

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT, E.D.N.Y.
AUG 09 2004



BROOKLYN OFFICE
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COMPLAINT
AND
JURY DEMAND

GARAUFIS, J.

SEV. M.

-----X
GERARD CERDA, individually and on :
behalf of all persons similarly :
situated, :
Plaintiff, :
-against- :
RESTAURANT ASSOCIATES, INC., and :
RA TENNIS CORP., :
Defendants. :
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Plaintiff GERARD CERDA, by his attorney, Eugene A. Gaer, for his Complaint alleges as follows:

1. This is an action for damages and equitable relief for unlawful employment discrimination on the basis of national origin and race respecting the assignment of positions and locations to food vendors employed at the United States Open Tennis Tournament (the "US Open"). Such discrimination is violative of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"), the New York State Human Rights Law, Executive Law § 290 et seq. ("NYSHRL"), and the New York City Human Rights Law, Administrative Code § 8-107(1)(a) et seq. ("NYCHRL").

JURISDICTION AND VENUE

2. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343 and 1367. Venue is appropriate under 28 U.S.C. § 1391.

3. The Court has jurisdiction over the federal claims of discrimination alleged herein in that Cerda filed a complaint respecting the wrongful acts of discrimination alleged herein with the United States Equal Employment Opportunity Commission on or about October 27, 2003, which claim was dismissed upon the issuance of a Notice of Right To Sue on June 14, 2004. Fewer than 90 days have elapsed since the date of the issuance of said Notice of Right To Sue.

4. The Court has jurisdiction over the claims of discrimination alleged herein under NYSHRL and NYCHRL under principles of supplemental and pendant jurisdiction.

THE PARTIES

5. Plaintiff Cerda is a citizen and resident of the State of New York who resides at 302 East 103rd Street, Apt. 3-D, New York, New York 10029.

6. Plaintiff Cerda is of Hispanic national origin in that his mother is of Puerto Rican, and his father of Mexican, national origin.

7. For eleven years Cerda's principal occupation has been employment as a refreshment vendor at various sports events, including the US Open.

8. Defendant RESTAURANT ASSOCIATES, INC. ("Associates"), is a New York corporation having a principal place of business at 36 West 44th Street, 5th Floor, New York, New York 10036.

9. Defendant RA TENNIS CORP. ("RA") is a New York Corporation having a principal place of business at Flushing Meadow Park, Flushing, Queens, New York.

10. Associates and RA are each engaged in interstate commerce and employ more than 100 persons each.

11. Because Associates and RA are closely affiliated with respect to ownership, management, labor relations and all matters at issue in this case, they are jointly and severally liable with respect to all claims alleged herein.

THE FACTS

12. Every year during late August and early September the United States Tennis Federation (the "USTA") conducts the US Open at its tennis center located at Flushing Meadow Park, in the Borough of Queens, City and State of New York. The US Open is regarded as one of the four premier international tennis tournaments. According to its organizers, the US Open is "the highest attended annual sporting event in the world".

13. A spectator event of the magnitude of the US Open

necessarily has facilities for providing food and beverages. These facilities are located throughout the grounds of the tennis center, both inside and outside the main stadium. Since at least 2000, and at all times relevant to this complaint, the USTA has contracted with Associates and RA to operate and manage such facilities.

14. Each year in the months of June and July, Associates and RA interview and hire several hundred persons to staff the refreshment facilities at the US Open.

15. The refreshment facilities at the US Open are not equally valuable in terms of compensation received by the personnel who staff them. The stationary beer wagons are the best sales assignments because: (a) they generate the most tips; and (b) they are staffed by only two people per wagon, which means that the 14% sales commissions paid for each sales location are only divided between those two people. Other locations are staffed by as many as 20 people in sales and support, all of whom receive a smaller share of the commissions.

16. In each year since 2000, the great majority of personnel have been Hispanic and/or non-white (including African-Americans and Asian-Americans), but Associates and RA have deliberately and overwhelmingly assigned the beer wagons to non-Hispanic white people.

17. Cerda worked as a vendor at the US Open in 2000 and 2003. In both years defendants Associates and RA failed and refused to assign him to the beer wagons while assigning these positions to non-Hispanic white personnel. In 2002 Cerda also received a discriminatory assignment at a facility other than a beer wagon.

18. Because of the recurring nature but short time-span of the US Open (less than three weeks) Cerda and the class set forth herein do not have an adequate remedy at law for the wrongful conduct of Associates.

19. The USTA is not being named as a defendant at this time solely on the basis of its representation to the EEOC that it has no role in hiring or staffing decisions by Associates and RA. In the event that evidence developed during discovery indicates that the USTA is in a position to stop the discriminatory conduct by its concessionaires Associates and RA, Cerda may move to amend this complaint to name the USTA as an additional defendant.

CLASS ACTION ALLEGATIONS

20. Cerda brings this action as a class action pursuant to subparts (a), (b) (2) and (b) (3) of Rule 23, Fed. R. Civ. Proc., on behalf of a class consisting of all Hispanic and/or non-white refreshment concession personnel who were hired, employed or offered employment by Associates or RA at the US Open in all

years since 2000.

21. Members of the class are so numerous that joinder of all members is impracticable. The exact number of class members is not known at this time and can only be ascertained through appropriate discovery. Several hundred refreshment concession workers are employed during each US Open and the individuals who are so employed change from year to year. Moreover, the short time-span of the US Open means that this is a situation which has recurred and will likely recur in the future before many of the individual class members become aware of the degree to which they have been injured and of their legal remedies for such injury. The identity of class members may be determined from records maintained by Associates and RA and, if appropriate, by advertisement. Class members may be notified by mail and publication, using forms of notice similar to those customarily used in employment discrimination class actions.

22. Cerda's claims are typical of the claims of the other members of the class. Cerda was assigned to facilities other than a beer wagon during three of the years subject to this complaint. He suffered actual diminution of income, humiliation and emotional injury as a result of being discriminated against in favor of non-Hispanic white vendors. He has retained competent and experienced counsel who intend to prosecute this action vigorously. Cerda has no interests which are contrary to

or in conflict with those of the class which he seeks to represent. The interests of the class will be fairly and adequately protected by Cerda.

23. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class. Among the questions of law and fact common to the class are:

- (a) Whether the distribution by Associates and RA of preferable work assignments to non-Hispanic whites constituted acts of unlawful employment discrimination is violation of Title VII, the NYSHRL and the NYCHRL;
- (b) Whether members of the class have sustained damages as a result of the conduct of Associates and RA and the proper measure of such damages;
- (c) Whether an injunction should be issued barring Associates and RA from engaging in such conduct in the future; and
- (d) Whether the USTA bore any measure of responsibility for the discriminatory acts set forth herein.

24. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Cerda knows of no difficult to be encountered in the management of this action that would preclude its maintenance

as a class action.

FIRST CLAIM FOR RELIEF

(Employment Discrimination under Title VII)

25. Cerda repeats and realleges the allegations of paragraphs 1 through 24 hereof as if fully set forth herein.

26. The acts of Associates and RA complained of herein constituted unlawful employment discrimination against Hispanic and/or non-white refreshment concession workers such as Cerda in violation of Title VII.

SECOND CLAIM FOR RELIEF

(Employment Discrimination under NYSHRL)

27. Cerda repeats and realleges the allegations of paragraphs 1 through 26 hereof as if fully set forth herein.

28. The acts of Associates and RA complained of herein constituted unlawful employment discrimination against Hispanic and/or non-white refreshment concession workers such as Cerda in violation of NYSHRL.

THIRD CLAIM FOR RELIEF

(Employment Discrimination under NYCHRL)

29. Cerda repeats and realleges the allegations of paragraphs 1 through 28 as if fully set forth herein.

30. On August 9, 2004, copies of the proposed complaint herein were served on the New York City Commission on Human Rights and the New York City Corporation Counsel pursuant to § 8-502(c) of the New York City Administrative Code.

31. The acts of Associates and RA complained of herein constituted unlawful employment discrimination against Hispanic and/or non-white refreshment concession workers such as Cerda in violation of NYCHRL.

WHEREFORE, Plaintiff demands judgment in favor of himself and the class as follows:

(a) back pay in an amount to be determined at trial for past salary lost as a result of discrimination respecting work assignments;

(b) an injunction barring defendants from further engaging in the discriminatory conduct alleged herein;

(c) front pay in an amount to be determined at trial;


(d) compensation in an amount to be determined at trial for humiliation, mental anguish, pain and suffering with respect to all claims as to which such damages are

authorized by law;

together with interest on the amounts awarded, the costs and disbursements of this action (including reasonable attorney's fees and litigation expenses as provided by law) and such other relief as is just and proper.

Plaintiff Demands a Trial by Jury.

Dated: New York, New York
August 9, 2004


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