

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	No. 4:04CV00846
)	
CONVERGYS CUSTOMER)	
MANAGEMENT GROUP INC. ,)	
)	
Convergys.)	

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, Convergys Customer Management Group Inc. (“Convergys”), by and through the undersigned counsel, and answers or otherwise responds to Plaintiff Equal Employment Opportunity Commission’s (“the Commission”) Complaint.

NATURE OF THE ACTION

Convergys admits that the Commission purports to bring this action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991. Convergys denies all other allegations in the first unnumbered paragraph of the Commission’s Complaint. Further answering, Convergys specifically denies that it violated any laws with respect to the employment or termination of Ahmet Demerelli.

JURISDICTION AND VENUE

1. Convergys admits only so much of paragraph 1 of the Commission’s Complaint as alleges that this Court generally has jurisdiction over actions brought under the ADA.

Convergys denies each and every remaining allegation of fact and conclusion of law contained in paragraph 1 of the Commission's Complaint.

2. Convergys admits only so much of paragraph 2 of the Commission's Complaint as alleges that venue is proper in this Court. Convergys denies each and every remaining allegation of fact and conclusion of law contained in paragraph 2 of the Commission's Complaint.

PARTIES

3. Convergys admits the allegations of fact contained in paragraph 3 of the Commission's Complaint, but denies that the Commission has satisfied all conditions precedent and/or exhausted administrative remedies required prior to bringing this action.

4. Convergys admits the allegations of fact contained in paragraph 4 of the Commission's Complaint.

5. Convergys admits the allegations of fact contained in paragraph 5 of the Commission's Complaint.

6. Convergys admits the allegations of fact contained in paragraph 6 of the Commission's Complaint.

STATEMENT OF CLAIMS

7. Convergys admits more than thirty days prior to the institution of this lawsuit that Ahmet Demerelli filed a charge with the Commission against Convergys. Convergys denies all other allegations in paragraph 7 of the Commission's Complaint.

8. Convergys denies each and every allegation in paragraph 8 of the Commission's Complaint.

9. Convergys denies each and every allegation in paragraph 9 of the Commission's Complaint.

10. Convergys denies each and every allegation in paragraph 10 of the Commission's Complaint.

11. Convergys denies each and every allegation in paragraph 11 of the Commission's Complaint.

Further answering, Convergys denies that the Commission is entitled to relief sought in the unnumbered paragraph titled "Prayer for Relief."

All other allegations not otherwise admitted are denied.

IN FURTHER answer, Convergys asserts the following Affirmative Defenses:

A. The claims in the Commission's Complaint should be dismissed for failure to state claims on which relief can be granted.

B. The Commission has failed to satisfy all conditions precedent to the institution of this action, and/or has failed to exhaust administrative remedies, including but not limited to the Commission's obligations to conciliate in good faith prior to instituting this action.

C. The Commission's claims, in part, are barred by applicable statutes of limitation or other time limitations.

D. The Commission's request for damages on behalf of Ahmet Demerelli must be either barred or offset as a result of his failure to mitigate damages.

E. The Commission's discrimination claims are barred because even if unlawful discrimination had taken a part in Convergys' challenged decisions, which Convergys denies, Convergys would have made the same decisions absent discrimination.

F. Any proposed accommodation or proposed further accommodation would cause an undue hardship on the operation of Convergys' business.

G. The actions taken by Convergys were job-related and consistent with business necessity.

H. Convergys affirmatively states that the Commission's claims for punitive damages in this matter would be contrary to the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

I. The Commission fails to state a claim to the extent Ahmet Demerelli is not a qualified employee with a disability within the meaning of the ADA.

WHEREFORE, Convergys prays that this Court dismiss all of the Commission's claims, and award Convergys its costs incurred in this action, and such further relief as the Court may deem just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Laura M. Jordan
Mary M. Bonacorsi, #2669
Laura M. Jordan, #101022
One U.S. Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000

Attorneys for Defendant, Convergys Customer
Management Group Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer and Affirmative Defense was served electronically with the Clerk of the Court this 3rd day of September, 2004 to be served by operation of the Court's electronic filing system upon Barbara Seeley, Equal Employment Opportunity Commission 1222 Spruce Street, Room 8.100, St. Louis, MO 63103 and via first class U.S. mail, postage prepaid, to Michael Fagras, Attorney for Ahmet Demerelli, 4700 Mexico Road, St. Peters, MO 63304.

/s/ Laura M. Jordan