

**STATE OF NEW JERSEY  
DEPT. OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EK17WB-66578**

██████████	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Administrative Action</b>
	)	<b>PARTIAL FINDING OF PROBABLE</b>
<b>Hamilton’s Grill Room,</b>	)	<b>CAUSE</b>
	)	
<b>Respondent.</b>	)	

On August 3, 2017, ██████████ (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, Hamilton’s Grill Room (Respondent), discriminated against her based on age and perceived disability in violation of the NJ Law Against Discrimination (LAD), N.J.S.A 10:5-12. Respondent filed an answer denying the allegations of discrimination. DCR’s investigation found as follows.

**Summary of Investigation**

Respondent is a family-owned restaurant located in Hunterdon County. Respondent hired Complainant as a hostess on March 17, 2004. Throughout the years she worked for Respondent in various capacities, including as a hostess, server, personal assistant to the owner, and restaurant decorator. In April 2017, Complainant became co-manager of the restaurant, but continued to also work as a hostess and server on weekend nights.

Complainant was discharged on June 7, 2017. Complainant, who was 65 years old at the time, alleged that her age and perceived disability factored into the decision to terminate her employment. Complainant alleged that two management employees made negative comments about her age and expressed their desire to have a younger workforce. Complainant told DCR that her co-manager and direct supervisor, Christian Minnucci, told her that she should be fired because she was “too old” and Minnucci was tired of “picking up her slack.” Complainant also alleged that near the time of her discharge, Minnucci sent her a text message saying that Complainant was “nuts.” This led Complainant to believe that she was perceived to have a mental disability.

According to the position statement, Respondent’s decision to terminate Complainant’s employment had nothing to do with her age or any perceived disability. Respondent alleged that Complainant’s employment was terminated because she: (i) violated company policies; (ii) had a history of mistreating customers and management; (iii) had a history of insubordination; and (iv) exposed Respondent to liability by purchasing alcohol for customers, which was illegal. Although Respondent’s position statement made these assertions, it included few documented details about them. In addition, in response to a document and information request from DCR,

Respondent produced no contemporaneous written documentation of any performance issues for Complainant. Although Respondent alleges that Complainant had been discharged and then rehired multiple times throughout her tenure at the restaurant for these same issues, no documents were produced to substantiate that claim. The owner responsible for those firings and re-hirings is now deceased.

Three documents produced to support Respondent's allegations as to Complainant's performance issues were dated after Complainant's discharge. Specifically, Respondent submitted two emails from Minnucci to the restaurant's owners listing criticisms of Complainant's work performance. One of these was written on August 2, 2017 (almost two months after Complainant was fired), and the other was written on September 21, 2017. A third document contained an October 12, 2017 statement by [REDACTED], a former general manager for Respondent and direct supervisor of Complainant from February 2016 through April 2017, detailing Complainant's work performance problems. Each of these documents appear to have been written in response to a request for information by Respondent's owner as to problems with Complainant's work performance, and all three were written after Complainant's termination. Although not contemporaneous, they do provide detail as to the types of performance problems attributed to Complainant, namely a failure to listen to or follow the direction of her managers and "a consistent inability" to provide good service to all customers, as opposed to a chosen few she favored. Respondent also provided written customer complaints from 2008 and 2015 as to poor service by Complainant and a 2010 reprimand from a prior manager charging Complainant with illegally purchasing alcohol for restaurant patrons. Respondent says it did not have a personnel file for Complainant or any of its other employees.

Respondent's position statement also asserted that the culminating event that led to Complainant's discharge took place on June 7, 2017, when Complainant overbooked the restaurant and caused significant confusion, frustration, and customer dissatisfaction. According to the head chef, Mark Miller, the restaurant was overbooked above its legal capacity of 150 people by approximately 40 people; Minnucci stated it was approximately 50 people. Both, Minnucci and Miller said that this caused customers to become frustrated, caused chaos in the restaurant, and caused the kitchen to run out of food. Miller stated that he explicitly directed Complainant to stop accepting bookings for the restaurant when he checked the reservation book at one point, but observed that Complainant ignored him and continued to accept bookings after that direction. Respondent asserts in its position statement that the overbooking was not accidental, but rather deliberate insubordination by Complainant, who had a history of disregarding managers.

During an interview with DCR, Complainant stated that because she had been employed at the restaurant for many years, she helped the manager, Minnucci, co-manage the restaurant. Complainant denied the misconduct and violations that Respondent alleged in its position statement. In an email to DCR, Complainant acknowledged some negative reviews by customers, but provided DCR with smiling photographs of her and other restaurant customers, as well as good reviews she received from customers. Complainant also stated that Minnucci has "axed" or fired many employees "without reason."

Complainant alleged that Minnucci was trying to get rid of her because she thought Complainant was too old. Complainant said Minnucci would call her "nuts" and the "Old Dragon"

of the restaurant, and would often tell her that she should quit because she was too old to continue working since she could not keep up. Complainant said that the “Old Dragon” comments were also made for years prior to the instant complaint by employees other than Minnucci. Complainant told DCR that she complained about the “Old Dragon” comments to the managers in charge at different times during her employment, including J.D. Simson and R.J (Last name unknown), but neither of them took any corrective action. In contrast, Respondent’s Answer alleges that Complainant often referred to herself as “old” in an effort to manipulate younger servers and bussers to perform heavy or unpleasant tasks for her and that she and another employee often referred to themselves as the “Old Dragons” of the restaurant.

To highlight her poor relationship with Minnucci, Complainant provided DCR with two transcripts of a “group chat” text she had received from Minnucci 5 days before her termination. In those texts, Complainant admits to calling out improperly from her noon shift on a Saturday by calling Miller instead of Minnucci and by calling out only 2 hours before that shift. Minnucci asks Complainant to report to work if she feels better later and assigns a junior server to work in the hostess position that day. Complainant then complains about being placed to work under a junior employee should she later come in to work and accuses Minnucci of trying “to get rid” of her. When told by Minnucci to “shut up,” to stop interfering in the group chat where Minnucci was trying to find enough employees to work that day, and to not bother to report to work after all, Complainant complains that she is now being denied a Saturday shift and cannot pay her rent, after calling out sick in the first instance. In these documents, Complainant refers to Minnucci as a “bitch” and compares Miller’s genitals to a “shriveled cashew nut.” There is no reference to age in these text messages.

As to the June 7, 2017 incident, Complainant denied overbooking the restaurant. Complainant told DCR that she recalled that it was a very busy night, and admitted that normal capacity was 150 people. She noted that capacity was often enlarged in the summer months on days when outdoor dining was added, with Miller grilling outside on the patio. She did not address whether the capacity was actually expanded on the night in question or if Miller was grilling outside. She said that management always encouraged staff to book as much as possible, and to never turn down a reservation. Complainant stated that she relied on that general edict and denied being told by Miller to not accept any more reservations that evening. However, in her interview with DCR, Complainant implies she knew of Miller’s direction because she states that she felt she had to accept additional reservations that evening because those who came were “regulars” and she believed they should be served.

Complainant provided DCR with three witnesses who could corroborate the ageist comments by Minnucci and/or by Miller. DCR interviewed all three.

██████████, who is approximately the same age as Complainant, worked for Respondent as a server part time and was the owner’s nurse as well. ██████████ stated that she overheard Miller tell Minnucci: “It’s time that the restaurant replaces ██████████ and [Complainant] with new blood.” ██████████ also told DCR that Complainant was referred to as the “Old Dragon” by Miller and other servers who were employed at the time. ██████████ had no recollection of hearing Minnucci make any ageist comments about Complainant. ██████████ was

discharged three months after Complainant. [REDACTED] also told DCR that Respondent did not have a system of disciplinary notices or warnings for employees.

[REDACTED] worked for Respondent as a server [REDACTED] told DCR that Minnucci used to refer to Complainant as “Pop” and “Grandpa” behind her back, in a disparaging way. [REDACTED] also told DCR that before Complainant’s shift would start, Minnucci would say that Complainant was too old to work there and that she wished Complainant was gone. [REDACTED] is no longer employed by Respondent.

[REDACTED] worked for Respondent as a server. She told DCR that she witnessed a few arguments between Complainant and Minnucci. She said Minnucci would sometimes talk about Complainant’s health and her physical condition, or express concern that she would get hurt on the job. [REDACTED] also said that Minnucci told her that she believed the industry was not appropriate for Complainant anymore, that she was too thin, and that she was afraid Complainant would collapse during her shift. [REDACTED] no longer works for Respondent.

During an interview with DCR, Minnucci, who is 30 years old and no longer employed by Respondent, denied calling Complainant an “Old Dragon” or making any ageist comments about her. She told DCR that she and Complainant co-managed the restaurant. When asked why Complainant was fired, Minnucci said that it was a buildup of things over the years, and that the owner, Jim Hamilton, had fired and rehired Complainant at least three times throughout the years for performance issues. Minnucci stated that everyone in the restaurant knew not to overbook. She stated that on June 7, 2017, Miller looked at the reservation book and told Complainant they had reached capacity for the night and not to book any more people. Minnucci told DCR that Complainant ignored Miller’s order and continued making reservations, and it caused the restaurant to have a terrible night. Minnucci stated that she had a three-way telephone conversation with Hamilton and Miller later that night, and during that call Hamilton told Minnucci that she could fire Complainant. According to Miller and Minnucci, only Hamilton had the authority to fire an employee.

Regarding Complainant’s prior work performance, Minnucci cited an incident when Complainant was working as a hostess, and took a reservation for a party of 25 without putting it in the system, so no one knew about it. According to Minnucci, Hamilton fired Complainant for that, but then reinstated her after a few weeks. Minnucci also stated that Complainant was very territorial, would not get along with the servers, and would boss around other employees in the restaurant. Minnucci told DCR that a few nights before Complainant was fired, she spoke to Complainant about being nasty to employees, and asked her to speak with them more calmly. According to Minnucci, Complainant became defensive and later that night sent her a nasty and condescending text message. Minnucci could not provide the text message to DCR, stating that she had not retained it. Minnucci also said that some customers complained about Complainant as a server, because she would complete their orders incorrectly. She acknowledged, however, that some customers enjoyed being served by Complainant.

Minnucci also told DCR that Respondent employed others of a similar age to Complainant, including a baker who was 75 years old, one chef who was in his 50’s, and an advertising person

who was 60 years old. Hamilton, who made the decision to fire Complainant, was 84 years old at that time.

DCR also interviewed Head Chef Miller, age 50. Miller has been employed by Respondent in that position for over 20 years. Miller told DCR that Complainant co-managed the restaurant with Minnucci. He described Complainant as “different.” He said she had a unique style of dressing and speaking. He told DCR that her work ethic was good, she came in on time, and did what she had to do for the day. But he said she sometimes wanted to do her own thing and not follow orders from anyone above her. Miller said he never heard Minnucci refer to Complainant as “Old Dragon” or “Pop” or make any other ageist remarks. Miller stated that the real reason for Complainant’s discharge was the incident on June 7, 2017. According to Miller, he specifically instructed Complainant not to take any additional reservations and yet Complainant continued to take reservations. Miller stated that because of Complainant’s deliberate overbooking, the kitchen was in total chaos, they ran out of food, and they had many upset customers. Miller explained that he and Minnucci called owner Jim Hamilton the night of the incident and told him what happened. Hamilton then told Minnucci she could let Complainant go. Miller remembers Minnucci pulling Complainant to the side at the end of the night and discharging her. Complainant seemed upset and stormed off.

In a written narrative, Complainant stated that Hamilton had “begged” her to be one of the three managers only weeks earlier, and he would not have done so if he was discontent with her work. She acknowledged that she received a few negative customer reviews, but added, “no server can work for more than a dozen years without one. We all laughed when we saw a review saying that the Chef should be fired immediately.” Complainant also denied that Mark Miller directed her to stop accepting reservations on the night of June 7, 2017, due to overcrowding and instead maintained that she had been repeatedly instructed over the course of her employment to “never turn anyone anyway” and to “book, book, book.”

During the course of the investigation, Respondent’s attorney notified DCR that there had been a change in ownership because Mr. Hamilton died. DCR was thus unable to interview Hamilton or ask him if he actually instructed Minnucci to fire Complainant, and if so, his reason for doing so.

### **Analysis**

At the conclusion of an investigation, DCR is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. For purposes of that determination, probable cause is defined as a reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe that the LAD was violated. *Ibid.* The procedure is not an adjudication on the merits, but merely an initial “culling-out process” in which the DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” *Frank v. Ivy Club*, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” *Ibid.* If the Director determines that probable cause exists, then the complaint will proceed to a hearing

on the merits, N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey, N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

#### A. Hostile Work Environment

A hostile work environment based on age or disability is a form of age or disability discrimination under the LAD. See Lehman v. Toys ‘R’ Us, Inc., 132 N.J. 587, 607 (1993).<sup>1</sup> To establish a claim for a hostile work environment based on age or disability, the evidence must show that the harassing conduct (1) would not have occurred but for the Complainant’s age or disability, and (2) was severe or pervasive enough (3) to make a reasonable employee perceive that the conditions of employment had changed and the work place had become hostile or abusive. Id. at 603-04. A hostile work environment claim looks at the totality of the circumstances, “which may include the frequency of the [harassing] conduct, its severity, whether it is physically threatening or humiliating, or a merely offensive utterance, and whether it unreasonably interferes with an employee’s work performance.” Ibid.

Complainant alleged that she was referred to as “nuts” by her supervisor on one occasion. Respondent denied the allegation. No evidence was offered by Complainant that this single comment on an unspecified date was severe or pervasive enough to support a claim that it altered the conditions of her employment in any way. Although the reference was offensive, it was not sufficiently severe or pervasive to constitute actionable harassment for a perceived disability under the LAD. Roa v. Roa, 200 N.J. 555, 575 (2010) (the LAD “does not set forth a general civility code for the American workplace”) (citation omitted); Taylor v. Metzger, 152 N.J. 490, 500-02 (1998) (under the LAD, epithets, insults, rudeness, and even severe personality conflicts are generally insufficient to establish a hostile work environment).

However, Complainant does state a claim for a hostile work environment based on derogatory comments about her age. Several witnesses, all former employees, supported Complainant’s allegation that the restaurant manager, who was Complainant’s direct supervisor, regularly made ageist comments about Complainant in the workplace. Those comments included, but are not limited to, referring to Complainant as “Pop,” and “Old Dragon,” and stating that Complainant was “too old” to work at the restaurant and that she “couldn’t keep up.” There was also a statement allegedly made to a co-worker of Complainant by the head chef that it was “time to replace [Complainant] with new blood.” The evidence showed that these comments were made by Complainant’s direct supervisor and another high-level employee, they took place over an extended period of time, they all referred to Complainant’s age in a derogatory manner, and they were made in the hearing of several other employees aside from Complainant. These types of comments create a reasonable suspicion that a reasonable employee in Complainant’s position

---

<sup>1</sup> Although the verified complaint in this matter did not explicitly allege that Complainant was subjected to an age-based hostile work environment, the complaint alleged age discrimination and ageist comments from management. Based on the investigation, the complaint is hereby amended to allege that Respondent subjected Complainant to an age-based hostile work environment. This amendment relates back to the allegations of age discrimination in the original complaint. N.J.A.C. 13:4-2.9.

would have perceived that the conditions of employment had changed and the workplace had become hostile or abusive.

Accordingly, there is **PROBABLE CAUSE** to believe that Respondent subjected Complainant to a hostile work environment based on age, and this case will proceed to a hearing on the merits of that allegation.

However, there is no evidence that Complainant was discriminated against or subjected to a hostile work environment based on a perceived disability. That allegation will therefore be dismissed with a finding of **NO PROBABLE CAUSE**.

#### B. Disparate Treatment

Complainant also alleged that her termination on June 7, 2017, was based on age discrimination. The LAD makes it unlawful to discipline, discharge, or otherwise discriminate against an employee in the terms or conditions of employment based on age. N.J.S.A. 10:5-12(a).

Respondent argues that it terminated Complainant based on a single, observable incident in the workplace—the June 7, 2017 overbooking incident, after what Minnucci characterized as a “build up” of performance problems over time. The investigation file included other evidence that corroborated Minnucci’s statement that Complainant’s work performance was problematic at times in the past. This evidence consisted of the statement of [REDACTED], a former manager of Complainant, to the effect that Complainant excelled at addressing certain customers’ personal comfort, but her performance was deficient as to other customers and as a server, leading to customer complaints about service. [REDACTED] also stated that Complainant would not take direction from supervisors. His statement was corroborated by a few customer complaints posted on Trip Advisor in 2015, a 2008 letter of complaint from a customer, and a 2010 letter from a former manager, counseling Complainant for improperly buying liquor for customers.

Respondent also pointed out that several employees are similarly aged or older than Complainant and remain employed, including the baker, a chef and an advertising employee. Further, Complainant was unable to identify any younger employee who overbooked in similar circumstances and remained employed.

However, the circumstances of the termination were obtained from Minnucci and Miller. According to both of them, the overbooking caused staff to become overworked, the restaurant kitchen to run out of food and become chaotic, and caused many unhappy customers to complain. Complainant denied overbooking the restaurant, but was not completely clear in her statements as to whether she had been told to stop accepting reservations that evening.

Complainant also presented evidence that both Minnucci and Miller considered her too old to be working in the restaurant and wanted her gone. As earlier noted, Complainant’s testimony in this regard was corroborated by three former employees of the restaurant. Against that background, the evidence suggests that Minnucci and Miller may have seized on Complainant’s overbooking

as a way to terminate her employment, and may not have fired a younger employee had he or she engaged in the same conduct.

The Director thus finds there is **PROBABLE CAUSE** to believe Respondent subjected Complainant to disparate treatment based on age, and this case will proceed to a hearing on the merits on that allegation as well.

At this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits” with regards to the allegations of age discrimination and a hostile work environment based on age. Frank, supra, 228 N.J. Super. at 56.

A handwritten signature in blue ink that reads "Rachel Wainer Apter". The signature is written in a cursive style and is contained within a rectangular box.

Rachel Wainer Apter, Director  
New Jersey Division on Civil Rights

DATE: May 15, 2019