

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Civil Action No.:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-against-

LABRANCHE & CO., INC.,

Defendants.

COMPLAINT IN
INTERVENTION

JURY TRIAL DEMANDED

-----x
PETER SERVIDIO,

Plaintiff,

-against-

LABRANCHE & CO., INC., ANTHONY CORSO
and ALFRED HAYWARD,

Defendants.
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Plaintiff-Intervenor, Peter Servidio (hereinafter referred to as "Servidio"), by his attorneys Mark B. Stumer & Associates, P.C., as and for his Complaint in Intervention, allege as follows upon information and belief:

NATURE OF ACTION

This is an action under Title I of the Americans With Disabilities Act of 1990 ("ADA"), Title I of the Civil Rights Act of 1991, and the New York City Civil Rights Law, Administrative Code of New York, §§ 8-101 et seq. ("NYCCRL"), to correct unlawful employment practices on the basis of disability, and perceived disability, and to provide appropriate relief to Peter Servidio who was adversely affected by such practices. As alleged with greater particularity below, the Defendants created a hostile work environment for Servidio based on his disability, failed to

promote him based on his disability, retaliated against him when he complained of the discrimination, and subjected him to constructive discharge.

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 Americans with Disabilities Act of 1990, 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 42 U.S.C §2000e-6 and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The Court has supplemental jurisdiction of the claims arising under the NYCCRL pursuant to 28 U.S.C. § 1367, because the NYCCRL claims arise from the same operative facts as the federal claims and are so related as to form part of the same case or controversy.

3. Servidio is entitled to file this Complaint in Intervention pursuant to Rule 24 of the Federal Rules of Civil Procedure, and 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. Venue is appropriate as the alleged unlawful employment practices were and are now being committed within the jurisdiction of the United States District Court for the Southern District of New York.

5. The claims asserted in this Complaint in Intervention and the claims asserted in the EEOC Complaint arise from a common nucleus of operative facts.

6. Servidio's proposed intervention is timely. No other motions have been filed with the Court, discovery has not commenced, and the issues have not yet been joined.

7. Copies of this Complaint were served on the Corporation Counsel of the City of New York and the New York City Commission on Human Rights prior to being filed in this Court, pursuant to § 8-502(c) of the NYCCRL.

PARTIES

8. At all relevant times, the Plaintiff was an “employee” covered by the ADA and a “person” within the meaning of the NYCCRL.

9. At all relevant times, Servidio has been disabled within the meaning of the ADA and the NYCCRL.

10. At all relevant times, Servidio has been regarded by the Defendants as having a disability within the meaning of the ADA and the NYCCRL.

11. At all relevant times, Servidio has a record having a disability within the meaning of the ADA and the NYCCRL.

12. At all relevant times, Defendant LaBranche & Co., Inc., (“LaBranche”) has continuously been a New York corporation doing business in the State of New York, and has continuously had at least fifteen employees.

13. At all relevant times, Defendant LaBranche 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 101(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).

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

15. At all relevant times, Defendant Alfred Hayward (“Hayward”) was the Chief Executive Officer of Defendant LaBranche and is liable in his individual capacity pursuant to the NYCCRL.

16. At all relevant times, Defendant Anthony Corso (“Corso”) was a Manager of Defendant LaBranche and is liable in his individual capacity pursuant to the NYCCRL.

STATEMENT OF CLAIMS

17. More than thirty days prior to the institution of this lawsuit, Servidio 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.

18. Servidio is a qualified individual with a disability pursuant: (a) he has bipolar disorder/manic depression which substantially limits him in one or more major life activities, including, but not limited to, sleeping; (b) Defendants regarded Servidio as being disabled, and (c) Servidio has a record of a disability of bipolar disorder/manic depression.

19. Since at least 2000, Defendants have engaged in the creation of a hostile environment on the basis of Servidio's disability, including but not limited to, the incidents set forth below:

a. Servidio was hospitalized for approximately one week in June of 2000 because of his disability, bipolar disorder/manic depression.

b. From the date of his hospitalization through his constructive discharge in December, 2003, Servidio's supervisors and co-workers made him the frequent target of offensive comments about his disability and the fact that he had been hospitalized. For example, shortly after Servidio's return to work, the Head Clerk questioned him about returning from a

"mental ward," and teased him about his use of medication. Defendant supervisors often initiated or participated in the harassment themselves and failed to deter Servidio's co-workers from contributing to the hostile environment. Supervisors and coworkers frequently made comments to the effect that Servidio was a nut, murderer, psycho, psychotic, crazy, suicidal, constantly in and out of mental institutions, and ready to get a gun and "go postal," meaning that he could potentially hurt or kill other people.

c. Servidio was often referred to, by his coworkers and supervisors, as "Crazy Pete," "the Lunatic," and "the Psycho," and was often told that he belonged in a straight jacket and a mental institution.

d. Throughout Servidio's employment with LaBranche, Servidio had repeatedly requested a promotion to the Specialist position. Despite being qualified for the position, Servidio was passed over for said promotion on about forty-five (45) separate occasions. He was informed by his Manager that he was not getting that promotion because he did not have the "right mental temperament."

e. As early as December 2000, Servidio complained to the Head Clerk about the harassment. The Head Clerk told Servidio that when offensive comments were made to him, he should respond to the comments with similar insults. In July 2001, Servidio also complained to the Post Captain about the continual comments. In approximately early November 2003, Servidio again complained to the Head Clerk. Defendants took no action to cease the harassment at any time.

20. Since at least November, 2003, Defendant has engaged in retaliation against Servidio. On or about November 24, 2003, Servidio complained to Defendant's Human Resources Department concerning the above-referenced offensive comments about his disability,

hospitalization, use of medication, and failure to receive the Specialist position on account of his disability. On November 25 and 26, Servidio met with the Chief Executive Officer and the Specialist Supervisor, and those individuals made negative comments about his disability and hospitalization, threatened him, stating that they would make his life extremely difficult and that they would personally ruin his career if he pursued his complaints of discrimination, and directed him to stop pursuing the matter.

21. Until the date of his constructive discharge, the Defendants continued to treat Servidio in a threatening and hostile manner, especially after receiving a letter about his complaints from his attorney.

22. As a result of the continued harassment and retaliation, Servidio's working conditions became so intolerable that he could not continue to work for the Defendants. As a result of the harassment, Servidio suffered a panic attack and experienced high blood pressure on December 1, 2003, and his condition deteriorated markedly in the next ten days. On December 12, 2003, Servidio was constructively discharged.

23. The effect of the practices complained of above has been to inflict emotional pain, suffering and inconvenience upon Servidio.

24. The unlawful employment practices complained of in paragraphs 9-11 above were and are intentional.

25. The unlawful employment practices complained of in paragraphs 9-11 above were done with malice or reckless indifference to the federally protected rights of Servidio, in violation of the ADA, 42 U.S.C. § 12101 et seq. and the NYCCRL

AS AND FOR THE FIRST CLAIM
HOSTILE ENVIRONMENT – ADA
AGAINST DEFENDANT LABRANCHE

26. Servidio hereby realleges and incorporates by reference, as if fully set forth herein, all of the allegations of the EEOC Complaint in this action and paragraphs 1-25 above.

27. Servidio was forced to endure discrimination and harassment in violation of the ADA.

28. Defendant's unlawful employment practices resulted in a hostile work environment in violation of the ADA.

29. The unlawful employment practices complained of above were intentional and were performed with malice and reckless indifference to Servidio's federally protected rights.

30. As a proximate result of Defendant's acts and practices described above, Servidio suffered and endured, and will continue to suffer and endure, serious and possibly permanent emotional pain, suffering and anguish, loss of enjoyment of life, loss of personal dignity, loss of self-esteem, embarrassment, humiliation, and other damages.

31. Defendants are therefore liable to Servidio for compensatory damages, punitive damages, other affirmative relief, costs and attorney's fees, in a sum to be awarded by Court and jury.

AS AND FOR THE SECOND CLAIM
DENIAL OF TERMS AND CONDITIONS – ADA
AGAINST DEFENDANT LABRANCHE

32. Servidio hereby realleges and incorporates by reference, as if fully set forth herein, all of the allegations of the EEOC Complaint in this action and paragraphs 1-31 above.

33. Servidio was forced to endure discrimination and harassment in violation of the ADA.

34. Defendant LaBranche have engaged in unlawful employment practices in violation of the ADA.

35. In violation of the ADA, Defendant LaBranche has denied Servidio equal terms, conditions and privileges of employment.

36. The unlawful employment practices complained of above were intentional and were performed with malice and reckless indifference to Servidio's federally protected rights.

37. As a proximate result of Defendant's acts and practices described above, Servidio has suffered and endured, and will continue to suffer and endure, serious and possibly permanent emotional pain, suffering and anguish, loss of enjoyment of life, loss of personal dignity, loss of self-esteem, embarrassment, humiliation, and other damages.

38. Defendant LaBranche is therefore liable to Servidio for compensatory damages, punitive damages, other affirmative relief, costs and attorney's fees, in a sum to be awarded by Court and jury.

AS AND FOR THE THIRD CLAIM

RETALIATION – ADA

AGAINST DEFENDANT LABRANCHE

39. Servidio hereby realleges and incorporates by reference, as if fully set forth herein, all of the allegations of the EEOC Complaint in this action and paragraphs 1-38 above.

40. In violation of the ADA, Defendant LaBranche retaliated against Servidio by subjecting him to adverse actions in his employment as a result of his discrimination complaints.

41. As a proximate result of Defendant's acts and practices described above, Servidio suffered and endured, and will continue to suffer and endure, serious and possibly permanent emotional pain, suffering and anguish, loss of enjoyment of life, loss of personal dignity, loss of self-esteem, embarrassment, humiliation, and other damages.

42. Defendant LaBranche is therefore liable to Servidio for compensatory damages, punitive damages, other affirmative relief, costs and attorney's fees, in a sum to be awarded by Court and jury.

AS AND FOR THE FOURTH CLAIM

HOSTILE ENVIRONMENT – NYCCRL

AGAINST ALL DEFENDANTS

43. Servidio hereby realleges and incorporates by reference, as if fully set forth herein, all of the allegations of the EEOC Complaint in this action and paragraphs 1-42 above.

44. Servidio was forced to endure discrimination and harassment in violation of the NYCCRL.

45. The Defendants unlawful employment practices resulted in a hostile work environment in violation of the NYCCRL.

46. The unlawful employment practices complained of above were intentional and were performed with malice and reckless indifference to Servidio's rights.

47. As a proximate result of the Defendants acts and practices described above, Servidio suffered and endured, and will continue to suffer and endure, serious and possibly

permanent emotional pain, suffering and anguish, loss of enjoyment of life, loss of personal dignity, loss of self-esteem, embarrassment, humiliation, and other damages.

48. Defendants are therefore liable to Servidio for compensatory damages, punitive damages, other affirmative relief, costs and attorney's fees, in a sum to be awarded by Court and jury.

AS AND FOR THE FIFTH CLAIM

DENIAL OF TERMS AND CONDITIONS – NYCCRL

AGAINST ALL DEFENDANTS

49. Servidio hereby realleges and incorporates by reference, as if fully set forth herein, all of the allegations of the EEOC Complaint in this action and paragraphs 1-48 above.

50. Servidio was forced to endure discrimination and harassment in violation of The NYCCRL.

51. The Defendants have engaged in unlawful employment practices in violation of The NYCCRL.

52. In violation of The NYCCRL, the Defendants have denied Servidio equal terms, conditions and privileges of employment.

53. The unlawful employment practices complained of above were intentional and were performed with malice and reckless indifference to Servidio's rights.

54. As a proximate result of Defendants' acts and practices described above, Servidio suffered and endured, and will continue to suffer and endure, serious and possibly permanent emotional pain, suffering and anguish, loss of enjoyment of life, loss of personal dignity, loss of self-esteem, embarrassment, humiliation, and other damages.

55. Defendants are therefore liable to Servidio for compensatory damages, punitive damages, other affirmative relief, costs and attorney's fees, in a sum to be awarded by Court and jury.

AS AND FOR THE SIXTH CLAIM

RETALIATION – NYCCRL

AGAINST ALL DEFENDANTS

56. Servidio hereby realleges and incorporates by reference, as if fully set forth herein, all of the allegations of the EEOC Complaint in this action and paragraphs 1-55 above.

57. In violation of the NYCCRL, the Defendants have retaliated against Servidio by subjecting him to adverse actions in his employment as a result of his discrimination complaints.

58. As a proximate result of the Defendants acts and practices described above, Servidio suffered and endured, and will continue to suffer and endure, serious and possibly permanent emotional pain, suffering and anguish, loss of enjoyment of life, loss of personal dignity, loss of self-esteem, embarrassment, humiliation, and other damages.

59. The Defendants are therefore liable to Servidio for compensatory damages, punitive damages, other affirmative relief, costs and attorney's fees, in a sum to be awarded by Court and jury.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request judgment against the Defendants as follows:

- 1) On the First and Second Claims, for discrimination in violation of the ADA, against Defendant LaBranche, in a sum to be awarded by a Court and/or a jury for compensatory

(including, but not limited to back pay, front pay and emotional distress) and punitive damages, costs and reasonable attorney's and experts fees;

2) On the Third Claim, for retaliation in violation of the ADA, against Defendant LaBranche, in a sum to be awarded by a Court and/or a jury for compensatory (including, but not limited to back pay, front pay and emotional distress) and punitive damages, costs and reasonable attorney's and experts fees;

3) On the Fourth and Fifth Claims, for discrimination in violation of the NYCCRL, against all Defendants, in a sum to be awarded by a Court and/or a jury for compensatory (including, but not limited to back pay, front pay and emotional distress) and punitive damages, costs and reasonable attorney's and experts fees;

4) On the Sixth Claim, for retaliation in violation of the NYCCRL, against all Defendants, in a sum to be awarded by a Court and/or a jury for compensatory (including, but not limited to back pay, front pay and emotional distress) and punitive damages, costs and reasonable attorney's and experts fees;

5) for such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

The Plaintiffs demand a jury trial of all issues properly triable by a jury.

Dated: September 28, 2005
New York, New York

MARK B. STUMER & ASSOCIATES, PC

By: 

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