

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and  
Opportunities ex rel. Wayne Rawls,  
Complainant  
v.

CHRO No. 1040066

Candace Devendittis  
Respondent

April 1, 2011

**FINAL DECISION  
HEARING IN DAMAGES**

***I.***

***The Parties***

The complainant is Wayne Rawls, 281 Gardner Avenue Apt. D-2, New London, CT 06320. The commission on human rights and opportunities (“commission”) is located at 25 Sigourney Street, Hartford, Connecticut 06106. The commission is represented by Kimberly Jacobsen, commission attorney. The complainant is represented by attorney Thomas J. Riley, 43 Broad Street, P.O. Box 58, New London, CT 06320. The respondent is Candace Denvenittis, c/o Dev’s on Bank Street, LLC, 341-345 Bank Street, New London, CT 06320.

***II.***

***Procedural History***

The complainant filed his employment discrimination complaint with the commission on August 14, 2009. The complaint alleged termination on the basis of a disability (perception of disability) in violation of General Statutes §§ 46a-60 (a) (1), and the

Americans With Disabilities Act, 42 U.S.C. 12101 et seq. On June 21, 2010, Robert J. Brothers, Jr., executive director of the commission, entered a default order pursuant to Regulations of Connecticut State Agencies § 46a-54-57a. I, as chief referee, then assigned the case to myself as presiding referee for a hearing in damages to be held August 4, 2010. On August 2, 2010 a motion to amend the complaint was granted and the hearing in damages was rescheduled for September 16, 2011. The amended complaint alleged a violation of General Statutes § 46a-58 (a), deprivation of state and federal rights, privileges and immunities.

On September 16, 2011 a hearing in damages was held at the commission. The commission, the complaint and complainant's attorney were in attendance at the hearing. Neither the respondent nor any representative of the respondent appeared at the hearing in damages. I presided over the hearing.

The commission and complainant filed a joint post hearing memorandum on September 26, 2011.

### ***III.***

#### ***Findings of Fact***

1. The complainant was employed by Dev's on Bank LLC, aka Dev's Restaurant, Dev's on Bank as a line cook in October 2007 for twelve dollars an hour for a thirty five hour week. Complaint , TR p.6.
2. Dev's is owned by the respondent Candace Devendittis. TR 7-8.

3. The respondent is the managing/member and manages and operates the business. Complaint.
4. In June of 2008 the complainant was promoted to executive chef and entered into an agreement with respondent as owner of Dev's on Bank calling for seven hundred dollars a week on a fifty-fifty five hour week. TR p.9, Complainant EX 2.
5. The complainant left work on December 19, 2008 because of headaches and was admitted to the hospital on December 20, 2008. TR p. 10.
6. The complainant was diagnosed with a brain tumor which was surgically removed on December 24, 2008, and he was discharged on December 31, 2008. TR 10-12.
7. The complainant stopped by the restaurant on February 3, 2009 to pick up tax forms and confirmed to the respondent that he was coming back to work. TR p. 13.
8. On February 19, 2009 the respondent told the complainant he was terminated and written notification of the termination was given by the respondent as owner of Dev's on Bank Street on said date. TR p 13-14, Complainant EX 3.
9. The complainant's relevant W-2 forms indicated his employer in 2008 was Devs On Bank Street LLC Candace J. Devendittis Single M (member) with a corporate employer identification number. Complainant EX 4.

#### **IV.**

#### ***Analysis***

In an action at law the entry of a default operates as a confession by the defendant of the truth of the material facts alleged in the complaint. *Murray v. Taylor*, 65 Conn. App., 334, 335 (Conn. App. 2001). There is an essential difference, however, between conclusions of fact and conclusions of law. *Davis v. Margolis*, 107 Conn 417 (1928).

It is clear from the complaint, testimony and exhibits that there is no question that the employer in this matter was Dev's on Bank Street, LLC, and not the respondent, hence as a matter of law the respondent cannot be liable to the complainant under General Statutes § 46a-60(a)(1). Nothing in the complaint, testimony or exhibits is advanced to suggest that this is an instance where individual liability should be established through a piercing of the corporate veil, so as to allow the respondent to be individually liable for the actions of the corporate respondent (against which a ruling establishing liability and damages is being issued of even date). Such a piercing requires affirmative proof of necessary elements. *Tomasso v. Armor Construction and Paving, Inc.* 187 Conn. 554 (1982). No such evidence having been alleged or proffered here, no such finding (which is a conclusion of law) can be made.

Hence the sole basis for imposing liability on the respondent is through General Statutes § 46a-60(a)(5) which is what complainant introduces in paragraph 18 of his complaint where it is alleged that the respondent aided, abetted etc. the corporate respondent. This provision contemplates liability toward a party who in some way helps

of compels another to act in a discriminatory way. *Bogdahn v. Hamilton Standard Space Sys. Int'l. Inc.*, 46 Conn Supp 153, 159 (Conn. Super. Ct. 1999).

Pursuant to General Statutes § 34-140 the business, property and affairs of a limited liability company shall be managed by its members which in the context of this matter means the respondent, the sole member of the employer limited liability company. Whether she is aiding and abetting the company or it is in fact acting through her, its only member, is a question of law, not fact. The actions taken by the respondent in hiring, promoting and ultimately terminating the complainant were pursuant to managing the business and affairs of the company and therefore generally entitled to the member immunities set forth in General Statutes § 34-133(a). The evidence establishes that the respondent was running her business as an LLC. Liability against one for aiding and abetting requires that a party in some way help or compel another to act in a discriminatory way. If a single member LLC acts through its member there is no "other". To find as the complainant would in essence have me do that § 46a-60(a)(5) can eviscerate the immunity of all member/managers in all single member LLCs in discrimination claims would require me to make a quantum leap not warranted by the facts or the law.

I find therefore that even with my acceptance of the material factual allegations of the complaint and the testimony and exhibits in the record that a case has not been made against the respondent, Candace Denvennis, in her individual capacity. Pursuant to authority granted in Regulations of Connecticut State Agencies, §.46a-54-88a(d)(2),

wherein the presiding officer may on his or her own dismiss a claim for failure to state a claim for which relief can granted, this complaint is herewith DISMISSED.

It is so ordered this 1<sup>st</sup> day of April 2011.

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J. Allen Kerr, Jr.  
Presiding Human Rights Referee

cc.

Wayne Rawls  
Candace Devendittis  
C. George Kanabis, Esq.  
Thomas J. Riley, Esq.  
Kimberly Jacobsen, Esq.