

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-01935-EWN-BNB

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

OUTBACK STEAKHOUSE OF FLORIDA, INC. and OS RESTAURANT SERVICES, INC.
D/B/A OUTBACK STEAKHOUSE,

Defendants.

EEOC's FIRST AMENDED COMPLAINT and JURY TRIAL DEMAND

NATURE OF THE ACTION

This is a public enforcement action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.* ("Title VII"), and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of gender, and to provide appropriate relief to Jennifer Turner-Reiger, Kelly Altizer, and other female employees and applicants, who were adversely affected by such practices. Plaintiff, the U.S. Equal Employment Opportunity Commission ("EEOC"), contends Defendants, Outback Steakhouse of Florida, Inc. and OS Restaurant Services, Inc. d/b/a Outback Steakhouse ("Outback"), have engaged in a pattern or practice of discriminating against women by failing to hire women in management positions, by failing to promote women to management positions, and by discriminating against women in terms and conditions of employment, including without limitation, providing women less

favorable job assignments, less training opportunities, and less opportunity for advancement.

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 Sections 703(a), 704, 706(f)(1), 706(f)(3), of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a), 2000e-3, 2000e-5(f)(1), 2000e-5(f)(3), 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, District of Colorado.

PARTIES

3. Plaintiff EEOC 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 706(f)(3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant has continuously been and is now doing business in the State of Colorado and has continuously had at least fifteen (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. §§ 2000e-(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty (30) days prior to the institution of this lawsuit, Jennifer Turner-Reiger and Kelly Altizer, former employees of Defendant Outback, filed charges of discrimination with the EEOC on behalf of themselves and other similarly situated female employees, alleging violations of Title VII by Defendant.

7. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least 2000, Defendant has denied equal employment opportunities to women, in violation of section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), by failing to hire women in management positions, by failing to promote women to management positions, and by discriminating against women in terms and conditions of employment, including without limitation, providing less favorable job assignments, less training opportunities, and less opportunity for advancement.

9. In approximately December 2002, Jennifer Turner-Reiger was passed over for promotion in favor of less qualified male candidates.

10. In approximately September 2001, Kelly Altizer was denied management training in favor of less qualified male candidates.

11. Outback managers refused to provide cooperation to allow Kelly Altizer to complete the training necessary for her advancement.

12. Outback managers have made statements reflecting gender bias, including without limitation, the following:

(a) Joint Venture Partner Tom Flanagan stated that women managers had “let him down” and “lost focus” when they had children.

(b) Joint Venture Partner Tom Flanagan stated that women managers have trouble “saying no”.

(c) Joint Venture Partner Tom Flanagan stated that he wanted the “cute girls” to work in the front as servers.

(d) Managing Partner Ben Martinez stated that women could not work in the kitchen.

(e) Managing Partner Ben Martinez told Kelly Altizer that she should be a teacher instead of working in the restaurant business.

(f) Managing Partner Ben Martinez stated that he would never allow his wife to work.

13. Outback has denied women equal opportunities for promotion to manager positions.

14. Outback has denied women equal opportunities to work in kitchen management.

15. Kitchen management experience is required for promotion to Managing Partner.

16. Kitchen management experience is required for promotion to management above the Managing Partner level.

17. Outback has denied women equal opportunities for promotion to Managing Partner and higher levels of management.

18. Women employees at Outback have been treated less favorably than their male

colleagues in the terms and conditions of their employment, including without limitation, providing women less favorable job assignments, less training opportunities, and less opportunity for advancement.

FIRST CLAIM FOR RELIEF
(Pattern or Practice of Gender Discrimination in Employment Practices)

19. Plaintiff realleges the foregoing paragraphs 1-18 of this Complaint.

20. The effect of the practices complained of in paragraphs 1-18 above has been to deprive equal employment opportunities to women and otherwise adversely affect the status of female employees and applicants based on their gender.

21. The unlawful employment practices complained of in paragraphs 1-18 above were and are intentional.

22. The unlawful employment practices complained of in paragraphs 1-18 above were and are done with malice or with reckless indifference to the federally protected rights of female employees and applicants.

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 policy or practice which discriminates against women, or retaliates against employees who report gender discrimination.

B. Order Defendants to institute and carry out policies, practices, and programs which provide equal employment opportunities for all employees and applicants, regardless of

gender, and which eradicate the effects of its past unlawful employment practices, including retaliation.

C. Order Defendants to make whole Jennifer Turner-Reiger, Kelly Altizer, and a class of individuals subjected to unlawful discriminatory treatment based on gender, by providing appropriate backpay with prejudgment interest, and compensation for other past and future pecuniary losses, in amounts to be determined at trial.

D. Order Defendants to make whole Jennifer Turner-Reiger, Kelly Altizer, and a class of individuals subjected to unlawful discriminatory treatment based on gender, by reinstating them with all attendant rights and benefits, or awarding appropriate front pay in lieu thereof, in amounts to be determined at trial.

E. Order Defendants to make whole Jennifer Turner-Reiger, Kelly Altizer, and a class of individuals subjected to the unlawful discriminatory treatment based on gender, by providing compensation for past and future non-pecuniary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and humiliation, in amounts to be determined at trial;

F. Order Defendants to pay Jennifer Turner-Reiger, Kelly Altizer, and a class of individuals subjected to the unlawful discriminatory treatment based on gender, punitive damages for its malicious and/or reckless conduct described above, in amounts to be determined at trial;

G. Order Defendants and their successors to provide training to officers, managers and employees regarding gender discrimination and retaliation in the workplace;

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

interest; and

- I. Award the Commission its costs in this action.

JURY TRIAL DEMAND

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

Dated: January 30, 2007

Respectfully submitted,

NANCY A. WEEKS
Supervisory Trial Attorney

s/ Rita Byrnes Kittle
RITA BYRNES KITTLE
Trial Attorney
(303) 866-1347

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Denver District Office
303 E. 17th Ave., Suite 510
Denver, CO 80203