

**NEW YORK STATE SUPREME COURT
ORANGE COUNTY**

<p>JAVIER AMIGON</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KTF ENTERPRISES, INC. and KIRKER ENTERPRISES, INC.</p> <p style="text-align: center;">Defendants.</p>

COMPLAINT

Index No.:

JURY TRIAL REQUESTED

Plaintiff Javier Amigon, by and through undersigned counsel, brings this Complaint and in support thereof states as follows:

PRELIMINARY STATEMENT

1. Plaintiff Javier Amigon is a disabled individual with a below the knee left leg amputation and a partial right foot amputation who was a long-term, highly reliable factory worker in Defendants' large-scale beauty supplies production and distribution business. Mr. Amigon performed his job responsibilities as a line-worker faithfully for many years while having access to a stool as a reasonable accommodation.

2. In the summer of 2015, Defendants acquired Concept Packaging, Inc. and the production facility it owned where Mr. Amigon worked. Approximately one year later, Defendants callously threw out Mr. Amigon's stool in front of him and forced him and other employees to stand while performing their job responsibilities. Mr. Amigon pled for continued access to a stool, provided numerous doctors' notes, and sustained injuries while fighting to keep his livelihood during his attempts to work without an accommodation. He

was denied this simple and economical accommodation, his doctors' notes were ignored, he was forced out of work, and was ultimately terminated.

3. Under New York State Human Rights Law ("NYSHRL"), Executive Law 290, *et. seq.*, employees with disabilities are entitled to reasonable accommodations that enable them to perform the essential functions of their job. The NYSHRL also prohibits employers from discriminating against a qualified individual on the basis of their disability. Plaintiff seeks declaratory and injunctive relief as well as compensatory damages, and any other relief the court may find just and proper for Defendants' violations of the NYSHRL.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Defendant KTF Enterprises, Inc. pursuant to CPLR § 302 as, at all times relevant herein, Defendant KTF Enterprises, Inc. regularly transacted business within the State of New York and contracted to supply goods or services within the State of New York.

5. This Court has jurisdiction over Defendant Kirker Enterprises, Inc. pursuant to CPLR § 302 as, at all times relevant herein, Defendant Kirker Enterprises, Inc. regularly transacted business within the State of New York and contracted to supply goods or services within the State of New York.

6. Venue is proper in this Court pursuant to CPLR § 302 because Defendant KTF Enterprises, Inc. resides in this County, both Defendants conduct business in this County, and because a substantial part of the events or omissions giving rise to the claims herein occurred in this County.

PARTIES

7. Plaintiff Javier Amigon is an adult individual with a disability, as defined by the NYSHRL, and his primary language is Spanish.

8. At all times relevant to this action Plaintiff was an employee of Defendants as defined by the NYSHRL.

9. Defendant KTF Enterprises, Inc. is a foreign business corporation operating in Orange County, New York and, at all times relevant to this complaint, operated a plant located at 220 Dupont Avenue, Newburgh, New York 12550.

10. Defendant Kirker Enterprises, Inc. is a foreign business corporation operating in New York and other states including New Jersey with a principal executive office located at 55 E 6th Street, Paterson, New Jersey, 07524.

11. At all times relevant to this action, Defendants were an “employer” of Plaintiff within the meaning of the NYSHRL.

12. At all times relevant to this action, Defendants both exercised control over Plaintiff’s terms and conditions of work.

13. At all times relevant to this action Defendants employed more than fifteen (15) employees.

PROCEDURAL HISTORY

14. On or about November 7, 2016, Plaintiff filed a timely charge with the EEOC for investigation.

15. On March 11, 2019, following its investigation of that Charge, the EEOC issued a determination that there is reasonable cause to believe that the Plaintiff was discriminated against because of his disability.

16. Following March 11th determination, the EEOC attempted to eliminate the unlawful employment practices by informal methods of conference and conciliation, pursuant to 42 U.S.C. § 2000e-5(f)(1), but the EEOC and Defendant were unable to secure a conciliation agreement.

17. Plaintiff has not initiated a charge or complaint with the New York State Division of Human Rights and elects to bring his NYSHRL claims in Court.

FACTS

18. Plaintiff is an individual with a disability as defined by the NYSHRL.

19. In 1985, Plaintiff was assaulted and severely injured. As a result of the assault he was hospitalized, and the treatment of his injuries required multiple surgeries with significant permanent consequences.

20. Plaintiff's left leg is amputated below the knee, and his right foot is partially amputated.

21. Plaintiff's physical conditions limit his major life activities, and substantially limit, among other things, his ability to walk long distances, stand for long periods of time, and put pressure on his lower extremities.

22. Plaintiff worked for Defendants, and their predecessor organization Concept Packaging, Inc., for many years.

23. Plaintiff worked on a production line, also known as the filling line, and his primary responsibilities included placing caps on bottles of nail polish. He also made and prepared boxes and took care of other minor tasks that allowed the production line to operate smoothly.

24. The position Plaintiff held was commonly referred to as a “topper” or “topador” in Spanish.

25. On busy days, the production line could produce more than 40,000 bottles of nail polish a day, more than one bottle per second.

26. For nearly all of his time working for Defendants and their predecessor, Plaintiff had access to a stool while working as a topper.

27. Sitting on a stool did not interfere Plaintiff’s job responsibilities or duties.

28. While the majority of Plaintiff’s tasks were performed on a stool, he also performed auxiliary tasks while standing. These tasks included making and preparing boxes and anything else necessary to keep the line running smoothly.

29. Plaintiff’s disabilities did not interfere with his ability to perform these auxiliary tasks, even when he performed them while standing. These auxiliary tasks were minor in comparison to his work on the filling line.

30. In mid-2015, Defendants bought the company that Plaintiff used to work for, Concept Packaging, Inc., and took control of the manufacturing plant where he worked, located at 222 Dupont Avenue, Newburgh, New York 12550.

31. At the beginning of Plaintiff’s employment under new management by Defendants, he had no work-related issues. He continued to work as a topper and was successfully performing his job duties and responsibilities while having access to a stool.

32. Suddenly, in or around January of 2016, managers of Defendants came to the production line and forced all employees, including toppers, to stand while performing their job responsibilities. The stools were thrown out in front of Plaintiff and his co-workers.

33. After attempting to work as long as possible, approximately one week, without a stool Plaintiff could no longer physically stand or work for Defendants.

34. Plaintiff visited his doctor and returned to work with a note that explained his physical limitations related to his disabilities.

35. At that point Plaintiff returned to work as a topper and was authorized to use a stool. He did so for a short period of time and successfully performed the essential functions of his job.

36. Approximately two weeks after returning to work with the doctors' notes and regaining access to the stool, Plaintiff was told that company rules prohibit him from using a seat. He was also told that he would not be given specialized treatment because it would create jealousy and unrest amongst his co-workers.

37. Plaintiff responded that if he was forced to work without a stool or seat the wounds on his amputated appendages would continue to bleed and he would be unable to work.

38. Plaintiff's managers told him that there was nothing they could do. He responded he could not physically continue to work and they provided him with disability paperwork and sent him home.

39. Plaintiff was placed on medical leave on or around, February 5, 2016.

40. On March 1, 2016, one of Plaintiff's doctors provided a detailed explanation to Defendant with respect to Plaintiff's disability and possible accommodations.

41. The note Plaintiff provided Defendants explicitly stated, "Due to the wear and tear of the current prosthesis the patient is temporarily unable to stand or kneel for long periods of time during an 8 hour shift. He is able to carry out all of his required duties,

including lifting, pushing, and pulling, without weight restrictions.” The note continued to say, “Again, he does not need a break away from his work duties, just an ability to do his job sitting down, to rest his limbs as mentioned above.” The note ends with, “He would like to continue doing what he loves and knows, to support himself and his family. The patient’s physical handicap and the above accommodations is not a hindrance to his performance as [an] effective employee.”

42. Despite the March 1, 2016 letter, expressing Plaintiff’s need for an accommodations and validating that he could return to work with access to a stool, as he had done during the entire duration of his work under Concept Packaging, Inc. and for six months prior under Defendants leadership, Plaintiff was not allowed to return to work or given an accommodation that would allow him to return to work.

43. On March 10, 2016, Plaintiff provided Defendants with another note from a medical provider. The note explained that Plaintiff would need to limit his use of prosthetics and that he was working towards having new prosthetics made.

44. On March 24, 2016, Plaintiff provided Defendants with another doctor’s note, which stated, “He may return to work immediately, however, bench/seating needs to be provided so that he may work his shift sitting down and not standing. This restriction/accommodation is in place for at least 6 months.”

45. Despite the notes and medical documentation to return to work with a stool, Defendants refused to allow Plaintiff to return to work or grant him an accommodation that would allow him to return to work.

46. On April 4, 2016, the Worker Justice Center of New York, sent a demand for a reasonable accommodation for Plaintiff to Defendant KTF Enterprises. The demand asked

for Plaintiff to return to work and have access to a stool, chair, or device that would allow him to return as a topper.

47. Defendants took the position that Plaintiff was unable to perform the essential functions of his job such as packaging, labelling, loading, and housekeeping while sitting.

48. Defendants ignored the fact that Plaintiff had performed the essential functions of his job for years.

49. After continued discussions, Plaintiff provided Defendants with an additional doctor's note on June 16, 2016. The letter stated, "Again, there are NO limitations if patient is able to sit while working as his upper extremities are working fine."

50. On July 11, 2016, Plaintiff was terminated by Defendants. The termination letter claimed that Plaintiff was unable to perform the essential functions of the job.

**FIRST CAUSE OF ACTION
(New York State Human Rights Law)**

51. Plaintiff repeats each and every allegation set forth above as if fully set forth herein at length.

52. Defendants discriminated against Plaintiff because of his disability in the terms, conditions and privileges of his employment in violation of New York State Human rights Law, Executive Law 290, *et. seq.*

53. Defendants' acts were with malice and reckless disregard for Plaintiff's rights.

54. Plaintiff has suffered and will continue to suffer irreparable injury and monetary damages as a result of the Defendants' discrimination unless and until this Court grants relief.

55. As a result of the Defendants' willful, knowing, and intentional discrimination on the basis of disability, the Plaintiff has suffered and will continue to suffer mental and

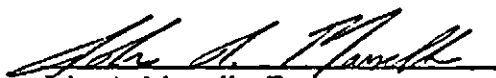
emotional anguish and emotional distress; he has also suffered and will continue to suffer loss of earnings and other employment and job benefits and opportunities; Plaintiff requests backpay, front pay, and benefits, and compensatory damages in an amount to be determined at trial, and any other relief the court may find just and proper.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests the following relief:

- (a) Declare Defendant's conduct in violation of the NYSHRL;
- (b) Enjoin Defendant from further violations of the NYSHRL;
- (c) Awarding to the Plaintiff a money judgment representing back pay, front pay and benefits, as well as compensatory damages, all in an amount to be determined at trial, for violations of NYSHRL;
- (d) An award of pre-judgment interest on the money awards requested above; and
- (e) Grant other further relief as just and appropriate.

Date: July 10, 2019



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