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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,

v.

APPLEBEE'S NEIGHBORHOOD GRILL AND BAR OF GEORGIA, INC., Defendant.

Civil Action No. 1.02-CV-829

March 29, 2002.

Jury Trial Demanded

COMPLAINT

This is an action under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the bases of color and retaliation and to provide appropriate relief to the charging party, Dwight Burch, who was adversely affected by such practices. Mr. Burch was subject to harassment on the basis of color by one of Defendant's management employees in violation of Title VII. Moreover, he was fired as a result of his complaining about such harassment, in violation 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 employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Northern District of Georgia, Atlanta Division.

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, Defendant, Applebee's Neighborhood Grill and Bar of Georgia, Inc. (the "Employer"), has continuously been a Georgia corporation doing business in the State of Georgia and the City of Jonesboro, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 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, Mr. Dwight Burch filed a charge with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least January 2001, Defendant Employer engaged in unlawful employment practices at its Tara Boulevard, Jonesboro, Georgia, location, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), and Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), by subjecting Mr. Burch to

(a) Harassment based upon his color, dark-skinned, including unwelcome and inappropriate comments about the dark color of his skin and

(b) Retaliatory discharge for exercising rights protected by Title VII.

8. The effect of the practices complained of in paragraph 7, above, has been to deprive Mr. Burch of equal employment opportunities and otherwise adversely affect his status as an employee because of his color.

9. The unlawful employment practices complained of in paragraph 7, above, were intentional.

10. The unlawful employment practices complained of in paragraph 7, above, were done with malice or with reckless indifference to the federally protected rights of Mr. Dwight Burch.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active conceit or participation with it, from engaging in harassment on the bases of color and retaliation and any other employment practice which discriminates on the basis of color or retaliation.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities without retaliation, which prohibit its employees, officers, agents, and others working on its behalf from engaging in harassment on the bases of color, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Mr. Burch, who was adversely affected by Defendant Employer's discriminatory conduct, 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 front-pay and/or rightful-place reinstatement of Mr.

Burch.

D. Order Defendant Employer to make whole Mr. Burch by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7, above, including job-search expenses resulting from the discharge, in amounts to be determined at trial.

E. Order Defendant Employer to make whole Mr. Burch by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7, above, including emotional pain and suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Defendant Employer to pay Mr. Burch punitive damages for its malicious and reckless conduct described in paragraph 7, above, in amounts to be determined at trial.

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

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

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

Respectfully submitted,

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. APPLEBEE'S NEIGHBORHOOD GRILL AND BAR OF GEORGIA, INC., Defendant.

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