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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission

Plaintiff,

vs.

Aztec Inn Properties, LLC., an
Arizona Corporation, dba Clarion
Hotel - Randolph Park; HSL
Properties Financial Corporation, an
Arizona Corporation

Defendants.

CIV 02-324 TUC RCC

FIRST AMENDED COMPLAINT
AND JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I and Title V of the Americans with Disabilities Act (ADA) of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan Rivera and David Laborin, who were adversely affected by such practices. Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan Rivera and David Laborin had the terms and conditions of their employment altered, were denied reasonable accommodations and were ultimately terminated because of their disabilities, which include mental retardation and Down's Syndrome. In addition, Defendants unlawfully interfered with the rights of these individuals which are granted or protected by the ADA.

1
2 JURISDICTION AND VENUE

- 3 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
4 1337, 1343 and 1345. This action is authorized and instituted pursuant to
5 Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42
6 U.S.C. § 12117(a), which incorporates by reference "Sections 706(f)(1) and
7 (3) and 707" of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42
8 U.S.C. "§§ 2000e-5(f)(1) and (3) and 2000e-6.and pursuant to Section 102
9 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
- 10 2. The employment practices alleged to be unlawful were committed within
11 the jurisdiction of the United States District Court for the District of Arizona.

12 PARTIES

- 13 3. Plaintiff, the Equal Employment Opportunity Commission (the
14 "Commission"), is the agency of the United States of America charged with
15 the administration, interpretation and enforcement of Title I of the ADA and
16 is expressly authorized to bring this action by Section 107(a) of the ADA,
17 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1)
18 and (3) and 707 of Title VII.", 42 U.S.C. §§ 2000e-5(f)(1) and 2000e-6." .
- 19 4. At all relevant times, Defendant, Aztec Inn Properties, LLC, an Arizona
20 corporation dba Clarion Hotel - Randolph Park ("Clarion"), has continuously
21 been doing business in the State of Arizona and the City of Tucson, and
22 has continuously had at least 15 employees.
- 23 5. At all relevant times, Defendant, HSL Properties Financial Corporation, an
24 Arizona corporation ("HSL") has continuously been doing business in the
25 State of Arizona and the City of Tucson, and has continuously had at least
26 15 employees.
- 27 6. At all relevant times, Defendants have continuously been employers
28 engaged in an industry affecting commerce under Section 101(5) of the

1 ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C.
2 § 12111(7), which incorporates by reference Sections 701(g) and (h) of
3 Title VII, 42 U.S.C. §§ 2000e(g) and (h).

4 7. At all relevant times, Defendants have been covered entities under Section
5 101(2) of the ADA, 42 U.S.C. § 12111(2).

6 STATEMENT OF CLAIMS

7 8. More than thirty days prior to the institution of this lawsuit, Steve Garcia,
8 Mary Ann Kluck, Jenny Dapice and Christina Gutierrez filed charges with
9 the Commission alleging violations of Title I and Title V of the ADA by
10 Defendant Employers. All conditions precedent to the institution of this
11 lawsuit have been fulfilled.

12 9. Since at least August, 1998, Defendants have engaged in unlawful
13 employment practices at its Tucson location, in violation of Title I of the
14 ADA, 42 U.S.C. §§ 12101 et seq. These practices include:

15 a. Altering the terms and condition of employment for Steve Garcia,
16 Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan Rivera and
17 David Laborin because of their disabilities, including but not limited
18 to, reassigning them to different work locations, segregating them
19 from the rest of the housekeeping staff for lunch breaks, excluding
20 them from staff meetings and altering the tip practices and payment.

21
22 b. Failing to provide reasonable accommodations for the disabilities of
23 Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez,
24 Juan Rivera and David Laborin.

25 c. Discharging Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina
26 Gutierrez, Juan Rivera and David Laborin because of their
27 disabilities.

28 10. In the alternative, since at least August, 1998, Defendants have engaged in

1 unlawful employment practices at its Tucson location, in violation of Section
2 503(b) of the ADA, 42 U.S.C. §12203(b), by interfering with the rights of
3 Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina Gutierrez, Juan
4 Rivera and David Laborin granted or protected by the Americans with
5 Disability Act.

6 11. The effect of the practices complained of in paragraphs 9 and 10 above
7 has been to deprive Steve Garcia, Mary Ann Kluck, Jenny Dapice,
8 Christina Gutierrez, Juan Rivera and David Laborin of equal employment
9 opportunities and otherwise adversely affect their status as employees
10 because of their disabilities.

11 12. The unlawful employment practices complained of in paragraphs 9 and 10
12 were and are intentional.

13 13. The unlawful employment practices complained of in paragraphs 9 and 10
14 above were and are done with malice or with reckless indifference to the
15 federally protected rights of Steve Garcia, Mary Ann Kluck, Jenny Dapice,
16 Christina Gutierrez, Juan Rivera and David Laborin.

17 PRAYER FOR RELIEF

18 Wherefore, the Commission respectfully requests that this Court:

- 19 A. Grant a permanent injunction enjoining Defendants, its officers,
20 successors, assigns, and all persons in active concert or participation with
21 it, from engaging in those actions alleged in paragraphs 9 and 10 and any
22 other employment practice which discriminates on the basis of disability.
- 23 B. Order Defendants to institute and carry out policies, practices, and
24 programs which provide equal employment opportunities for qualified
25 individuals with disabilities, and which eradicate the effects of its past and
26 present unlawful employment practices.
- 27 C. Order Defendants to make whole Steve Garcia, Mary Ann Kluck, Jenny
28 Dapice, Christina Gutierrez, Juan Rivera and David Laborin, by providing

1 appropriate backpay with prejudgment interest, in amounts to be
2 determined at trial, and other affirmative relief necessary to eradicate the
3 effects of its unlawful employment practices, including but not limited to
4 reinstatement of Steve Garcia, Mary Ann Kluck, Jenny Dapice, Christina
5 Gutierrez, Juan Rivera and David Laborin.

6 D. Order Defendants to make whole Steve Garcia, Mary Ann Kluck, Jenny
7 Dapice, Christina Gutierrez, Juan Rivera and David Laborin by providing
8 compensation for past and future nonpecuniary losses resulting from the
9 unlawful practices complained of in paragraphs 9 and 10 above, including
10 emotional pain, suffering, inconvenience, loss of enjoyment of life, and
11 humiliation, in amounts to be determined at trial.

12 E. Order Defendants to pay Steve Garcia, Mary Ann Kluck, Jenny Dapice,
13 Christina Gutierrez, Juan Rivera and David Laborin punitive damages for
14 its malicious and reckless conduct, as described in paragraphs 9 and 10
15 above, in amounts to be determined at trial.

16 F. Grant such further relief as the Court deems necessary and proper in the
17 public interest.

18 G. Award the Commission its costs.

19
20 JURY TRIAL DEMAND

21 The Commission requests a jury trial on all questions of fact raised by its
22 complaint.

23
24 RESPECTFULLY SUBMITTED this ____ day of July, 2002

25 GWENDOLYN YOUNG REAMS
26 Associate General Counsel

27 EQUAL EMPLOYMENT
28 OPPORTUNITY
COMMISSION

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