

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

BELL GAS, INCORPORATED, CORTEZ)
GAS COMPANY, AND ABC PROPANE,)
INCORPORATED, d/b/a AWC PROPANE,)

Defendants.)

CIVIL -02-1412 LCS/KBM

COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of retaliation, and to provide appropriate relief to Evelyn Silva who was adversely affected by such practices. The Commission alleges that Ms. Silva was retaliated against by Defendants Bell Gas, Incorporated, Cortez Gas Company, and ABC Propane, Incorporated, d/b/a AWC Propane because she opposed unlawful employment practices and/or because she made a charge and participated in proceedings protected by Title VII. This action also seeks to remedy the Defendants' failure to make and preserve employment records as required by Section 709(c) of Title VII.

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 Section 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 committed within the jurisdiction of the United States District Court for the District of New Mexico.

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 VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, the Defendants Bell Gas, Incorporated, Cortez Gas Company, and ABC Propane, Incorporated, d/b/a AWC Propane (collectively the "Defendants" or "Employers") were each New Mexico Corporations which continuously did and are now doing business in the State of New Mexico and the City of Roswell. Each has continuously had at least fifteen employees and collectively they have operated a business as a single employer under the name AWC Propane located in Roswell.

5. At all relevant times, the Defendants have continuously been and are now employers 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, Evelyn Silva filed a charge with the Commission alleging a violation of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

RETALIATION

7. Prior to June 17, 2002, Evelyn Silva filed an employment discrimination charge with the Equal Employment Opportunity Commission against Ballew Distributing, a company that shares common management and ownership with the Defendants in this action.

8. On or about June 17, 2002, Evelyn Silva began working for AWC Propane in Roswell, New Mexico.

9. On or about June 19, 2002, Evelyn Silva was identified by management officials of the Defendants as the individual who had previously filed a charge of discrimination against Ballew Distributing, which has common ownership with the Defendants.

10. On or about June 20, 2002 AWC Propane discharged Evelyn Silva.

11. Since at least June 20, 2002, Defendants have engaged in unlawful employment practices at their Roswell, New Mexico facility in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) by discharging Evelyn Silva in retaliation for her opposition to unlawful employment practices and/or because she made a charge and participated in proceedings protected by Title VII.

12. The effect of the practices complained of in Paragraphs 7-11 above has been to deprive Evelyn Silva of equal employment opportunities and otherwise adversely affect her status as an employee because of her opposition to unlawful employment practices and/or for making a charge and participating in proceedings protected by Title VII.

13. The unlawful employment practices complained of in Paragraphs 7-11 above were intentional.

14. The unlawful employment practices complained of in Paragraphs 7-11 above were

done with malice or reckless indifference to the federally protected rights of Evelyn Silva.

RECORD KEEPING

15. Since at least June 17, 2002, Defendants have failed, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed, including failing to preserve Evelyn Silva's employment application.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns and all persons in active concert or participation with them, from engaging in any employment practice which discriminates or retaliates against any individual who opposes any practice made unlawful by Title VII or who makes a charge, testifies, assists or participates in any manner in an investigation, proceeding or hearing under Title VII.

B. Order Defendants to institute and carry out policies, practices and programs which provide equal employment opportunities for any individual who opposes any practice made unlawful by Title VII or who makes a charge, testifies, assists or participates in any manner in an investigation, proceeding or hearing under Title VII, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendants to make whole Evelyn Silva, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, reinstatement and front pay to Evelyn Silva.

D. Order Defendants to make whole Evelyn Silva by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 11 above, including job search expenses and other pecuniary losses, in amounts to be determined at trial.

E. Order Defendants to make whole Evelyn Silva, by providing compensation for past and future non pecuniary losses resulting from the unlawful practices complained of in paragraph 11 above, including but not limited to, compensation for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendants to pay Evelyn Silva punitive damages for its malicious and/or reckless conduct described in paragraph 11 above, in an amount to be determined at trial.

G. Order Defendants to make and preserve all records, in accordance with the provisions of Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-8(c), relevant to the determination of whether unlawful employment practices have been or are being committed.

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

I. Award the Commission its costs in this action.

JURY TRIAL DEMANDED

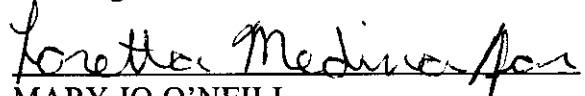
The Commission requests a jury trial on all questions of fact raised by its Complaint.

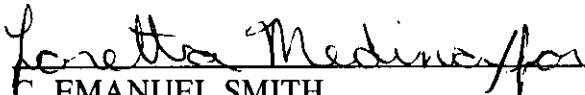
DATED this 26th day of September, 2002.

Respectfully submitted,

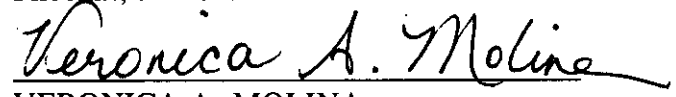
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