UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY   :   Civil Action No.
COMMISSION,   :
        :
      Plaintiff,   :
        :   **COMPLAINT**
     v.   :   **JURY TRIAL DEMANDED**
        :
ALEX C. FERGUSSON, INC.,   :
        :
      Defendant.   :
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NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act of 1967, as amended, ("ADEA") to correct unlawful employment practices on the basis of age by Alex C. Fergusson, Inc., (hereafter "Defendant"), and to make whole Raymond Allen and other similarly situated individuals who were affected by Defendant's discriminatory practices. As alleged in greater detail below, Defendant discriminated against Raymond Allen and other similarly situated individuals by maintaining a self-proclaimed "practice and policy of Alex C. Fergusson, Inc. that all active full time employees retire from the company at age 65."

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 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b), which incorporates by reference Section 16(c) of the Fair Labor Standards Act of 1938 ("the FLSA"), as amended, 29 U.S.C. § 216(c).

2.   The unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Western District of New York.

PARTIES

3.   Plaintiff, Equal Employment Opportunity Commission, is an agency of the United States of America charged with the administration, interpretation, and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of the Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-523 (1984), 98 Stat. 2705.

4.   At all relevant times, Defendant has continuously been a Pennsylvania corporation doing business in the state of New York, and has continuously had at least 20 employees.

5.   At all relevant times, Defendant has continuously been an employer within the meaning of Section 11(b) of the ADEA, 29 U.S.C. § 630(b).

CONCILIATION

6.   Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

STATEMENT OF CLAIMS

7.   Raymond Allen began his employment with Defendant as a salesperson in or around February, 2000. By letter dated July 21, 2004, he was informed that "It has been a practice and policy of Alex C. Fergusson, Inc. that all active full time employees retire from the company at age 65." In this letter, he was given a choice between "Full retirement as of 65$^{\text{th}}$ birthday" and "Semi-retirement with compensation maxing at $11,640.00 annually."

8.   Defendant, by letter received by Plaintiff on August 10, 2005, confirmed this mandatory retirement policy by stating, "It has been a practice and policy of Alex C. Fergusson, Inc. that all active full time employees retire from the company at age 65. However, employees are also given the opportunity to remain as a part-time employee with benefit and compensation packages."

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9.   Defendant further acknowledged in this letter that four other employees had been subjected to this policy.

10.   After Mr. Allen refused to accept either choice offered by Defendant's letter of July 21, 2004, Defendant informed Mr. Allen by letter dated January 3, 2005, that, effective February 1, 2005, his compensation would be cut by more than half, to $12,500, he would lose his car allowance, and his book of business would be transferred to others.

11.   Mr. Allen refused to accept these onerous terms and was constructively discharged.

12.   The effect of the practices complained of above has been to deprive Raymond Allen and similarly situated employees of equal employment opportunities and otherwise adversely affected their status as employees because of age.

13.   The unlawful employment practices complained of above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. §626(b).

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A.   Grant a permanent injunction enjoining the Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practices which discriminate on the basis of age;

B.   Order the Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals who are 40 years of age and older, and which eradicate the effects of their past and present unlawful employment practices;

C.   Grant a judgment requiring the Defendant to pay denied or lost pay and benefits in an amount to be determined at trial, and an equal sum of liquidated damages, plus prejudgment interest, to Raymond Allen and other similarly situated individuals;

E.   Order the Defendant to re-hire Raymond Allen and other similarly situated

individuals into appropriate positions or, in lieu thereof, order the defendant to pay them front

pay;

F.   Grant such further relief as the Court deems necessary and proper;

G.   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.

Respectfully submitted,

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