

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
Plaintiff,)	
)	
v.)	
)	
RMAX, INC.,)	
)	Civil Action No. CCB 03 CV2649
Defendant.)	
)	
)	
)	
_____)	

MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Plaintiff, the Equal Employment Opportunity Commission ("EEOC" or "the Commission"), hereby moves this Court for leave to file an Amended Complaint, copies of which are attached hereto as Attachments "A" and "B". The EEOC requests leave to amend the Complaint to correct Defendant's name from "RMAX, Inc." to "RMAX Services, LLC" for the reasons set forth in the accompanying Memorandum of Law.

Respectfully submitted,

GERALD S. KIEL
Regional Attorney

DEBRA M. LAWRENCE
Supervisory Trial Attorney

/s/ _____
REGINA M. ANDREW
Trial Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Baltimore District Office
10 S. Howard Street, 3rd Flr.
Baltimore, Maryland 21201

ATTACHMENT "A"

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
Baltimore District Office)	
10 S. Howard Street, 3d Floor)	
Baltimore, Maryland 21201)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. CCB 03 CV2649
)	
)	<u>AMENDED</u>
RMAX Services, LLC)	<u>C O M P L A I N T</u>
7201 Allen Drive)	
Salisbury, MD 21802)	JURY TRIAL DEMAND
)	
Defendant.)	

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Pamela Johnson. On September 13, 2002, Defendant, RMAX, wrongfully terminated its employee, Pamela Johnson, in retaliation for requesting an accommodation for her disability, reactive airways disease and bronchial asthma.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. Section 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. Sections 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section

1981a.

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

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) of Title VII, 42 U.S.C. Section 2000e-5(f)(1).

4. At all relevant times, Defendant, RMAX Services, LLC ("Defendant" or "RMAX"), has continuously been a Maryland corporation, doing business in the State of Maryland and the City of Salisbury and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, Defendant has been a covered entity within the meaning of Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, Pamela Johnson filed a charge with the Commission alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Beginning on or about August 8, 2002 and continuing to the present, Defendant engaged in unlawful employment practices at its Salisbury, Maryland facility, in violation of Section 503 of Title V of the ADA, 42 U.S.C. Section 12203. The practices include unlawfully discharging Pamela Johnson, a qualified individual with a disability as defined by Section 101(8) of the ADA, 42 U.S.C. §12111(8), in retaliation for requesting an accommodation for her disability, reactive airways disease and bronchial asthma, a disability as defined under Section 3(2)(A)-(C) of the ADA, 42 U.S.C. §12102(2)(A)-(C).

9. The effect of the practices complained of above has been to deprive Pamela Johnson, a qualified individual with a disability, of equal employment opportunities and otherwise adversely affect her status as an employee, because of her disability.

10. As a direct and proximate result of these violations of her rights under the ADA, Pamela Johnson has suffered economic damages, including but not limited to lost wages, and expenses for job searches. In addition, she has suffered emotional pain, inconvenience, mental anguish, frustration, increased illness and physical pain, humiliation, and loss of enjoyment of life.

11. The unlawful employment practices complained of in paragraph 8 above were intentional.

12. The unlawful employment practices complained of in paragraph 8 above were done with malice or with reckless indifference to the federally protected rights of Pamela Johnson.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining 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 a disability;

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices;

C. Order Defendant to make whole Pamela Johnson by providing appropriate back pay with prejudgment interest, in amounts to be proven at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices;

D. Order Defendant to reinstate Pamela Johnson or make her whole by providing her with front pay, in amounts to be determined at trial, to eradicate the effects of Defendant's unlawful employment practices;

E. Order Defendant to implement non-discriminatory, objective, written policies and practices regarding the terms and conditions of employment and sign and conspicuously post, for a designated period of time, a notice to all employees that sets forth the remedial action required by the Court and inform all employees that it will not discriminate against any employee because of a disability, including that it will comply with all aspects of the ADA and that it will not take any action against employees because they have exercised their rights under that statute;

F. Order Defendant to make whole Pamela Johnson by providing compensation for past pecuniary losses including job search expenses;

G. Order Defendant to make whole Pamela Johnson by providing compensation for non-pecuniary losses including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, increased illness and physical pain, embarrassment, frustration, and humiliation, in an amount to be proven at trial;

H. Order Defendant to pay to Pamela Johnson punitive damages for its callous indifference to her federally protected right to be free from disability based retaliation in the workplace;

I. Grant such further relief as the Court deems necessary and proper; and

J. Award the Commission its costs in this action.

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

Respectfully submitted,

ERIC S. DREIBAND
General Counsel_____

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

/s/

GERALD S. KIEL
Regional Attorney

/s/

DEBRA M. LAWRENCE
Supervisory Trial Attorney

/s/

REGINA M. ANDREW, Bar No. 7756
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
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ATTACHMENT "B"

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Baltimore District Office)	
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2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section 1981a.

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

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E. Order Defendant to implement non-discriminatory, objective, written policies and practices regarding the terms and conditions of employment and sign and conspicuously post, for a designated period of time, a notice to all employees that sets forth the remedial action required by the Court and inform all employees that it will not discriminate against any employee because of a disability, including that it will comply with all aspects of the ADA and that it will not take any action against employees because they have exercised their rights under that statute;

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ERIC S. DREIBAND
General Counsel_____

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REGINA M. ANDREW, Bar No. 7756
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RMAX, INC.)	
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MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Introduction

Plaintiff, the Equal Employment Opportunity Commission (“EEOC” or “the Commission”), requests leave to file an Amended Complaint to correct Defendant’s name to read “RMAX Services, LLC.”

The EEOC's Complaint in this action was filed on September 15, 2003. The Complaint specifically alleges that Defendant terminated Pamela Johnson in retaliation for requesting an accommodation for her disability, reactive airways disease and bronchial asthma. The Complaint seeks make whole relief for Pamela Johnson who was adversely affected by Defendant’s unlawful employment practices.

In compliance with Local Rule 103.6.d., and before filing this motion to amend its Complaint, Plaintiff EEOC sought the consent of Defendant’s counsel. Counsel failed to respond and instead filed a Motion to Dismiss on the grounds that the Commission had brought action against RMAX, Inc., instead of RMAX Services, LLC.

Argument

Rule 15(a), Fed. R. Civ. P., provides that leave of court to amend a pleading "shall be freely given when justice so requires." "The Supreme Court has emphasized that "this mandate is to be heeded.'" Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986)(quoting Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). See also Davis v. Piper Aircraft Corp., 615 F.2d 606, 613 (4th Cir.), cert. dismissed, 448 U.S. 911 (1980). With regard to the correction of names, leave to amend is routinely granted. See, e.g., Hilgrave Corp. v. Symantec Corp., 212 F.R.D. 34 (E.D. Mich. 2003)(in patent infringement case, leave to amend complaint is granted where patent holder was incorrectly identified as corporation when its correct name ended with "Inc."); Daniels v. Anderson, 2003 WL 21715350*1 (D.N.D. July 22, 2003 (leave to amend complaint granted to allow plaintiff to include correct name of defendant); Trevathan v. Baruch College of the City of New York, 1994 WL 573299*8 (S.D.N.Y. Oct. 18, 1994)(leave to amend complaint granted to allow plaintiff to insert defendant's middle initial). For the sake of accuracy and in the interests of justice, the Court should allow the EEOC's Complaint to be amended.

Nor will any prejudice arise as a result of the amendment. In her initial charge of discrimination filed with the EEOC, the Charging Party specifically named "R-MAX" as her employer and referred to RMAX Services, LLC's corporate address and telephone number in Maryland. Further, following completion of the investigation, RMAX Services had notice of the EEOC's Determination and the EEOC's invitation to conciliate. Accordingly, all jurisdictional and procedural requirements have been satisfied.

The proceedings in this case have just commenced. Defendant has filed a Motion to Dismiss. At this stage in the proceedings, it is clear that amendment of the EEOC's Complaint would not cause Defendant to suffer any undue prejudice or hardship whatsoever.

Conclusion

For the reasons set forth above, the interests of justice require that Plaintiff EEOC be granted leave to amend its Complaint in this action to correct Defendant's name.

Respectfully submitted,

GERALD S. KIEL
Regional Attorney

DEBRA M. LAWRENCE
Supervisory Trial Attorney

/s/

REGINA M. ANDREW
Trial Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Baltimore District Office
10 S. Howard Street, 3rd Flr.
Baltimore, Maryland 21201
(410) 962-4220

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the Equal Employment Opportunity Commission's Motion For Leave To File An Amended Complaint, Attachments "A" and "B", and Memorandum of Law in support thereof were served this 28th day of November, 2003 by mailing a copy thereof, first class, postage prepaid, on the following counsel of record:

Robert P. Scanlon, Esq.
Anderson & Quinn, LLC
Adams Law Center
25 Wood Lane
Rockville, Maryland 20850

/s/
Regina M. Andrew