

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff

V.

**PHM CORPORATION d/b/a
THE OAKS & WEST MONROE
GUEST HOUSE**

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CIVIL ACTION NO. 3:06cv1624

JUDGE JAMES

MAG. JUDGE HAYES

AMENDED COMPLAINT AND JURY DEMAND

NOW INTO COURT, through undersigned counsel, comes Plaintiff, the United States Equal Employment Opportunity Commission (hereinafter the “EEOC” or “Commission”), and pursuant to Federal Rule of Civil Procedure 15 files its Amended Complaint and Jury Demand. The EEOC respectfully avers as follows:

NATURE OF THE ACTION

1. This action is brought 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 and to provide appropriate injunctive relief to correct the unlawful employment practices to which Tobie Escher (hereinafter “Escher”) was adversely subjected. The EEOC alleges that Escher, a Black female, was subjected to discrimination based on race by Defendants PHM Corporation d/b/a The Oaks and West Monroe Guest House (hereinafter sometimes “PHM”), Woodlawn Manor, Inc. d/b/a “The Oaks” (hereinafter sometimes “The Oaks”), and West Monroe Guest House, Inc. d/b/a “West Monroe Guest House” (hereinafter sometimes “WMGH”) when PHM and Woodlawn Manor, Inc. terminated her from “The Oaks” for conduct similar to that of one or more similarly

situated white employees and PHM and WMGH refused to hire her at “West Monroe Guest House” for the same conduct, all because of her race, in violation of Title VII.

JURISDICTION AND VENUE

2. 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 Sections 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 pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3. The employment practices alleged to be unlawful were at all material times committed within the jurisdiction of the United States District Court for the Western District of Louisiana.

PARTIES

4. 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. §2000e-5(f)(1) and (3).

5. At all relevant times and continuously to this date, the Defendant PHM has been a business corporation operating two extended-care residential facilities for the elderly and infirm in Monroe, Louisiana known as “The Oaks” and “West Monroe Guest House” and has employed more than 15 employees.

6. At all relevant times and continuously to this date, the Defendant Woodlawn Manor, Inc. has been a business corporation that owns the extended-care residential facility for the elderly and infirm in Monroe, Louisiana known as “The Oaks” and has employed more than 15 employees.

7. At all relevant times and continuously to this date, the Defendant West Monroe Guest House, Inc. has been a business corporation that owns the extended-care residential facility for the elderly and infirm in Monroe, Louisiana known as "West Monroe Guest House" and has employed more than 15 employees.

8. At all relevant times and continuously to this date, each Defendant, individually and/or collectively as a joint and single employer or integrated enterprise, has been an employer engaged in an industry affecting commerce under Sections 701(b),(g) and (H) of Title VII, 42 U.S.C. §§2000e(b), (g) and (h).

9. At all relevant times, all materials facts occurred within the jurisdiction of this Court in Monroe, Louisiana.

STATEMENT OF CLAIMS

10. More than thirty days prior to the institution of this lawsuit Escher filed a charge with the EEOC alleging violations of Title VII and Title I of the Civil Rights Act of 1991 by the Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since February of 2004, the Defendants PHM and The Oaks have engaged in unlawful employment practices at the facility "The Oaks," which is located at 1000 McKeen Place, Monroe, Louisiana. Also, since February of 2004, the Defendants PHM and WMGH have engaged in unlawful employment practices at "The Oaks" sister facility "West Monroe Guest House," which is located at 1007 Glenwood Drive, West Monroe, Louisiana.

12. Escher was employed by Defendants PHM and/or The Oaks as a Licensed Practical Nurse at "The Oaks" facility from February 11, 2003 until February 18, 2004.

13. On or about February 18, 2004, a day that Escher originally was scheduled to be off, she reported for work after having voluntarily signed-up to work with the expectation that she would

be given her usual hall assignment that day. After reporting to work, Escher learned that she was assigned to work the "D Hall" that day. This assignment, according to Escher and the other nurses, was the least desirable assignment. After learning of this assignment, Escher informed the Assistant Director of Nursing Annette Picard that she declined to work the extra shift because of the hall assignment; and then she clocked out and left the facility. Later she received a call from "The Oaks" Director of Nursing Kathryn Thigpen, who informed Escher that she was being terminated for insubordination and that Ms. Picard had alleged that Escher used profanity while abandoning her shift. Escher denied having used any profanity and pointed out that a white Licensed Practical Nurse (Martha Clark) had done the same thing but was not fired or disciplined. Thigpen fired Escher anyway.

14. Escher subsequently applied to work for Defendants PHM and WMGH at the "West Monroe Guest House," the sister facility to "The Oaks." She was conditionally hired effective February 25, 2004. After taking her pre-hire drug screen but prior to actually reporting for work, Escher was contacted by Debbie Faulk, the Assistant Director of Nursing at "West Monroe Guest House," who told her that she could not hire her because Annette Picard from "The Oaks" advised her that Escher had abandoned her job, and that PHM has a policy of not hiring employees at one facility after they have been terminated by a sister facility. Escher pointed out that "West Monroe Guest House" had recently hired a white LPN Kim Whittington after Ms. Whittington was discharged at The Oaks for "no call, no show." Regardless, PHM and WMGH refused to hire Escher.

15. The disciplinary records of Escher and Clark show that Clark had an extensive disciplinary record, which included "having a bad attitude and cursing on the hall," and that Escher had only one previous write-up for "failure to clock out at lunch."

16. The practices complained of in paragraphs eleven through fifteen above constitute discrimination based on race in violation of Title VII. Defendant is liable under Title VII for the above-described practices of its supervisors and employees.

17. The effect of the practices complained of in paragraphs eleven through fifteen above has been to deprive Escher of equal employment opportunities, alter her conditions of employment, and to affect adversely her status as an employee because of her race, in violation of Title VII.

18. The unlawful employment practices complained of in paragraph eleven through fifteen above were intentional.

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 it, from engaging in discrimination based on race within the meaning of Title VII, and any other employment practice which discriminates on the basis of race.
- B. Order Defendants to institute and carry out policies, practices, and programs which are designed to prevent discrimination based on race and retaliation, and which eradicate the effects of its past and present unlawful employment practices.
- C. Order Defendants to make Escher whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs eleven through fifteen above, including but not limited to emotional and mental anguish, pain and suffering, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.
- D. Grant a judgment requiring Defendants to make Escher whole by providing appropriate back wages and pre-judgment interest, in an amount to be determined at trial, as well as any

other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices, including, but not limited to, order an award of front pay in an amount to be determined at trial.

E. Order Defendants to pay Escher punitive damages for its malicious and reckless conduct, as described in paragraphs nine through thirteen above, in amounts to be determined at trial.

F. Grant such further legal or equitable relief as the Court deems necessary and proper in the public interest.

G. Award the Commission the costs of this litigation.

JURY TRIAL DEMAND

In accordance with Rules 38 and 39 of the Federal Rules of Civil Procedure, the Commission hereby requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

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