

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL MORRONE
3501 Spruce Drive
Northampton, PA 18067 and

GARY HALL
6545 Walnut Lane
Coopersburg, PA 18030 and

JAMES O'BRIEN
2733 Valley Woods Road
Hatfield, PA 19440 and

JOPSEPH CUVO
2123 Eugene Street
Easton, PA 18045

Plaintiffs,

v.

HANNABERY ELECTRIC, INC.
d/b/a HANNABERY HVAC
200 Schantz Road
Allentown, PA 18104

Defendant.

CIVIL ACTION

No. _____

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

The above-named Plaintiffs hereby aver as follows:

I. Introduction

1. The Plaintiffs have initiated the instant action to redress age discrimination and retaliation by Defendant Hannabery Electric, Inc. (hereinafter "Defendant") in violation of the Age Discrimination in Employment Act (ADEA) and the Pennsylvania Human Relations Act, as well as other applicable federal and state law.

II. Parties

2. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
3. Plaintiff Michael Morrone is an adult individual and citizen of the United States with an address as captioned above.
4. Plaintiff Gary Hall is an adult individual and citizen of the United States with an address as captioned above.
5. Plaintiff James O'Brien is an adult individual and citizen of the United States with an address as captioned above.
6. Plaintiff Joseph Cuvo is an adult individual and citizen of the United States with an address as captioned above.
7. Defendant is a Pennsylvania corporation with an office at the above-captioned address.
8. At all times relevant herein, Defendant acted through its agents, servants and employees, each of whom was in the scope of his or her employment at all times relevant herein.
9. Defendant is an "employer" within the meaning of the Age Discrimination in Employment Act because it is engaged in an industry affecting commerce and because it maintains or maintained twenty (20) or more employees for each working day in each of twenty (20) or more weeks in the current or preceding calendar year.
10. Defendant also maintains a sufficient number of employees to satisfy the jurisdictional prerequisites of the Pennsylvania Human Relations Act (requiring four or more employees).

III. Jurisdiction and Venue

11. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
12. The instant action is initiated pursuant to the Age Discrimination in Employment Act and other applicable federal and state law.
13. The Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of such jurisdiction to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.
14. The United States District Court for the Eastern District of Pennsylvania may exercise original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of civil rights.
15. The Court may also maintain supplemental jurisdiction over the state law claims set forth herein pursuant to 28 U.S.C. § 1367(a) and Rule 18(a) of the Federal Rules of Civil Procedure because they are sufficiently related to the claim(s) within the Court's original jurisdiction that they form part of the same case or controversy.
16. Venue is properly laid in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) because Defendant resides in and/or conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

17. Plaintiffs were employed in the Eastern District of Pennsylvania at the time of the unlawful actions set forth herein.

IV. Procedural and Administrative Requirements

18. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
19. The Plaintiffs have each satisfied the procedural and administrative requirements for proceeding under the Age Discrimination in Employment Act and the Pennsylvania Human Relations Act as follows:

a. Each Plaintiff has filed one or more timely written charges of ADEA retaliation against Defendant with the Equal Employment Opportunity Commission alleging retaliation;

b. After a party has filed a charge of age discrimination or retaliation with the EEOC, that party must wait at least 60 days before filing a civil action. *See* 29 U.S.C. § 626(d).

c. Over sixty (60) days have passed since the filing of the aforementioned charge(s);

d. Plaintiffs also cross-filed the aforementioned charge(s) of discrimination with the Pennsylvania Human Relations Commission;

e. Plaintiffs have exhausted the required federal and state administrative remedies as to the allegations of this Complaint.

V. Factual Background

20. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

21. Each named Plaintiff is over 40 years of age and within the class of persons protected by the Age Discrimination in Employment Act.
22. On or about September 26, 2006, the Equal Employment Opportunity Commission filed a civil action against Defendant in the United States District Court for the Eastern District of Pennsylvania (at case no. 06-CV-4331, docket item no. 1) alleging that it had engaged in age discrimination against its employees.
23. Plaintiffs hereby incorporate paragraphs 7 (a) – (j), paragraph 8, and paragraph 9 of aforesaid Complaint filed against Defendant.
24. Since the date of the filing of the foregoing action, Defendant has engaged in unlawful retaliation and intimidation of Plaintiffs as a result of their cooperation with the EEOC therein and other protected activity by Plaintiffs.
25. By way of example only, Defendant has engaged in the following retaliatory conduct as a direct result of Plaintiffs' protected activity since the filing of the foregoing action:
 - a. Improper discipline of one or more Plaintiffs;
 - b. Pre-textual suspension and/or discharge of one or more Plaintiffs;
 - c. Threats and intimidation in an effort to discourage Plaintiffs from assisting in or cooperating with the EEOC in its prosecution of an action against Defendant;
 - d. Unjustified denial of raises and other benefits of employment;
 - e. Denial of work assignments;
 - f. False accusations of criminal activity;
 - g. Other acts of retaliation against Plaintiffs.

COUNT ONE
ADEA RETALIATION

26. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
27. The Age Discrimination in Employment Act prohibits employers from discriminating against individual employees because of their opposition to any practice made unlawful under the statute. *See* 29 U.S.C. § 623(d).
28. Plaintiffs have opposed practices made unlawful by the foregoing statute.
29. Since September 26, 2006, in taking adverse employment actions as aforesaid against Plaintiffs as a result of their opposition to age discrimination and other protected activity, Defendant has engaged in repeated and ongoing violations of the Age Discrimination in Employment Act.

WHEREFORE, Plaintiffs respectfully request the relief set forth in the attached *Ad Damnum* clause.

COUNT ONE
PHRA RETALIATION

30. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
31. Defendant's actions as aforesaid, in harassing and discriminating against Plaintiffs based upon their opposition to age discrimination and other protected activity, also violated the Pennsylvania Human Relations Act, 43 Pa.C.S.A. § 959 *et. seq.*

AD DAMNUM CLAUSE/PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor and against Defendant and that it enter an Order as follows:

- a. Defendant is to be permanently enjoined from discriminating against or retaliating against Plaintiffs on any basis forbidden by the Age Discrimination in Employment Act and other applicable federal and state law;
- b. Defendant is to be prohibited from continuing to maintain their its unlawful policy, practice, or custom of discriminating against employees based on their engaging in protected activity, and is to be ordered to promulgate an effective policy against such discrimination and to adhere thereto;
- c. Defendant is to compensate Plaintiffs, reimburse Plaintiffs, and to make Plaintiffs whole for any and all pay and benefits Plaintiffs would have received had it not been for Defendant's unlawful actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiffs should be accorded those benefits illegally withheld from the date Plaintiffs first suffered discrimination at the hands of Defendants until the date of verdict;
- d. Plaintiffs are to be awarded actual damages, as well as damages for the pain, suffering, and humiliation caused to Plaintiffs by Defendant's actions (on Plaintiffs' PHRA claims only);
- e. Double damages are to be awarded for willful violation of the ADEA;
- f. Plaintiffs are to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate;
- g. Plaintiffs are to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;
- h. Any verdict in favor of Plaintiffs is to be molded by the Court to maximize the financial recovery available to Plaintiffs in light of the caps on certain damages set forth in 42 U.S.C. § 1981a, as mandated by the decision of the Third Circuit Court of

Appeals in *Gagliardo v. Connaught Laboratories*, 311 F.3d 565, 570-71 (3d Cir. 2002);

- i. Plaintiffs are to be granted such additional injunctive or other relief as may be requested during the pendency of this action in an effort to ensure Defendant does not engage (or ceases engaging) in unlawful retaliation against Plaintiffs or other witnesses to this action;
- j. That the Court is to maintain jurisdiction of this action after verdict to ensure compliance with its Orders therein.

Respectfully submitted,

TIMOTHY M. KOLMAN AND ASSOCIATES

By: /s/ Timothy M. Kolman, Esquire

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