual comments and offensive sexual conduct in the workplace. However, I do not believe Neumann, for the most part, found this conduct to be unwelcomed or offensive. See, College-Town, 400 Mass. at 162 (complainant must subjectively find the conduct unwelcome), Harris, 510 U.S. at 21-22 (1993) (complainant must subjectively perceive the environment to be abusive in order for the to have actually altered the conditions of the victim's employment). To the contrary, I found that she willingly contributed to and sometimes initiated the sexual banter. For example, Neumann admitted that she sometimes responded to a sexual remark by making a similar comment. In addition, with respect to the comment Antonios made that "Shorty was just the right height to perform oral sex on you", I find that she did not find this comment objectionable, particularly since she had made many sexual jokes and comments the previous evening. Neumann's sexual remarks from the previous evening included references to her previous work in a strip bar. Moreover, I did not credit her testimony with respect to her having complained to Efthimios Rizos and Sue LaValley. Although Neumann apparently complained on one occasion about a remark a co-worker made to

Alyssa Patryn, I do not believe she ever complained about any of the comments directed to toward her. Consequently, she has failed to demonstrate that she found the sexual conduct at Red Rocks to be unwelcome or offensive and, therefore, she failed to establish a claim of hostile work environment sexual harassment.

## **B. RETALIATION**

Each Complainant has also alleged that Respondents engaged in unlawful retaliation in violation of M.G.L. c. 151B, § 4(4). Retaliation is a separate claim from discrimination, “motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices.” Kelly, 22 MDLR at 25, *quoting*, Ruffino v. State Street Bank and Trust Co, 908 F. Supp. 1019, 1040 (D. Mass. 1995). M.G.L. c. 151B, § 4(4) makes it unlawful for an employer to discharge, expel or otherwise discriminate against any person because she has opposed any practices forbidden under c. 151B or because she has filed a complaint, testified, or assisted in any proceeding alleging a violation of c. 151B. Kelley v. Plymouth County Sheriff’s Department, 22 MDLR 208, 215 (2000), *citing*, Bain v. Springfield, 424 Mass. 758, 765 (1997); see, Sexual Harassment Guidelines, at 25-28.

In the absence of any direct evidence of retaliatory motive, as in this case, the Commission follows the three-part burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 972 (1973). Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655, 665-666 (2000); Yeskevicz v. New Tech

Precision, Inc., 23 MDLR 75, 80-81 (2001). Consequently, in order to establish a prima facie case of unlawful retaliation, each Complainant must prove that: (1) she engaged in protected activity; (2) Respondents knew she had engaged in protected activity; (3) Respondents subjected her to an adverse employment action; and, (4) a causal connection existed between the protected activity, known by the retaliators, and the adverse employment action. Morris v. Boston Edison Co., 942 F. Supp. 65, 68-69 (D. Mass. 1996); Ruffino, 908 F. Supp. at 1044; Kelly, 22 MDLR at 215; Langford v. Massachusetts Department of Employment and Training, 17 MDLR 1043, 1059 (1995). Once Complainants have established a prima facie case of retaliation, the burden of production shifts to Respondents to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason for their actions. Abramian, 432 Mass at 116-117; Wynn & Wynn, 431 Mass. at 665. If Respondents meet this burden, then each Complainant must show by a preponderance of the evidence that Respondents acted with retaliatory intent, motive, or state of mind. Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001); see, Abramian, 432 Mass at 117. Complainants may meet this burden through circumstantial evidence including proof that “one or more of the reasons advanced by the employer for making the adverse decision is false.” Lipchitz, 434 Mass at 504. However, each Complainant retains the ultimate burden of proving that Respondents’ adverse actions were the result of retaliatory animus. *Id.*; Abramian, 432 Mass at 117. Again, Complainants’ claims will be analyzed separately.

**1. ALYSSA PATRYN**

I believe Patryn has established a prima facie case of retaliation. First, she engaged in protected activity on or about February 15, 1999, when she cooperated with the Southampton Police Department with respect to Neumann's complaint against Efthimios Rizos, and then contacted the Commission. A few days later, on February 20, 1999, Respondents subjected her to an adverse action when they terminated her employment. Antonios Rizos admitted that he knew Patryn had spoken with both the police and the Commission at the time he and his brother decided to terminate her employment. Under these circumstances, I find a casual connection existed between Patryn's protected activity and her termination. Consequently, she has proven a prima facie case of retaliation.

The burden of production now shifts to Respondents to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason for their decision to terminate Patryn's employment. I conclude that Respondents have failed to meet this burden. Antonios Rizos claimed that they decided to fire her solely because she did not come in prior to her regular start time on February 19, as they had requested earlier that morning. I found his testimony on this matter lacked credibility. In particular, Respondents actions are totally inconsistent with Antonios' admission that Patryn was a good worker. He also acknowledged that he had never received any complaints about her work performance. Under these circumstances, I find his suggestion that they fired her solely because she did not

come in prior to her regular scheduled start time to be patently untruthful. Patryn has, therefore, established that Respondents engaged in unlawful retaliation.

## **2. SHELLY NEUMANN**

I likewise conclude that Neumann has proven a prima facie case of retaliation. On or about February 10, 1999, she contacted the Commission regarding the alleged assault upon her by Efthimios Rizos and her belief that Respondents subjected her to unlawful sexual harassment. She then reported the matter to the Southampton Police Department. Although Neumann failed to establish that Respondents actually engaged in unlawful sexual harassment, a complainant need not prevail on her sexual harassment claim in order to prove a retaliation claim. In order to prove she engaged in protected activity, Neumann need only demonstrate that she “reasonably and in good faith believed that [Respondents were] engaged in wrongful discrimination and that [she] acted reasonably in response to [her] belief.” Sexual Harassment Guidelines, at 14. I find that Neumann contacted the Commission and the Southampton Police in “good faith belief” that Respondents had engaged in unlawful sexual harassment; and, therefore, she has established that she participated in protected activity.

On February 19, 1999, a few days after Neumann contacted the police and the Commission, Respondents terminated her employment. Antonios Rizos similarly acknowledged that they had known Neumann went to the police and the Commission before they decided to fire her. I find, under these circumstances, that Neumann has demonstrated a casual connection between her protected

activity and Respondents decision to terminate her employment; and, thus, she has established a prima facie case of unlawful retaliation.

The burden of production now shifts to Respondents to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason for their decision to terminate Neumann's employment. Respondents have failed to meet this burden. Antonios claimed that he fired Neumann based on her insulting language the previous night and not as a result her going to the police or contacting the Commission. However, no one corroborated his account of his argument with Neumann and I largely credited Neumann's testimony regarding the events of that evening. Consequently, I refuse to credit Antonios' testimony that he terminated her employment as a result of her allegedly making derogatory or ethnic remarks. Moreover, even if Neumann made insulting or ethnic remarks to Antonios, I still believe the evidence overwhelmingly established that her protected activity was the determinative factor in her termination. In other words, Neumann has established that the reason advanced by Respondents for terminating her employment – the ethnic and derogatory comments – was not the real reason for her termination. Rather, she has proven that Respondents fired her principally as a result of their retaliatory animus. Consequently, Neumann has established that Respondents engaged in unlawful retaliation in violation of M.G.L. c. 151B, § 4(4).

**C. INDIVIDUAL LIABILITY**

In her complaint, Alyssa Patryn named Efthimios Rizos as an individual Respondent. Shelly Neumann named both Efthimios and Antonios Rizos as Respondents. The Commission has long recognized and imposed individual

liability under G.L. c. 151B. Beaupre v. Cliff Smith & Associates, 50 Mass. App. Ct. 480, 491 (2000); see, e.g., Deeter v. Bravo's Pizzeria and Restaurant, 23 MDLR 167, 170 (2001) (individual respondent jointly and severally liable with employer where he supervised complainant's work, owned part of business, and engaged in particularly odious and loathsome unwelcome verbal and physical conduct), Hope v. San-Ran, Inc., 8 MDLR 1195, 1210-1211 (1986) (supervisor who perpetrated sexual harassment and manager who failed to act on employee's complaint held jointly and severally liable for their separate acts of aiding and abetting); compare, Rushford v. Bravo's Pizzeria, 23 MDLR 171, 175 (2001) (supervisor not individually liable where he did not exercise supervisory authority over complainant and conduct, although offensive, was not particularly egregious or heinous).

Pursuant to G.L. c. 151B, § 4(4A), it is unlawful for "any person to coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter..." Among the rights protected by G.L. c. 151B is equal treatment in the terms and conditions of employment regardless of sex and it is well settled that these rights extend to protect employees against unlawful sexual harassment. Tunstall, 22 MDLR at 287-289. The Commission's imposition of individual liability under the statute for prohibited hostile work environment sexual harassment and wrongful retaliation is consistent with the expressed provisions of G.L. c. 151B, § 9, which provides in pertinent part: "the provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof..." See, Bournewood Hospital v. MCAD,

358 N.E.2d 235, 242-243 (1976) (this provision mandates the liberal construction of the statute to accomplish its remedial purposes). In addition, G.L. c. 151B, § 4(5) provides that it is unlawful for “any person, whether an employer or employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under [G.L. c. 151B] or to attempt to do so.”

As described in detail above, I found that Respondents, principally as a result of Efthimios Rizos’ offensive conduct, engaged in unlawful sexual harassment against Patryn in violation of M.G.L. c. 151B, § 4(16A). I also concluded that Efthimios and Antonios Rizos’ decisions to terminate both Patryn and Neumann constituted unlawful retaliation in violation of M.G.L. c. 151B, § 4(4). Moreover, I found that Efthimios and Antonios Rizos fostered and tolerated the offensive and inappropriate sexual conduct in the workplace. They also ignored Patryn’s protests and complaints, allowing the debasing conduct to continue unabated. Lastly, Efthimios and Antonios Rizos owned and managed Red Rocks and supervised all of its employees. Consequently, I find that they both “interfered” with the exercise and enjoyment of Complainants’ rights to be free of, respectively, sexual harassment and retaliation. Accordingly, Efthimios Rizos shall be held individually and jointly liable with Respondent, Red Rocks Pizza, to Complainant Alyssa Patryn for the unlawful sexual harassment and retaliation established under the facts of this case. In addition, both Efthimios Rizos and Antonios Rizos shall be individually and jointly liable with Respondent, Red Rocks Pizza, to Complainant Shelly Neumann for the unlawful retaliation.

#### **IV. REMEDY**

M.G.L. c. 151B, § 5 authorizes the Commission to grant remedies to make Complainants whole, including back pay and emotional distress damages.

College-Town v. MCAD, 400 Mass. 156, 68-169 (1987); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 181-182 (1985).

##### **A. ALYSSA PATRYN**

Complainant, Alyssa Patryn, is entitled to lost wages stemming from her wrongful retaliatory discharge. She testified credibly that after Respondents terminated her employment, she remained out of work for several weeks. She eventually got a job at another restaurant as a phone attendant, but could only get ten hours of work per week. At the time of her discharge from Red Rocks, she had been working five or six shifts per week. After six months at her new employer, she eventually began working the same amount of hours and earning the same rate of pay she had previously received at Red Rocks. Patryn claimed to have lost \$3,000 to \$4,000 in wages during this six-month period. I credited her testimony that she lost \$3,000 in wages and, therefore, she is entitled to an award of \$3,000 in back pay.

In addition, Patryn is entitled to monetary damages in compensation for the emotional distress she suffered as a direct and probable result of Respondent's unlawful sexual harassment and retaliation. Buckley Nursing Home, 20 Mass. App. Ct. at 182. Patryn testified credibly that the termination greatly upset her. She also claimed that the sexually hostile work environment negatively affected her attitude toward men and resulted in her being unable to trust

men for an extended period of time. She claimed she felt comfortable working at her subsequent employer because a woman owned and ran the restaurant. Patryn emphasized that Red Rocks was her first job and her positive work performance there gave her a genuine sense of pride. Lastly, she testified sincerely about the importance of her job to her emotional well being and the necessity of having a job both for the money she earned and for the work-study credits she received at school. Considering Patryn's young age and immaturity at that time, and the severity and pervasiveness of Respondents' unlawful sexual harassment, I find that Patryn is entitled to \$30,000.00 in damages in compensation for the emotional distress she suffered as a direct and probable consequence of Respondents' unlawful conduct.

**B. SHELLY NEUMANN**

Neumann testified credibly that after Respondents wrongfully terminated her employment, it took her a substantial amount of time to find a job that paid comparable wages to the waitress position she had at Red Rocks. She claimed it was difficult to find work because she needed to take care of her two children and, therefore, she had limited available time to look for a job. She also stated that she went to see six or seven prospective employers, but they would not hire her because they heard she had been fired from Red Rocks. To make ends meet she started doing side jobs, such as painting, pruning, or day care. Neumann testified she made less than \$150 per week until November 1999, when she found a job as a bartender and earned comparable wages to those she received at Red Rocks. She estimated that during the eight-month period following her termination, she lost

\$4,800 in wages. I credited her testimony regarding her lost wages and, therefore, she is entitled to an award of \$4,800 in back pay.

Neumann is also entitled to monetary damages in compensation for the emotional distress she suffered as a direct and probable result of Respondents unlawful retaliation. She claimed that she became extremely upset over the loss of her job. In particular, she testified that Respondents' actions made her feel degraded and hurtful. Without providing any specific details, Neumann stated that the loss of her job at Red Rocks caused her a tremendous amount of emotional and financial strain. I find that Neumann is entitled to \$15,000.00 in damages in compensation for the emotional distress she suffered as a direct and probable consequence of Respondents' unlawful retaliation.

**V. ORDER**

Based on the foregoing findings of fact and conclusions of law, I hereby issue the following order:

1. Respondents, Red Rock Pizza, and Efthimios Rizos shall pay Complainant, Alyssa Patryn, within sixty (60) days of receipt of this decision, the sum of \$3,000.00 in back pay, and the sum of \$30,000.00 in damages for emotional distress, for a total award of \$33,000.00, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
2. Respondents, Red Rock Pizza, Efthimios Rizos, and Antonios Rizos shall pay Complainant, Shelly Neumann, within sixty (60) days of

receipt of this decision, the sum of \$4,800.00 in back pay, and the sum of \$15,000.00 in damages for emotional distress, for a total award of \$19,800.00, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

3. Respondents shall conduct basic annual training sessions on sexual harassment for all employees, managers, and supervisors employed by Respondent, Red Rocks Pizza. With respect to such training:
  - a. Each training session for employees must be at least three (3) hours in length; and each training session for managers and supervisors must be at least six (6) hours in length. All managers, supervisors, and employees, as of the date of the training session, are required to attend. No more than twenty-five (25) persons may attend each training session. Respondent shall repeat this training, once each calendar year for the next five (5) years, for all new supervisors, managers, and employees who were hired or promoted after the date of the initial training session.
  - b. Within thirty (30) days of the receipt of this decision, Respondent shall select a trainer to conduct the initial training sessions. The trainer must be selected from the list of trainers who have completed the Commission-certified sexual harassment prevention-training program, available from the Commission's Director of Training. Within one week of Respondent's selection of a trainer, a

copy of this hearing decision must be forwarded to the trainer for his or her review.

- c. At least one month prior to the training date, Respondent must submit a draft training agenda to the Commission's Director of Training for approval; and, provide the Director of Training with one-month's advance notice of the training date(s) and location(s). If the Commission decides to send a representative to observe the training sessions, Respondent will provide the Commission representative with unfettered access to the training sessions.
- d. Within one month after the completion of the training, Respondent must submit documentation of compliance to the Commission's Director of Training, signed by the trainer, identifying the training topic, the names of persons required to attend the training as identified in paragraph (a) above, the names of the persons who attended each training session, and the date and time of each training session.
- e. In the event that Respondent's company is sold, materially changed, or taken over by new management, any and all successor purchasers, assignors, managers, or operators of Respondent's company (hereinafter referred to as the "new owners") shall be responsible for fulfilling the training requirements specified in this decision if any of the following shall apply:

- i. The majority of the managers and supervisors employed by Respondent as of the date of this decision continue to work for the new owners as of the succession date;
    - ii. The majority of Respondent's governing board (e.g., board of directors, trustees) as of the date of this decision continues to serve on the new owner's board as of the succession date;
    - iii. The new owners are relatives of Respondent, or previously employed by Respondent as a manager or supervisor; or,
    - iv. Respondent continues to retain an interest in the successor entity.
  - f. For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.
4. The parties shall notify the Clerk of the Commission as soon as the above-described ordered payments have been made. If Respondents fail to comply with the terms of this Order within the time periods allotted, Complainant is instructed to immediately notify the Clerk of the Commission.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the

Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 22<sup>nd</sup> day of August, 2003.

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EDWARD R. MITNICK,  
Hearing Officer