

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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KASEY R FRANKLIN,	)	
CHARGING PARTY,	)	
	)	CASE NO. 9801008288
vs.	)	
	)	<b>ORDER REGARDING</b>
LYLE NALIVKA, DBA ACOMA LOUNGE	)	<b>APPEAL OF FINAL</b>
AND RESTAURANT,	)	<b>AGENCY ORDER</b>
RESPONDENT.	)	

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This matter came before the Human Rights Commission, as scheduled on May 3, 1999, for consideration of the Charging Party’s appeal from the Final Agency Decision in the above-captioned case. Commission member Evelyn Stevenson was not present. Oral argument, having been requested by the parties, was heard. Charging Party was present, as were counsel for Charging Party, Robert Kelleher, Sr., and Respondent, Mark Vucurovich.

Both counsel were given 30 minutes for oral argument. Following oral argument, the Commissioner questioned counsel for both parties regarding various points raised in argument. After those questions, oral argument was closed and the Commission thereafter began deliberations.

Charging Party requested that the case be remanded to the Department hearing officer for “reconsideration of the evidence” and for an award of monetary damages. Charging Party argued that hearing officer misapprehended the evidence, and erred in refusing to permit the counselor, Honshurak, to testify as to Charging Party’s credibility. Respondent argued that the findings of fact were supported by the record, and that the Commission was not in the position to re-weigh the evidence. Respondent also argued that the opinion testimony of Honshurak was properly excluded as a matter of law. On rebuttal, Charging Party argued that the principles of joint and several liability did not prohibit consideration of the claimed damages, despite a subsequent automobile accident.

The Commission discussed the arguments raised by the parties in their briefs and oral argument. The Commission agreed that the Commission, sitting in its appellate role, could not properly re-weigh the evidence in the record. As such, the Commission found that, upon review of the record as a whole, the findings of fact were supported by substantial, credible, admissible

evidence. The Commission also found that the hearing officer's analysis was correct, and that the hearing officer correctly concluded that Charging Party had failed to carry her burden of proof in her case. Having found that the conclusions of law were correctly decided, the Commission did not have to reach the issue of damages. The Commission voted 4-0 to overrule the Charging Party's exceptions to the Final Agency Order, and further voted 4-0 to affirm the Final Agency Order.

Dated this \_\_ day of May, 1999.

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Gloria "Patt" Etchart, Chair, Montana Human Rights Commission

A party may appeal from this order by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this order pursuant to Section 2-4-701, et seq., MCA.

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing **ORDER REGARDING APPEAL OF FINAL AGENCY ORDER** was mailed to the following by U.S. Mail, postage prepaid, on this \_\_\_ day of May, 1999.

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