

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

PROFESSIONAL TRANSIT MANAGEMENT LTD, LLC d/b/a SPRINGS TRANSIT

Defendant.

COMPLAINT AND JURY TRIAL DEMAND

NATURE OF THE ACTION

This action arises under Title VII of the Civil Rights Act of 1964 (“Title VII”) to correct unlawful employment practices on the basis of a hostile work environment for a class of employees based on color and race (African American) and national origin (Hispanic, Asian) and to provide appropriate relief to Andy Martinez (“Martinez”), and other similarly situated employees and former employees of Defendant, PROFESSIONAL TRANSIT MANAGEMENT, LTD LLC d/b/a SPRINGS TRANSIT, who were adversely affected by such practices. As set forth below, the Equal Employment Opportunity Commission (EEOC or Commission) alleges that Defendant discriminated against Martinez and a class of similarly situated individuals by subjecting them hostile work environment because of national origin, race, and color in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

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 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), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(A).

2. The alleged unlawful employment practices were committed within the jurisdiction of the United States District Court for the District of Colorado.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission, is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant has continuously been a Colorado corporation doing business in the State of Colorado and has continuously had at least fifteen employees. Defendant is engaged in the business of providing local and express bus transportation services in Colorado.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Martinez filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant. All

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

7. Since at least January, 2003, Defendant has engaged in unlawful employment practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by discriminating against Martinez and a class of similarly situated individuals by subjecting them to a hostile work environment because of race and color (African American) and national origin (Hispanic, Asian).

8. Martinez was hired by Defendant on or about July 14, 2004, as a mechanic and performed the duties of his position in a satisfactory manner.

9. Beginning in or about August 2004, Martinez began hearing racial slurs directed at Hispanics, African Americans, and Asians.

10. On or about August 2004, Martinez' co-workers continually made racial slurs and some of the derogatory comments involved references to "gassing" and "shooting" members of minority groups including Hispanics, African Americans, and Asians.

11. On or about August 2004, Martinez' co-workers stated that it should not be against the law to shoot "[n-words], Mexicans, and chinks" and that "we should be able to just line them up and shoot them down," and, "I hate them " [n-words]".

12. On or about August 2004, Martinez' co-worker made comments such as, " If [n-words] don't like the way they are treated in America, get on a boat and go back to Africa" and "If I had my way, I'd gas them (African Americans) like Hitler did the Jews."

13. On or about August 2004, Martinez confronted his co-workers about these comments and they stated that they had a "deep hatred" for minorities.

14. On or about August 2004, Martinez' co-workers also discussed target shooting

and were known to keep guns in their possession.

15. The discriminatory and hostile comments made by Martinez' co-workers were condoned and participated in by Pete Faria, Maintenance Supervisor.

16. The discriminatory and hostile comments by Martinez' co-workers were so pervasive and severe that Martinez and other minority employees became fearful of their personal safety while on the job.

17. On or about August 2004, Martinez complained to Glenn Cross, EEO Manager about the hostile environment but it did not cease.

18. On or about October 2004, another co-worker repeatedly used the word "[n-word]" referring to African Americans and stated that his "neighborhood was going to shit because of a clan of Mexicans that were moving in next door."

19. On or about November 2004, Martinez' co-worker stated, "I would shoot every Mexican crossing the border, women and children included."

20. On or after November 2004, an African American employee overheard the threatening comments and wrote to management about the racial harassment and his fear of workplace violence based on race but the harassment and hostile environment did not cease.

21. On or about December 2004, Martinez again complained to management about the racial environment and threats but the harassment and hostile environment did not cease.

22. On or about February 2005, Martinez again complained to management about the racial comments and threats but the harassment and hostile environment did not cease.

23. Despite the complaints of Martinez and others about the hostile work environment, management failed to take sufficient measures to stop the harassment and hostile

environment.

24. The effect of the practices complained in paragraphs 7 through 23 above has been to deprive Martinez and others of equal employment opportunities and otherwise adversely affect their status as employees because of their race, color, and/or national origin.

25. Because of their national origin (Hispanic, Asian) and race and color (African American, black), Defendant denied Martinez and other similarly situated current and former employees equal employment opportunities and otherwise adversely affected their status as employees.

26. As a result of Defendant's actions, Martinez and a class of similarly situated individuals has suffered damages, including but not limited to emotional distress, lost earnings and benefits, and other expenses, in amounts subject to proof.

27. The unlawful employment practices complained of in the foregoing paragraphs were and are intentional.

28. The unlawful employment practices complained of above were committed with malice or with reckless disregard for the federally protected rights of Martinez and a class of similarly situated current and former employees.

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 practice which discriminates on the basis of national origin, race and/or color.

B. Order the Defendant to institute and carry out policies, practices and programs

which provide equal employment opportunities for Hispanic, Asian and African American employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order the Defendant to make whole Martinez, and a class of similarly situated individuals by providing compensation for past, and future pecuniary losses incurred as a result of the unlawful employment practices described above, in amounts to be determined at trial.

D. Order the Defendant to make whole Martinez and a class of similarly situated individuals, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

E. Order Defendant to pay punitive damages for its malicious and reckless conduct complained of above in amounts to be determined at trial.

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.

Dated: September 26, 2006

Respectf

ully submitted,

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Associate

U.S. EQUAL EMPLOYMENT
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PLEASE NOTE:

It is sufficient for purposes of service on the Plaintiff Equal Employment Opportunity Commission that pleadings, notices, and any other court document be served upon the Trial Attorney. Therefore, duplicate service is not required on the General Counsel or Deputy General Counsel located in **Washington, D.C.**