

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

FILED

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION and ROCKY DILLARD,
Plaintiffs**

v.

**TRI-STATE SECURITY AGENCY, INC.,
Defendant**

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U.S. DISTRICT COURT
EASTERN DIST. TENN.

No. 1:04-CV-219

Judge Curtis Collier

Magistrate Judge Lee

COMPLAINT TO INTERVENE

Come the plaintiff, Rocky Dillard, by and through counsel who would sue the defendant, Tri-State Security Agency, Inc., for damages and for cause would show as follows:

I. PRELIMINARY STATEMENT

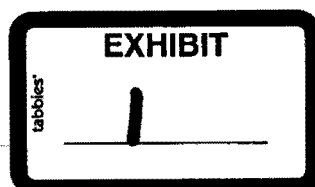
1. This is an employment discrimination action seeking relief as authorized by Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 et seq. and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a .

II. JURISDICTION

2. The 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 referenced 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.

III. PARTIES

3. Plaintiff, Rocky Dillard ("Dillard") is a male resident of Polk County, Tennessee, and was



employed by the Defendant, Tri-State Security Agency, Inc., beginning February 2, 2000 as a security guard through its Chattanooga office in Hamilton County, Tennessee.

4. At all relevant times, Defendant, Tri-State Security Agency, Inc., (“Tri-State”) was a corporation doing business in the State of Tennessee and has continuously had at least fifteen (15) employees. Defendant Tri-State is in the business of providing security guards to Chattanooga area businesses. Tri-State is an “employer” as that term is defined in Title I of the American with Disabilities of 1990 (“ADA”).

5. At all relevant times, Defendant Tri-State has been an employer engaged in an industry affecting commerce within the meaning of §101 (5) of the ADA, 42 U.S.C. 12111(5) and sections 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporate by reference §701 (g) and (h) of Title VII, 42 U.S.C. §2000e(g) and (h).

IV. EXHAUSTION OF REMEDIES

5. Prior to instituting this action, Plaintiff filed a timely charge of discrimination with the Equal Opportunity Employment Commission (“EEOC”) pursuant to Title I of the ADA and 42 U.S.C. §12112. (Plaintiff’s Charge of Discrimination is attached hereto as Exhibit A). On July 22, 2004 the EEOC filed a complaint against Tri-State Security Agency, Inc., based *inter alia*, on Defendant’s unlawful and intentional patterns and practices of discrimination against its employees by discharging Rocky Dillard, a qualified individual with a disability, for taking medication for the treatment and prevention of seizures.

V. FACTS / CAUSE OF ACTION

6. Plaintiff was employed by Tri-State on February 2, 2000 to fill a position as a security guard during the evening and night shift. This position was his first job.

7. Plaintiff duties included but were not limited to patrolling designated buildings, partly

performed by operating a company vehicle. With a reasonable accommodation of additional instruction and close supervision, Plaintiff was able to perform the essential functions of the job.

8. In July of 2000 Tri-State sought information about medications taken by employees. At that time Tri-State learned about the medication taken by the Plaintiff for a seizure disorder. Once Defendant learned about the medication, Mr. Dillard was terminated from his employment.

9. The conduct of the defendant described above constitutes unlawful discrimination on the basis of disability in violation of the ADA and 42 U.S.C. §12101 et seq.

10. Defendant's unlawful employment practices adversely affect the Plaintiff's status as an employee causing Plaintiff to suffer loss of salary and benefits.

11. Defendant's intentional unlawful employment practices were with malice or reckless indifference to the rights of the Plaintiff herein.

VI. PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Plaintiff respectively requests that the Court:

(a) Declare Defendant's practices as complained of herein to be in violation of Title I of the American with Disabilities Act of 1990 and 42 U.S.C. §12101.

(b) Grant Plaintiff reinstatement to his previous employment with full rights and benefits as if he was not discharged based on intentional discrimination

(c) Grant Plaintiff an Order requiring Defendant to make him whole by appropriate back pay, front pay and all other benefits of employment lost as a result of the actions complained of herein in an amount to be proved at trial.

(d) Grant Plaintiff any compensatory and/or punitive damages to which she is entitled under the above Title VII of the Civil Rights Act of 1964 as a result of the actions complained of herein, including but not limited to damages for his embarrassment, humiliation and emotional distress.

(e) Grant Plaintiff a trial by jury.

(f) Grant Plaintiff his costs and expenses incurred herein, including a reasonable attorney's fee pursuant to 42 U.S.C. §1988.

(g) Grant Plaintiff such other further relief both general and specific as the court deems necessary and proper in this case.

Respectfully submitted,
Rocky Dillard, Plaintiff

By: 

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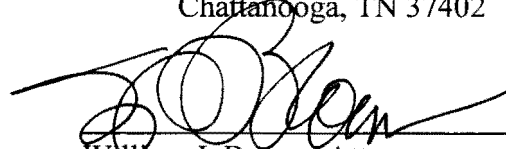
CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to Intervene, Complaint to Intervene and attached Memorandum of Law was served on counsel for the defendant by placing a copy of same in the U.S. Mail with sufficient postage to insure delivery and addressed and faxed to:

Deidre Smith, Attorney for
Equal Employment Opportunity Commission
1407 Union Avenue, Suite 621
Memphis, TN 38104

John D. Barry, Attorney for
Tri-State Security Agency, Inc.
600 Georgia Avenue, Suite 4
Chattanooga, TN 37402

on this the 30th day of September, 2004.



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