



PRESS RELEASE

12-12-13

Beverage Distributors Ordered to Pay About \$200K and Hire Sight-Impaired Employee in EEOC Disability Discrimination Suit

Jury Found Company Violated Federal Law by Shunning Legally Blind Applicant

DENVER - In a disability lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), a federal court in Denver has ordered Beverage Distributors Company (BDC) in Colorado to pay around \$200,000 and hire him to a position he had been denied because of his impaired eyesight, the agency announced today.

According to the EEOC's suit, Mike Sungaila, who is legally blind, worked for BDC for over four years as a driver's helper. When the company decided to eliminate his position and instead use contract laborers, Sungaila applied for a position as a night warehouse loader. BDC offered Sungaila the position subject to a pre-employment medical examination. Following the medical examination, BDC withdrew the job offer, believing that Sungaila could not safely perform the functions of the position due to his poor eyesight. The position involves loading cases of liquor and kegs of beer into the back of trucks. The EEOC, contending that Sungaila could safely perform the job, filed suit in U.S. District Court for the District of Colorado after first attempting to reach a pre-litigation settlement through its conciliation process. *EEOC v. Beverage Distributors Company, LLC*, 11-cv-02557-CMA-CBS.

Following a four-day trial in April, the jury agreed with the EEOC that BDC intentionally violated the Americans with Disabilities Act (ADA) when it withdrew its job offer to Sungaila because of his impaired eyesight. The jury initially awarded Sungaila \$132,347 in back pay, but found that his damages should be reduced by \$102,803 because the jury believed that Sungaila could have mitigated his damages by finding a comparable position. This week, U.S. District Judge Christine Arguello vacated the jury's finding that Sungaila could have mitigated his damages, finding that BDC failed to prove there were any available comparable jobs that Sungaila could have performed, and ordered BDC to pay Sungaila his entire back pay. Moreover, BDC must pay interest on the award, which will increase the award to approximately \$200,000, and must compensate Sungaila for any tax consequence he will suffer due to being paid this judgment in one year.

In addition, the court ordered BDC to hire Sungaila as a night warehouse loader with the same seniority that he would have had BDC not withdrawn the job offer due to his eyesight. Sungaila must be offered this position within the next six months and will be paid the same salary as other employees who have been employed in the position for five years, which is approximately \$23 per hour.

The court also found that "the testimony of Beverage Distributors managers and human resources professionals demonstrated a lack of sufficient knowledge about the ADA, its interactive process, and the requirement that reasonable accommodations be provided to employees." The judge also stated that BDC's employee handbook was insufficient to explain to employees how they can request accommodations and contained an incorrect statement of its obligations under the law. Therefore, the court ordered that BDC must engage an outside consultant to provide employee training and assistance in revisions to BDC's policies, job postings, notice posting, and reporting and compliance review. BDC must report to the court within six months that it has complied with the judge's order.

"The Commission is always willing to resolve cases informally," said EEOC General Counsel P. David Lopez. "As we have demonstrated consistently nationwide, when necessary, we will try the case and secure both monetary relief for the victim and, importantly, non-monetary relief to ensure the company modifies its practices so that the discrimination does not recur. The Commission has prevailed in 10 of its past 11 jury trials."

"Employers must provide accommodations for qualified individuals with disabilities and must base all employment-related decisions on facts, not stereotypical assumptions about an employee's abilities," said EEOC Regional Attorney Mary Jo O'Neill. "We believe this order will ensure that going forward, individuals with disabilities will no longer be discriminated against by Beverage Distributors. Further, this decision will send a message to all employers that it does not pay to discriminate."

EEOC Denver Field Office Director Nancy Sienko added, "We are excited that Mr. Sungaila will finally be fully

compensated for the harm that he suffered due to discrimination by his former employer."

The EEOC is responsible for enforcing federal laws against employment discrimination. Further information is available at www.eeoc.gov. Further information about the EEOC is available on its website at www.eeoc.gov.