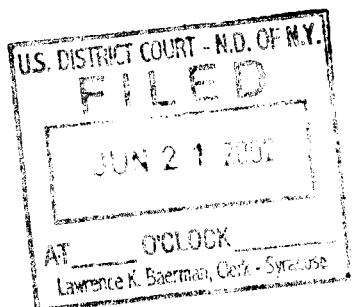


S.M.V.
G025 ✓
AOK ✓

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



-----x
EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :
 :
 Plaintiff, :
 :
 -against- :
 :
 STATE UNIVERSITY OF NEW YORK :
 UPSTATE MEDICAL UNIVERSITY :
 formerly known as SUNY HEALTH :
 SCIENCE CENTER AT SYRACUSE :
 :
 Defendant. :
-----x

Civil Action No.

COMPLAINT

JURY TRIAL DEMAND

NPM DEP

5: 02 -CV-0820

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990, to compel Defendant to comply with a Settlement Agreement, achieved through the EEOC mediation process, in resolution of a charge of disability discrimination, and to provide appropriate relief to Mark Polly. As alleged with greater specificity below, Mr. Polly and the Defendant entered into a Settlement Agreement through the EEOC's mediation program on January 16, 2002, the terms of which included placing Mr. Polly in a Nursing Station Clerk position. However, Defendant has failed to place Mr. Polly in the position in violation of the agreement.

JURIDICTION 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) ("ADA"), which incorporates by reference sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42

U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

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

PARTIES

3. Plaintiff, the 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 (incorporating 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 SUNY Upstate Medical Center. has continuously been a New York corporation doing business in the State of New York and the county of Onondaga 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 within the meaning of Section 101(5) and (7) of the ADA, 42 U.S.C. § 12111(5) and (7), which incorporates by reference Sections 701 (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Mark Polly filed a charge with the Commission alleging violations of the ADA by Defendant. All conditions

precedent to the institution of this lawsuit have been fulfilled.

7. Defendants have failed and refused to comply with the terms of a Settlement Agreement it entered into with Mark Polly through the EEOC mediation process on or about January 16, 2002. A copy of the Settlement Agreement is attached to the Complaint as Exhibit A. The terms of the Settlement Agreement require that Defendant place Mr. Polly in a Nursing Station Clerk position based on the job description provided by Defendant during the mediation process.

8. The effect of the practices complained of above has been to deprive Mark Polly of equal employment opportunities and otherwise adversely affect his status as an employee because of his disability.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a judgment ordering Defendant to place Mark Polly in the Nursing Station Clerk position as set forth in the Settlement Agreement and based on the job description provided by Defendant during the mediation process.

B. Compel Defendant's specific performance of the Settlement Agreement entered into and executed by Defendant and Mark Polly.

C. Order Defendant to make whole Mark Polly by providing compensation for past and future pecuniary losses resulting from the breach of the settlement agreement described in paragraph 7 above, including any other related costs in amounts to be determined at trial.

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

JURY TRIAL DEMAND

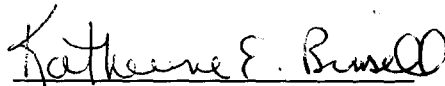
The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

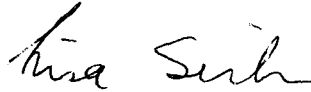
Gwendolyn Y. Reams
Acting Deputy General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

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(212) 337-1075 (facsimile)
[temporary address/phone number]

SETTLEMENT AGREEMENT

CHARGE NUMBER: 165A200082
CHARGING PARTY: Mark M. Polly
RESPONDENT: SUNY Upstate Medical University

1. In exchange for satisfactory fulfillment of the promises by ^{SUNY}Upstate Medical University ~~Hospital~~ (Respondent) in this agreement, Mark M. Polly (Charging Party) agrees not to institute a lawsuit under the Americans with Disabilities Act of 1990 in EEOC Charge Number 165A200082 or its corresponding New York State Division of Human Rights Complaint and agrees not to file grievances regarding any issues covered by the above referenced charge of discrimination. Charging Party does not waive any right to pursue the issue of pay for out of title work. Respondent retains all rights to oppose Charging Party's claims against it for alleged out of title work.
2. Further, the parties agree that submission of this agreement to the EEOC will constitute a request for closure of EEOC Charge Number 165A200082 and its corresponding New York State Division of Human Rights Complaint.
3. It is understood that this agreement does not constitute an admission by Respondent of any violation of the Americans with Disabilities Act of 1990 or of the New York State Human Rights Law.
4. Respondent agrees that there shall be no discrimination or retaliation in violation of the Americans with Disabilities Act of 1990 against any person because of Charge Number 165A200082, or actions relating to that charge or this settlement.
5. The parties agree that the EEOC is authorized to investigate compliance with this agreement, and, upon notice to both parties with opportunity to address the issue, to bring a legal action to enforce the agreement.
6. The parties agree that this agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this agreement.
7. This document constitutes a final and complete statement of the entire agreement between the parties.
8. The parties agree that future request for accommodation, if any, should be directed to, and will be responded to by the Office of Human Resources.
9. Charging Party agrees to undergo functional capacity testing to be ordered by his treating physician and paid for by Respondent. Charging Party agrees that Respondent will be provided a copy of the results of the functional capacity test.
10. In exchange for satisfactory fulfillment by the charging party of the promises made in this agreement, Respondent agrees to:
 - a. Restore one half of all accruals used by Charging Party from August 31, 2001 to the effective date of this agreement;
 - b. Pay for a functional capacity test to be administered to Charging Party within two weeks of the effective date of this agreement, or as soon after two weeks as is practicable.
 - c. Upon receiving medical restrictions from Charging Party's physician which are no more restrictive than those contained in the employee leave certificate dated June 25, 2001, to place Charging Party in the position of Nursing Station Clerk 50516 (in Medical Cardiology Dept.

Signature: [Handwritten Signature] Printed Name: Molly C. Zimmermann

Date: 1-8-02 Title: Associate Counsel

Signature: [Handwritten Signature] Printed Name: Mark M. Polly

Date: 1/16/02 Title: NSC

Handwritten notes:
5-6 witnesses
EEOC to bring
12/11/01
10 Suny's do

Handwritten initials:
S
S