

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
Christina Manuel
CLERK-ALBUQUERQUE

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
LOEWEN GROUP INTERNATIONAL, INC.,)
d/b/a MEMORY GARDENS OF THE)
VALLEY,)
)
Defendant.)

CIV 98 0112 JP
CIV)
COMPLAINT)
LESLIE C. SMITH
JURY TRIAL DEMAND)

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 national origin and to provide appropriate relief to Jose Ponce and Martha Avila who were adversely affected by such practices. The Commission alleges that Jose Ponce and Martha Avila were discriminatorily discharged from their positions as funeral telemarketers because of their national origin.

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 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e-5(f)(1) and (3) ("Title VII") and 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 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 Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. Sections 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Loewen Group International, Inc. (the "Employer" or "Loewen"), a Delaware corporation, had continuously been doing business in Santa Teresa, New Mexico, and had 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 Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. Sections 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Jose Ponce and Martha Avila filed charges with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. On or about July 23, 1996, Defendant Employer engaged in unlawful employment practices at its Santa Teresa, New Mexico, facility, in violation of Section 706(f)(1) and (3) of Title VII, 42 U.S.C. Sections 2000e-5(f)(1) and (3), by discharging Jose Ponce and Martha Avila from their positions as funeral telemarketers, positions which both held and performed in the Spanish language prior to their discharge, because of their national origin.

8. The effect of the practices complained of in paragraph 7 above has been to

deprive Jose Ponce and Martha Avila of equal employment opportunities and otherwise adversely affect their status as employees because of their national origin.

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

10. The unlawful employment practices complained on in paragraph 7 above were done with malice or with reckless indifference to the federally protected rights of Jose Ponce and Martha Avila.

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 concert or participation with it, from engaging in unlawful employment discrimination and any other employment practice which discriminates on the basis of national origin.

B. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for Spanish speaking employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Jose Ponce and Martha Avila, 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 of Jose Ponce and Martha Avila.

D. Order Defendant Employer to make whole Jose Ponce and Martha Avila, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including job search expenses, in amounts

to be determined at trial.

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

F. Order Defendant Employer to pay Jose Ponce and Martha Avila 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.

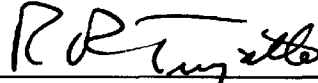
Dated this 28 day of January, 1998.

Respectfully submitted,

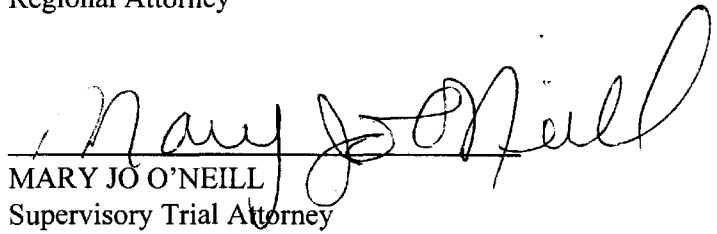
G. GREGORY STEWART
General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1801 L Street, NW
Washington, D.C. 20507



RICHARD R. TRUJILLO
Regional Attorney



MARY JO O'NEILL
Supervisory Trial Attorney

Phoenix District Office
3300 N. Central Avenue, Suite 690
Phoenix, AZ 85012



VERONICA A. MOLINA
Trial Attorney

LORETTA MEDINA
Senior Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Albuquerque District Office
505 Marquette NW, Suite 900
Albuquerque, NM 87102
(505) 248-5231