

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

MARISSA FUHER,

Charging Party,

-v-

NAGEL SPORT Inc. and JEFFREY
NAGEL,

Respondents.

Case # 0081013388 & 0081013390

ORDER

Marissa Fuher (Fuher) filed a complaint with the Department of Labor and Industry (Department) alleging that Nagel Sport Inc. and Jeffrey Nagel discriminated against her in employment based on gender when she was sexually harassed. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Fuher's allegations of unlawful discrimination. The Department issued a Notice of Dismissal. Fuher filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 22, 2009.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. Section 49-2-511(2), MCA. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion because there was no assessment of whether Jeffrey Nagel and Richard Shanahan were joint employers for purposes of discrimination liability. Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Hearings Bureau pursuant to § 49-2-505, MCA.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had originally found cause. See § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Marissa Fuher's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this ____ day of July 2009.

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of July 2009.

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Montana Human Rights Bureau