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U.S. DISTRICT COURT

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TX-EASTERN-BEAUMONT

BY Marilyn Lee

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, §
Plaintiff, §

V. §

HOUSING AUTHORITY of the §
CITY OF PORT ARTHUR, TEXAS, §
Defendant. §

CIVIL ACTION NO. 1:01CV-520

**DEFENDANT'S ORIGINAL ANSWER TO
PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, HOUSING AUTHORITY OF THE CITY OF PORT ARTHUR, TEXAS, nominated Defendant in the above-entitled and numbered cause, and files this its Original Answer to Plaintiff's Original Complaint, and in support thereof, would respectfully show unto the Court the following:

FIRST DEFENSE

In answer to the numbered paragraphs of Plaintiff's Complaint, Defendant avers:

I.

In answer to the paragraph entitled "Nature of the Action," Defendant admits Plaintiff's claim asserts age discrimination and otherwise the allegations of said paragraph are denied.

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II.

In answer to Paragraph 1, the jurisdiction of this Court is admitted.

III.

In answer to Paragraph 2, it is admitted the acts as alleged would have been committed within the jurisdiction of this Court, but said acts are denied.

IV.

In answer to Paragraph 3, Defendant admits the EEOC is the Plaintiff, but otherwise denies the allegations of such paragraph.

V.

In answer to Paragraph 4, it is admitted the HOUSING AUTHORITY OF THE CITY OF PORT ARTHUR, TEXAS, is a housing authority operated within the City of Port Arthur, Texas, to provide low income housing; otherwise, the allegations of paragraph 4 are denied.

VI.

In answer to Paragraph 5, it is admitted the HOUSING AUTHORITY OF THE CITY OF PORT ARTHUR, TEXAS, is an employer; otherwise, the allegations of paragraph 5 are denied.

VII.

In answer to Paragraph 6, it is admitted conciliation efforts were undertaken in this matter, and as far as this Defendant was concerned, were ongoing at the time of the filing of this litigation.

VIII.

In answer to Paragraph 7, the allegations of said paragraph are denied as worded.

IX.

In answer to Paragraph 8, it is admitted Mr. Londow was involuntarily retired. Otherwise, the allegations of paragraph 8 are denied.

X.

In answer to Paragraph 9, it is admitted the HOUSING AUTHORITY OF THE CITY OF PORT ARTHUR, TEXAS, had a personnel policy referencing retirement at age 70, which was amended June 29, 2001, and prior to the filing of this litigation, to exclude any age reference. Otherwise the allegations of paragraph 9 are denied.

XI.

In answer to Paragraph 10, the allegations of paragraph 10 are admitted.

XII.

In answer to Paragraph 11, it is admitted a letter was forwarded by Bobby Feemster to Mr. Londow regarding congratulating him on his retirement; otherwise the allegations of paragraph 11 are denied.

XIII.

In answer to Paragraph 12, Defendant denies the allegations contained therein.

XIV.

In answer to Paragraph 13, Defendant denies the allegations contained therein.

XV.

In answer to Paragraph 14, Defendant denies the allegations contained therein.

XVI.

In answer to the prayer of Plaintiff's Complaint, Defendant denies the allegations contained therein. Further, in answer to sub-paragraph A of the prayer of Plaintiff's Complaint, Defendant specifically denies Plaintiff is entitled to an injunction, particularly in light of the fact the policy of the HOUSING AUTHORITY OF THE CITY OF PORT ARTHUR, TEXAS, was changed effective June 29, 2001, to delete any reference to age. The remaining paragraphs of the prayer of Plaintiff's Complaint are further denied, and it is denied the Plaintiff is entitled to any of the relief sought in sub-paragraphs B, C, D and E.

GENERAL DENIAL

XVII.

Further answering Plaintiff's Complaint, if such be necessary, and without waiving the above or subsequent affirmative defenses, but ever insisting upon each of them, Defendant generally denies each and every, all and singular the allegations of Plaintiff's Complaint and states that same are not true, in whole or in part, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

XVIII.

Defendant pleads the Doctrine of good faith/qualified and/or absolute immunity under state and federal law.

XIX.

Defendant states that at all time relevant to the causes of action pled it and its employees acted within the course and scope of their employment, performing discretionary actions in good faith.

XX.

Defendant respectfully states it and its employees acted at all times with proper motives.

XXI.

Defendant respectfully states it and its employees acted with the reasonable belief in the propriety of their actions.

XXII.

Defendant respectfully states it and its employees acted in the scope of their discretionary powers.

XXIII.

By further answer, and in the alternative, Defendant invokes each and every defense and limitation available under Title 5 of the Texas Civil Practice and Remedies Code regarding Governmental Liability for tort claims, and specifically asserts its rights to governmental immunity in the above-referenced cause of action.

XXIV.

By way of further affirmative defense, and in the alternative, Defendant asserts each and every defense it has under Texas Civil Practice & Remedies Code §101.023 regarding limitation of amount of liability.

XXV.

By further answer, and in the alternative, Defendant further asserts the claims made the basis of this cause of action against it involve allegations concerning governmental functions

for which Defendant is either protected from liability or exempted from liability under the Texas Tort Claims Act.

XXVI.

By way of further answer, and in the alternative, Defendant would state the Plaintiff is obligated to mitigate damages. Defendant would show Plaintiff failed to timely and properly mitigate damages.

XXVII.

By way of further answer, and in the alternative, Defendant pleads the employee at will doctrine as that term is understood and defined by the laws of the State of Texas.

XXVIII.

By way of further answer, and in the alternative, Defendant denies Plaintiff is entitled to attorneys' fees or court costs under the facts of this case.

XXIX.

By way of further answer, and in the alternative, Defendant would state Mr. Londow was offered his position back at the HOUSING AUTHORITY OF THE CITY OF PORT ARTHUR, TEXAS, effective July 16, 2001, and has not yet returned to work as of the filing of this answer.

XXX.

Defendant reserves the right to further plead such exceptions and affirmative defenses as required in order that justice may be had at the trial of this matter on its merits.

WHEREFORE, PREMISES CONSIDERED, Defendant, HOUSING AUTHORITY OF THE CITY OF PORT ARTHUR, TEXAS, prays that Plaintiff's claim be dismissed with

prejudice or that upon trial hereof, Plaintiff recover nothing and judgment issue in favor of Defendant, that Defendant be awarded reasonable attorneys fees as part of the costs, costs of court, and for all such other and further relief, both general and specific, at law or in equity, as Defendant may be justly entitled to receive.

Respectfully submitted,

BENCKENSTEIN & OXFORD, L.L.P.
P. O. Box 150
Beaumont, Texas 77704
Phone: (409) 833-9182
Fax : (409) 833-8819

By: 
Frank D. Calvert
State Bar No. 03667700

ATTORNEYS FOR DEFENDANT,
HOUSING AUTHORITY OF THE CITY OF
PORT ARTHUR, TEXAS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished to all counsel of record by:

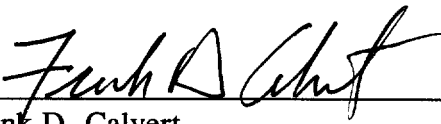
☒ United States Certified Mail, return receipt requested

☐ Hand-Delivery

☐ Federal Express

☐ Telefacsimile

on this 27th day of August, 2001.



Frank D. Calvert