

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
-against-)
)
)
THE SALVATION ARMY)
)
)
Defendant.)
_____)

Civil Action No. 1:05-cv-343-PB

COMPLAINT
AND JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 (ADA), as well as Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Craig Lanzim (“Lanzim”). As alleged with greater particularity below, The Salvation Army (“Defendant”) subjected Lanzim to discrimination on the basis of his disabilities by failing to hire and failing to provide him with equal opportunity to compete for a position in its West Lebanon, New Hampshire, Thrift Store.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107 (a) of the ADA, 42 U.S.C. §12117 (a), which incorporates by reference Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e - 5 (f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981A.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Hampshire.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Section 706 (f)(1) and (3) of Title VII, 42 U.S.C. § 2000e - 5 (f)(1) and (3).

4. At all relevant times, Defendant has been a New York corporation doing business in the State of New Hampshire, and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. §12111(5), and Section 10 (7) of the ADA, 42 U.S.C. §12111(7), which incorporates by reference Sections 701 (g) and (h) of Title VII, 42 U.S.C. §§ 2000e - (g) and (h).

6. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Lanzim filed a charge with the Commission alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Lanzim is a qualified disabled individual pursuant to Title I of the ADA.

9. On or about April 15, 2004, Lanzim went to Respondent’s West Lebanon, New Hampshire, store with his employment counselor to inquire about advertised positions for Thrift Store employees, and to make an application for the advertised position.

10. On or about April 15, 2004, Lanzim and his employment counselor were told that the Store Manager did not to accept applications from disabled persons because he had worked with disabled persons before and he had said it had not gone well.

11. Defendant never called Lanzim to interview for the open positions at its West Lebanon store and, on information and belief, it hired two non-disabled applicants to fill the open positions.

12. Since at least April 15, 2004, Defendant has engaged in unlawful employment practices in violation of Section 102 of Title I of the ADA, 42 U.S.C. §12101 et seq. These practices include, but are not limited to, the following:

a.) Defendant failed to provide Lanzim with equal access to the employment opportunity of Thrift Store Employee in its West Lebanon store because of his disabilities.

b.) Defendant discriminated against Lanzim by failing to hire him for the position of Thrift Store Employee in its West Lebanon store because of his disabilities.

c.) Defendant has a policy and practice of destroying employment applications in violation of 29 CFR ¶1602.14.

13. The effect of the practices complained of above has been to deprive Lanzim of equal employment opportunities because of his disabilities.

14. The unlawful employment practices complained of above were intentional.

15. The unlawful employment practices complained of above were done with malice or with reckless indifference to Lanzim's federally protected rights.

16. The practices complained of above have inflicted emotional pain, suffering, and inconvenience upon Lanzim.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice which discriminates on the basis of disability.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal opportunities for qualified individuals with disabilities, and which provide affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to implementing a policy and procedure for handling the application and interview process for open positions without regard to an individual's disability and without discrimination towards persons with disabilities.

C. Order Defendant to hire Lanzim or pay him front pay in lieu of hiring.

D. Order Defendant to make Lanzim whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including but not limited to appropriate back pay with prejudgement interest and job search expenses, in amounts to be determined at trial.

E. Order Defendant to make Lanzim whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described above, including but not limited to emotional pain, suffering, and inconvenience in amounts to be determined at trial.

F. Order Defendants to pay Lanzim punitive damages for its malicious and reckless conduct described above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated: September ___, 2005
Boston, Massachusetts

Respectf

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