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Frivolous ADA Lawsuit Dismissed against Johnny Rockets Franchisee

Posted Sat, 2011/04/09 - 18:07 by [Janet Sparks](#)

MIAMI – A district judge ruled that a lawsuit filed by a disabled man against a Johnny Rockets franchise restaurant was “frivolous, unreasonable and groundless,” and has ordered him to pay the fees and costs of the franchisee’s attorney.

Robert Einhorn of Zarco Einhorn Salkowski & Brito, representing the owner of J.R. Eight, Inc. said, “ADA professional plaintiffs, and the attorneys who represent them, are now on notice that they could be required to pay the defendants’ attorneys’ fees for pursuing frivolous and groundless claims under the guise of defending civil liberties.”



The wheelchair confined plaintiff, Dorian Kallen, alleged that the restaurant in Aventura Mall discriminated against him and others by failing to remove architectural barriers in violation of Title III of the Americans with Disabilities Act (“ADA”). In support of his claims, Kallen listed seventeen technical violations related to accessibility. His complaint stated that he was “denied full and safe access to the facilities,” when he visited the hamburger shop. The disabled man also alleged he “would like to return and enjoy the goods and/or services” at the restaurant “on a spontaneous but full and equal basis,” but he could not do so because of structural barriers.

After receiving the initial complaint, the Johnny Rockets franchise owner immediately completed certain improvements to the restaurant to remove the alleged accessibility barriers and to ensure the restaurant’s compliance with the ADA. The franchisee found that the technical violations were relatively minimal, including such tasks as lubricating door hinges, replacing door locking mechanisms, and adjusting the height of soap and paper towel dispensers. After the franchisee company completed its remediation efforts, Kallen was notified that the hamburger shop was in compliance.

Kallen then filed an amended complaint alleging the identical violations in its initial complaint. He also filed a motion for temporary injunction to close down the restaurant.

In addition to opposing Kallen’s motion to close down the restaurant, J.R. Eight, Inc. filed a motion to dismiss the complaint as moot and sought sanctions against Kallen.

On March 31, Judge King issued his 15-page order granting the franchisee’s motion, based on the evidence that the Johnny Rockets’ restaurant was in fact in compliance with ADA standards, and dismissed the case with prejudice. The judge wrote, “Plaintiff had not proven that he ever visited Defendant’s restaurant and encountered any barriers;” and that “even if Plaintiff had in fact visited the restaurant, plaintiff had failed to show that any architectural barriers existed that would have resulted in discrimination against himself and other disabled persons.”