

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

NFI MANAGEMENT, INC., D/B/A HOME
MANAGEMENT, INC., ALSO D/B/A
DOVE TREE APARTMENTS,

Defendant.

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Civil Action No.

SA04CA0656

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**COMPLAINT AND
JURY TRIAL DEMAND**

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and 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 Defendant's former employee, Felix Castro, who was adversely affected by such practices. The Equal Employment Opportunity Commission, (the "Commission"), alleges that Defendant, NFI Management, Inc., d/b/a Home Management, Inc., also d/b/a Dove Tree Apartments, (hereinafter collectively referred to as "Dove Tree Apartments"), failed to provide Felix Castro with a reasonable accommodation; it terminated him from his position of maintenance technician because of his disability; and it failed to return Mr. Castro to his position or a comparable position and/or rehire Mr. Castro because of his disability.

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 ("ADA"), 42 U.S.C. §12117(a), which incorporates by reference Sections

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 Western District of Texas, San Antonio Division.

PARTIES

3. Plaintiff, 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 Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant, Dove Tree Apartments, has continuously been doing business in the State of Texas and the City of San Antonio, and has continuously employed at least fifteen (15) employees.

5. At all relevant times, Defendant, Dove Tree Apartments, 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).

6. At all relevant times, Defendant, Dove Tree Apartments, 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, Felix Castro filed a charge with the Commission alleging violations of Title I of the ADA by Defendant, Dove Tree

Apartments. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. At all relevant times, Felix Castro has been and is a qualified person with a disability and is covered by Title I of the ADA, 42 U.S.C. §§ 12101 et seq.

9. Defendant, Dove Tree Apartments, has engaged in unlawful employment practices at its San Antonio, Texas location, in violation of Title I of the ADA, 42 U.S.C. §§ 12101 *et seq.*

These practices include the following:

- a. Failing to provide medical leave to Mr. Castro past June 1, 2002, as a reasonable accommodation, following the amputation of Mr. Castro's leg below the knee on May 24, 2002 resulting from his Type I diabetes;
- b. Terminating Mr. Castro from his maintenance technician position because of his disability; and
- c. Failing to return Mr. Castro to his position or a comparable position and/or rehire Mr. Castro when he provided a full medical release to Defendant on July 25, 2002.

10. The effect of the practices complained of in paragraph 9 above has been to deprive Mr. Castro of equal employment opportunities and to otherwise adversely affect his status as an employee because of his disability.

11. The unlawful employment practices complained of in paragraph 9 above were intentional.

12. The unlawful employment practices complained of in paragraph 9 above were done with malice or with reckless indifference to the federally protected rights of Felix Castro.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, Dove Tree Apartments, its officers, successors, assigns, and all persons in active concert or participation with it, from discriminating against any qualified employees, because of their disabilities, by failing to provide reasonable accommodations; by terminating qualified individuals because of their disability; by failing to rehire qualified employees because of their disabilities; and engaging in any other employment practice which discriminates on the basis of disability;

B. Order Defendant, Dove Tree Apartments, to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices, including but not limited to posting notices regarding its compliance with the ADA;

C. Order Defendant, Dove Tree Apartments, to make whole Felix Castro by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Felix Castro, or front pay in lieu thereof;

D. Order Defendant, Dove Tree Apartments, to make whole Felix Castro by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 9, including, but not limited to, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial;

E. Order Defendant, Dove Tree Apartments, to make whole Felix Castro by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 9 above, including, but not limited to, emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial;

F. Order Defendant, Dove Tree Apartments, to pay Felix Castro punitive damages for its malicious and reckless conduct, as described in paragraph 9 above, in amounts to be determined at trial;

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

H. Award the Commission its costs.

JURY TRIAL DEMAND

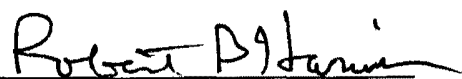
The Commission requests a jury trial on all questions of fact raised by its complaint.


Respectfully submitted,

ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel


ROBERT B. HARWIN
Regional Attorney
District of Columbia Bar No. 076083


JUDITH G. TAYLOR
Supervisory Trial Attorney
Texas Bar No. 19708300



DAVID C. RIVELA
Attorney-in-Charge
Texas State Bar No. 00797324

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

San Antonio District Office
5410 Fredericksburg Rd., Ste 200
San Antonio, TX 78229-3555
Telephone: (210) 281-7619
Telecopier: (210) 281-7669

ATTORNEYS FOR PLAINTIFF