

CITY OF NEW YORK  
COMMISSION ON HUMAN RIGHTS

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In the Matter of

COMMISSION ON HUMAN RIGHTS  
ex rel. HENRY GOLDSTEIN,

Petitioner,

Complaint Nos. M-P-D-17-25914,  
M-P-D-17-36830  
OATH Index No. 862/19

-against-

LIMÓN JUNGLE, BKUK CORP., BKUK RE  
CORP., BESIM KUKAJ, and “JOHN DOE,”

Respondents.

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In the Matter of

COMMISSION ON HUMAN RIGHTS,

Petitioner,

-against-

INTERMEZZO, BKUK CORP., BKUK RE  
CORP., BESIM KUKAJ, and ALBERTO  
“L.N.U.,”

Respondents.

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**DECISION AND ORDER**

These consolidated cases arise from allegations that Respondents Limón Jungle and Intermezzo, two restaurants owned by Respondents BKUK Corporation, BKUK Re Corp., and Besim Kukaj (*see* Bureau Exs. B, J, U), discriminated against patrons with disabilities by denying them service because of the presence of their service animals, in violation of § 8-107(4) of the New York City Human Rights Law (“NYCHRL”).

## I. PROCEDURAL HISTORY

An initial complaint was filed on October 12, 2017, on behalf of Complainant Henry Goldstein against Limón Jungle and an unnamed restaurant manager, “John Doe.” (Goldstein Compl., ALJ Ex. 1.) Mr. Goldstein alleged that after he entered Limón Jungle with his service dog on July 18, 2017, he was confronted by a manager who demanded that he present paperwork verifying the dog as a service animal. (Goldstein Compl. ¶¶ 5-7.) Even after Mr. Goldstein showed his dog’s service tag and an electronic copy of paperwork from the New York City Department of Health, confirming that the dog is registered as a service animal, the manager allegedly declined to seat him, insisting that he instead provide a physical copy of the paperwork. (Goldstein Compl. ¶¶ 6-11.) On March 7, 2018, the Goldstein complaint was amended, adding BKUK Corporation, BKUK Re Corp., and Besim Kukaj as respondents. (Am. Goldstein Compl., ALJ Ex. 1.)

On July 11, 2018, the Law Enforcement Bureau of the New York City Commission on Human Rights (“Bureau”) filed a separate, Commission-initiated complaint against Intermezzo (a restaurant owned and operated by the same group as Limón Jungle); BKUK Corporation; BKUK Re Corp.; Besim Kukaj; and an employee at Intermezzo, Alberto “L.N.U.” (Intermezzo Compl., ALJ Ex. 1.) The Commission-initiated complaint alleged that on May 25, 2018, a Bureau investigator phoned Intermezzo restaurant and spoke with Alberto “L.N.U.” (*Id.* ¶ 7, 9.) According to the complaint, the investigator explained that he wanted to host a dinner at the restaurant and asked if it would be a problem if someone attended with a service dog (*id.* ¶ 8), and Alberto “L.N.U.” repeatedly stated that the service dog would not be permitted, explaining that it could expose the restaurant to potential fines (*id.* ¶¶ 9-12).

Despite the Bureau having repeatedly served BKUK Corporation, BKUK Re Corp., Besim Kukaj, Limón Jungle, and Intermezzo (collectively, “Respondents”) with the complaints against them and with formal notice at each stage of the proceedings, Respondents never filed an answer or appeared. (*See* Bureau Ex. 1, Affirmation of Conor Ahern dated Mar. 21, 2019 (“Ahern Aff.”); Hearing Tr. (“Tr.”) 34:24-33:1.)<sup>1</sup>

The Bureau found probable cause to proceed with both cases (*see* Ahern Aff. Exs. I, O, P), and, referred the consolidated cases to the Office of Administrative Trials and Hearings (“OATH”) on October 19, 2019. (Ahern Aff. ¶ 20 & Ex. Q.)

The Honorable John B. Spooner held a hearing at OATH on March 28, 2019. Based on a robust record of notice to the Respondents,<sup>2</sup> Judge Spooner found Respondents in default and proceeded with the hearing as an inquest. (Tr. 5:7-12.) On April 22, 2019, Judge Spooner issued his Report and Recommendation, recommending that the Office of the Chair of the New York City Commission on Human Rights (“Commission”): (1) find that Respondents violated §§ 8-107(4) and 8-107(15) of the NYCHRL; (2) award \$14,000.00 in emotional distress damages to Mr. Goldstein; (3) impose civil penalties of \$28,000.00 against Respondents; and (4)

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<sup>1</sup> The Commission finds that service on “John Doe” and Alberto “L.N.U.” was inadequate to alert the individuals in question that they were being sued. *Reda v. Dep’t of Health of City of New York*, 137 Misc. 2d 61, 63 (Sup. Ct. N.Y. Cty. 1987) (“In an administrative proceeding the standard for service is whether the notice under all the circumstances is reasonably calculated to make the parties aware of the proceeding so that they have an opportunity to be heard.”), *aff’d*, 143 A.D.2d 1073 (1st Dep’t 1988). The Commission therefore dismisses the claims against those individuals.

<sup>2</sup> Among other things, the Bureau presented proof of mail and personal service of the original Goldstein complaint and proof of mail service of the amended Goldstein complaint (including service on nine non-respondent organizations associated with Respondent Kukaj), the Intermezzo complaint, and notices of probable cause and of trial. (*See generally* Bureau Ex. 1; ALJ Ex. 1).

require that Respondent undergo anti-discrimination training. (Report & Recommendation (“R&R”) at 3, 5.)

Notice and a copy of the Report and Recommendation was served on all parties and all parties were given time to submit post-hearing comments. (Letter from Zoey S. Chenitz, Esq. to all parties, dated Apr. 29, 2019.) The Bureau submitted timely written comments and objections to the Report and Recommendation, asking the Commission to adopt Judge Spooner’s recommendations on liability and training, but increase the award for emotional distress damages to \$20,000.00 and impose civil penalties of \$100,000.00. (Bureau Comments 3.) The Bureau also asked that the Commission grant additional affirmative relief, including requiring Respondents to undergo a policy audit to ensure compliance with the NYCHRL, post a notice of rights for people with disabilities in each of their businesses, and undergo two years of monitoring for instances of discrimination. (*Id.*) No comments were received from any respondent.

After reviewing the Report and Recommendation, the hearing transcript, the evidence admitted during the hearing, and the Bureau’s comments on the Report and Recommendation, the Commission adopts Judge Spooner’s recommendations concerning (1) liability under §§ 8-107(4) and 8-107(15) of the NYCHRL; (2) emotional distress damages; and (3) anti-discrimination training.<sup>3</sup> With respect to civil penalties, the Commission concludes that the amount should be increased to \$50,000.00, as discussed in further detail below. The Commission also concludes that Respondents must undergo monitoring for a two-year period, conspicuously post a notice of rights in each of their New York City restaurants, and submit written anti-

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<sup>3</sup> As previously noted, the Commission dismisses the claims against Respondents “John Doe” and Alberto “L.N.U.” Accordingly, the Commission does not adopt any recommendations concerning liability or remedies as against those respondents.

discrimination policies for the restaurants Limón Jungle and Intermezzo to the Bureau for review.

## **II. STANDARD OF REVIEW**

In reviewing a report and recommendation, the Commission may accept, reject, or modify, in whole or in part, the findings or recommendations made by the administrative law judge. The Commission reviews a report and recommendation and the parties' comments and objections *de novo* as to findings of fact and conclusions of law. *Comm'n on Human Rights ex rel. Gibson v. N.Y.C. Fried Chicken Corp.*, OATH Index No. 279/17, Comm'n Dec. & Order, 2018 WL 4901030, at \*2 (Sept. 28, 2018); *Comm'n on Human Rights ex rel. Martinez v. Joseph "J.P." Musso Home Improvement*, OATH Index No. 2167/14, Comm'n Dec. & Order, 2017 WL 4510797, at \*8 (Sept. 29, 2017).

## **III. CIVIL PENALITIES**

As noted above, the Commission adopts Judge Spooner's reasoning and recommendations concerning liability under §§ 8-107(4) and 8-107(15) of the NYCHRL; emotional distress damages for Mr. Goldstein; and the requirement that Respondents undergo anti-discrimination training. The Commission focuses its discussion in this section on the assessment of civil penalties.

Where the Commission finds that respondents have engaged in an unlawful discriminatory practice, the NYCHRL authorizes the Commission to, among other things, impose civil penalties of not more than \$125,000.00, unless the "unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act," in which case a civil penalty of not more than \$250,000.00 may be imposed. *Id.* § 8-126(a); *see Automatic Meter Reading Corp. v. N.Y.C. Comm'n on Human Rights*, No. 162211/2015, 63 Misc. 3d 1211(A),

2019 WL 1129210, at \*11 (Sup. Ct. N.Y. Cty. Feb. 28, 2019) (upholding \$250,000 civil penalty upon a finding that respondent engaged in willful and wanton sexual harassment over a three-year period). Civil penalties are paid to the general fund of the City of New York. N.Y.C. Admin. Code § 8-127(a).

In assessing whether the imposition of civil penalties will vindicate the public interest, the Commission may consider several factors, including, but not limited to: (1) the respondent's financial resources; (2) the sophistication of the respondent's enterprise; (3) the respondent's size; (4) the willfulness of the violation; and (5) the impact on the public of issuing civil penalties. *See, e.g., Comm'n on Human Rights v. A Nanny on the Net*, OATH Index Nos. 1364/14 & 1365/14, Comm'n Dec. & Order, 2017 WL 694027, at \*8 (Feb. 10, 2017); *Comm'n on Human Rights v. CU 29 Copper Rest. & Bar*, OATH Index No. 647/15, Comm'n Dec. & Order, 2015 WL 7260570, at \*4 (Oct. 28, 2015). The Commission also considers the extent to which the respondent cooperated with the Bureau's investigation and with OATH, *see, e.g., A Nanny on the Net*, 2017 WL 694027, at \*9; *Comm'n on Human Rights v. Crazy Asylum*, OATH Index Nos. 2262/13, 2263/13, 2264/13, Comm'n Dec. & Order, 2015 WL 7260568, at \*6 (Oct. 28, 2015), as well as the amount of remedial action that the respondent may have already undertaken, *see, e.g., A Nanny on the Net*, 2017 WL 694027, at \*8; *CU 29 Copper Rest. & Bar*, 2015 WL 7260570, at \*4.

In this case, Judge Spooner recommended civil penalties of \$14,000.00 for each of the two independent acts of discrimination, for a total of \$28,000.00. (R&R at 9.) He opined that "substantial" civil penalties are warranted, because "[t]he two acts of discrimination by the two restaurants were blatant and persistent," and Limón Jungle's refusal of service to Mr. Goldstein was "willful." (*Id.*) He also found that Respondents' refusal to cooperate in the case and the fact

that they own nine restaurants in Manhattan weigh in favor of heightened penalties. (*Id.*) Judge Spooner concluded that, in light of recent fines of \$15,000.00 in *Commission on Human Rights ex rel. Rodriguez v. A Plus Worldwide Limo Inc.*, \$18,000 in *Commission on Human Rights ex rel. Gibson v. N.Y.C. Fried Chicken Corp.*, and \$7,000.00 in *Commission on Human Rights ex rel. Stamm v. E&E Bagels, Inc.*, a fine of \$14,000.00 should be imposed for each violation in this case. (*Id.*)

In comments, the Bureau asks the Commission to increase the penalty to \$100,000.00. (Bureau Comments at 5-9.) The Bureau argues that Judge Spooner’s recommendation does not adequately reflect the Respondents’ sophistication and resources, their ability to retain counsel, or the impact of their discrimination on the public. (*Id.* at 5.) The Bureau notes evidence in the record that respondents operate nine restaurants in “busy, expensive, and touristy areas of Manhattan, such as Chelsea, the West Village, Greenwich Village, and Hell’s Kitchen.” (*Id.* at 7 (citing Bureau Ex. 1).) Based on Respondents’ failure to offer mitigating evidence, the Bureau argues that the Commission should assume that Respondents have significant resources. (*Id.*) The Bureau also argues that in *Gibson* the Commission premised a fine of \$18,000.00 largely on the public impact of discrimination by a single restaurant in a busy Manhattan neighborhood, and posits that Respondents in this case, who run a group of nine busy restaurants in Manhattan, should therefore face a more substantial fine than what Judge Spooner recommends. (*See id.* at 8.) The Bureau asserts that there is a significant public interest in addressing disability discrimination, which constitutes the most common form (41%) of public accommodation discrimination at the Commission. (*Id.* at 8 (citing Commission’s 2018 Annual Report).) The Bureau also argues that without a more sizable penalty, sophisticated respondents will conclude

“it is financially wiser to ignore the Commission and risk a light penalty than it is to comply with its process, with the attendant legal burdens and costs.” (*Id.* at 9.)

In view of the record in this case and the Commission’s past decisions, the Commission concludes that a civil penalty of \$50,000.00 is appropriate. Judge Spooner was correct in finding that Respondents’ discriminatory conduct was blatant, persistent, and willful. During the incident at Limón Jungle, the restaurant refused to serve Mr. Goldstein even after he advised them of their legal obligations and after he presented proof that his dog was a service animal (Tr. 14:12-15:5)—proof, it should be noted, that restaurants in New York City are prohibited from demanding and that Mr. Goldstein was under no obligation to provide. *See* N.Y.C. Comm’n on Human Rights, *NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Disability*, 20 (Apr. 2019). Intermezzo similarly insisted that it would not serve a customer with a dog, even after being repeatedly advised that the dog is a service animal. (*Id.* at 22:9-16; Bureau Ex. 1 at Ex. N.) It can be reasonably inferred from the repeated nature of Respondents’ violations and their employees’ unwavering stance that service dogs are unwelcome, that Respondents’ restaurant group has a policy of denying customers with disabilities reasonable accommodations.

The record in this case also indicates that Respondents run a much larger and more sophisticated business enterprise than those in *Gibson*, *Rodriguez*, and *Stamm*—the cases that Judge Spooner relies on in his Report and Recommendation. In *Gibson*, the Commission found that “Respondents operate a single restaurant, which has been in business since 2004 in Manhattan’s Garment District,” in “one of the busiest areas in New York City,” and concluded that it was therefore likely that the respondents’ discrimination would “impact large numbers of New York residents and tourists,” warranting a fine of \$18,000.00. *Gibson*, 2018 WL 4901030,



at \*9. In *Rodriguez*, the respondent ran a small car service with no evidence in the record of more than one employee. *See generally, Comm'n on Human Rights ex rel. Rodriguez v. A Plus Worldwide Limo, Inc.*, OATH Index No. 905/15, Comm'n Dec. & Order, 2019 WL 3225764 (Mar. 7, 2019). Indeed, rather than simply impose a financial penalty in *Rodriguez*, the Commission ordered that the respondents perform community service and face a monetary fine of \$15,000.00 only if they failed to carry out the required community service. *Id.* at 15. In *Stamm*, the Commission attributed a modest fine of \$7,000.00 to the fact that the Bureau “failed to present any information about Respondent’s financial resources, sophistication, or size,” *Comm'n on Human Rights ex rel. Stamm v. E&E Bagels, Inc.*, OATH Index No. 803/14, Comm'n Dec. & Order, 2016 WL 1644879, at \*11 (Apr. 20, 2016), a fundamental difference with this case.

Here, the record shows that Respondents run a sophisticated enterprise of nine restaurants in Manhattan, including several with active liquor licenses. (Bureau Ex. 2.) The restaurants are in several neighborhoods in New York City, including Chelsea, Hell’s Kitchen, Greenwich Village, and the West Village, and “[s]pecializ[e] in on and off premise parties for all occasions.” (Bureau Ex. 1 at Ex. B.) Records from the New York State Liquor Authority indicate that Limón Jungle has been operating since at least June 2007 (Bureau Ex. 2 at 4), and according to the website for Bkuk Group, Intermezzo was “started in 1990.” (Bureau Ex. 1 at Ex. J.) The Bkuk Group website advertises an “exquisite experience,” featuring photos of elegant dining rooms and plated dishes, and touts Respondent Besim Kukaj’s “17 years of restaurant experience.” (Bureau Ex. 1 at Exs. B & D.) In short, the record in this case supports a finding that Respondents run a large, long-standing, sophisticated business enterprise and should have been

fully aware of their legal obligations under the NYCHRL, as well as the Americans with Disabilities Act.

The size of Respondents' business enterprise also reflects the large impact that their discriminatory policy is likely to have on the public. With nine restaurants in high-traffic areas of the city, Respondents' discrimination is likely to impact many people. *See Gibson*, 2018 WL 4901030, at \*9. Moreover, as the Bureau correctly notes, discrimination against people with disabilities remains the most prevalent form of discrimination in public accommodations in New York City, and there is a public interest in strong legal enforcement to eliminate such discrimination. *See N.Y.C. Comm'n on Human Rights, Fiscal Year 2018 Annual Report: Fighting The Rising Tide Of Hate (2018)*, 29 (2019). As the Commission has previously observed, "people with disabilities face numerous obstacles when navigating New York City and accessing essential services. Discrimination compounds those difficulties, striking at people's dignity and limiting their ability to freely engage in basic life activities." *Rodriguez*, 2019 WL 3225764, at \*9. There is also a substantial public interest in ensuring that businesses take their legal obligations seriously, including by participating in Commission proceedings. In the absence of adequate civil penalties, there is a risk that businesses will continue to do as Respondents have done here—ignore the Commission and write off their discriminatory conduct as a mere cost of doing business. *See Automatic Meter Reading Corp.*, 2019 WL 1475080, at \*11 (the NYCHRL "gives the Commission a mandate to order large civil penalty awards under appropriate circumstances in order to deter unlawful discriminatory acts sending the message to both the people directly involved and the City as a whole that such discriminatory acts will not be tolerated.").

Taking into account Respondents' large size and sophistication; the multiple instances of willful discrimination; Respondents' complete refusal to participate in the Commission's investigation and case proceedings; the public interest in stamping out discrimination by providers of public accommodations against people with disabilities; and fines in comparable cases, the Commission concludes that a civil penalty of \$50,000.00 should be imposed. *See Marine Holdings, LLC v. N.Y.C. Comm'n on Human Rights*, 31 N.Y.3d 1045, 1047 (2018) (declining to disturb the Commission's order of \$125,000.00 in civil penalties); *Automatic Meter Reading Corp.*, 2019 WL 1475080, at \*12 (upholding civil penalty of \$250,000.00); *Jovic v. N.Y.C. Comm'n on Human Rights*, Index No. 17/100838, Order (Sup. Ct. N.Y. Cty. Feb. 27, 2018) (upholding civil penalty of \$60,000.00); *Russell v. Chae Choe*, OATH Index No. 09-1021033, Comm'n Dec. & Order, 2009 WL 6958753, at \*2 (Dec. 10, 2009) (imposing civil penalty of \$50,000.00).

#### **IV. ADDITIONAL AFFIRMATIVE RELIEF**

In light of Respondents' multiple violations of the NYCHRL, the size of their business enterprise, its impact on a large number of customers, and the Respondents' unwavering stance that service dogs are unwelcome to the point of suggesting, if not a policy, then a consistent pattern of denying service to customers with disabilities, the Commission further concludes that they must undergo a formal review of their written anti-discrimination policies and two years of monitoring by the Bureau, as set forth in further detail below. Respondents must also post a notice of rights at the entrance of each of their New York City restaurants, advising customers that service animals are welcome.<sup>4</sup>

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<sup>4</sup> An example of appropriate signage is available as an appendix to the Commission's legal enforcement guidance on disability discrimination. *See NYC Commission on Human Rights*

## V. CONCLUSION

For the reasons discussed herein, IT IS HEREBY ORDERED that Respondents immediately cease and desist from engaging in discriminatory conduct.

IT IS FURTHER ORDERED that, no later than 60 calendar days after service of this Order, Respondents pay Complainant \$14,000.00 in emotional distress damages, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to Henry Goldstein, including a written reference to OATH Index No. 862/19.

IT IS FURTHER ORDERED that, no later than 60 calendar days after service of this Order, Respondents pay a civil penalty of \$50,000.00 to the City of New York, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to the City of New York, including a written reference to OATH Index No. 862/19.

IT IS FURTHER ORDERED that, no later than 60 calendar days after service of this Order, Respondents arrange for the managers of all New York City businesses owned or managed by Respondents BKUK Corporation, BKUK Re Corp., and Besim Kukaj to undergo a Commission-led training on the NYCHRL, to be completed no later than 120 days after service of this Order. A schedule of available trainings may be obtained by calling the Director of Training and Development at (212) 416-0193 or emailing [trainings@cchr.nyc.gov](mailto:trainings@cchr.nyc.gov).

IT IS FURTHER ORDERED that, no later than 60 calendar days after service of this Order, Respondents conspicuously post a notice of rights at the entrance of all New York City

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*Legal Enforcement Guidance on Discrimination on the Basis of Disability*, 130 (Apr. 2019)  
[https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR\\_LegalGuide-DisabilityFinal.2.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.2.pdf)

restaurants owned by Respondents BKUK Corporation, BKUK Re Corp., and Besim Kukaj, advising customers that service animals are welcome.


IT IS FURTHER ORDERED that, no later than 60 calendar days after service of this Order, Respondents submit to the Bureau written copies of their anti-discrimination policies at Limón Jungle and Intermezzo. The policies should be mailed or provided in electronic copy to Assistant Commissioner for Law Enforcement Katherine Carroll and include written reference to “Goldstein v. Limón Jungle, OATH Index No. 862/19.”

IT IS FURTHER ORDERED that, for a two-year period, Respondents BKUK Corporation, BKUK Re Corp., and Besim Kukaj submit an annual written summary to the Bureau listing each complaint made over the prior calendar year at one of their New York City restaurants, or filed in court or with a government agency concerning one of their New York City restaurants, in which a customer alleges discrimination by a restaurant employee. The first summary is due by January 15, 2020, and the second by January 15, 2021. The annual summaries should be mailed to Assistant Commissioner for Law Enforcement Katherine Carroll and include written reference to “Goldstein v. Limón Jungle, OATH Index No. 862/19.”

Failure to comply with any of the foregoing provisions in a timely manner shall constitute non-compliance with a Commission Order. In addition to any civil penalties that may be assessed against them, Respondents shall pay a civil penalty of \$100.00 per day for every day the violation continues. N.Y.C. Admin. Code § 8-124. Furthermore, failure to abide by this Order may result in criminal penalties. *Id.* § 8-129.

Dated: New York, New York  
September 25, 2019

**SO ORDERED:**  
**New York City Commission on Human Rights**



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Carmelyn P. Malalis  
Commissioner/Chair

To:

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