

FILED by *JJC* D.C.
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 CARLOS JUENKE
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 S. D. OF FLA. - MIAMI

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF FLORIDA
 MIAMI DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 98-202-CIV-
v.)	MIDDLEBROOKS
)	
AEROMAR AIRLINES, INC.,)	<u>AMENDED COMPLAINT</u>
)	<u>JURY TRIAL DEMAND</u>
Defendant.)	<u>INJUNCTIVE RELIEF SOUGHT</u>
)	

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), to correct unlawful employment practices on the basis of age and to provide appropriate relief to Emma Mendez. As stated with greater particularity in paragraphs 7 and 8 below, the Equal Employment Opportunity Commission ("EEOC" or the "Commission") alleges that Aeromar Airlines, Inc., violated the ADEA when it subjected Emma Mendez, then age 49, to harassment and subsequently laid her off because of her age. Moreover, the Commission alleges that Defendant retaliated against Emma Mendez in violation of the ADEA because she continued to pursue her rights under this lawsuit.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,

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1343 and 1345. This action is authorized and instituted pursuant to Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the "ADEA"), which incorporates by reference Section 16(c) of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. § 216(c).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Southern District of Florida, Miami Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant, Aeromar Airlines, Inc. (the "Employer"), has continuously been a Florida corporation doing business in the State of Florida and the City of Miami, and has continuously had at least 20 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

CONCILIATION

6. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance

with the ADEA through informal methods of conciliation, conferences and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

STATEMENT OF CLAIMS

7. Since at least April of 1996, the Defendant Employer engaged in unlawful employment practices at its Miami, Florida, facility in violation of Section 4(a) of the ADEA, 29 U.S.C. § 623(a), by subjecting Emma Mendez to harassment and subsequently laying her off because of her age. Emma Mendez was 49 years old in April of 1996. She had been employed in Defendant's Sales Department for approximately four years and was qualified for her position of Sales Manager and the position of Sales Person, which she supervised. Emma Mendez was also qualified for the Account Executive position in Defendant Employer's Sales Department. From approximately April to October of 1996, Defendant subjected Emma Mendez to harassment in the form of derogatory, age-related comments. Subsequently, on October 7, 1996, Defendant laid off Emma Mendez because of her age and reassigned her duties to significantly younger individuals.

8. Defendant Employer engaged in unlawful employment practices in violation of Section 4(d) of the ADEA, 29 U.S.C. § 623(d), by retaliating against Emma Mendez because she opposed Defendant's age discrimination and she filed a charge, and/or participated in the investigation or litigation with respect to her charge. Defendant's retaliation included threatening Ms. Mendez in March 1998, that if she did not drop this lawsuit she would be "torn to shreds." Moreover, when Ms. Mendez continued to pursue her rights under this litigation,

Defendant filed a state court action against Ms. Mendez on July 17, 1998, because she had continued to pursue her rights under this lawsuit.

9. The effect of the practices complained of in paragraphs 7 and 8 above has been to deprive Emma Mendez of equal employment opportunities and otherwise adversely affect her status as an employee and individual because of her age and/or in retaliation for her opposition to Defendant's unlawful employment practices.

10. The unlawful employment practices complained of in paragraphs 7 and 8 above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

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 policies and/or practices of harassing and/or laying off individuals because of their age, or engaging in any other employment practices which discriminate on the basis of age against individuals 40 years of age and older, including retaliating against employees who are pursuing their rights under the ADEA.

B. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its unlawful employment practices.

C. Grant a judgment requiring Defendant Employer to make whole Emma Mendez

and pay appropriate back wages in an amount to be determined at trial and an equal sum as liquidated damages and prejudgment interest to individual(s) whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to, paying wages to Emma Mendez.

D. Order Defendant Employer to make whole all individuals adversely affected by the unlawful practices described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to, reinstatement and/or front pay for Emma Mendez.

E. Grant a permanent injunction enjoining Defendant's state court action filed against Emma Mendez on July 17, 1998, and enjoining any other retaliatory acts taken against Ms. Mendez because she has continued to pursue her rights under the ADEA and this lawsuit.

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

G. Award the Commission its costs of this action.

JURY TRIAL DEMAND

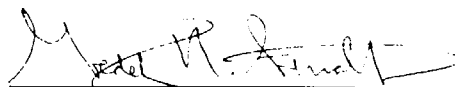
The Commission requests a jury trial on all questions of fact raised by its complaint.

C. GREGORY STEWART
General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

DELENER FRANKLIN-THOMAS
Regional Attorney

EVE G. LOWE
Supervisory Trial Attorney



GEDETYN SERRALTA
Senior Trial Attorney
Florida Bar No. 0864137

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., #2700
Miami, FL 33131
Tel. (305) 530-6009
Fac. (305) 530-7660