

**MAGISTRATE JUDGE  
JOHNSON**

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

**CIV - UNGARO - BENAGES**

**97 - 4223**

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CALDER RACE COURSE, INC., )  
 )  
Defendant. )

CIVIL ACTION NO.

COMPLAINT  
JURY TRIAL DEMAND  
INJUNCTIVE RELIEF SOUGHT

FILED IN  
SD of FL  
STRICTLY CONFIDENTIAL  
DEC 22 1997  
12:34  
U.S. DISTRICT COURT  
MIAMI, FLORIDA

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 Robert Anderson, Arthur Carratt, Stanley Corcell and Frank Poer. As stated with greater particularity in paragraph 7 below, the Equal Employment Opportunity Commission (the "Commission") alleges that in May of 1996, Calder Race Course, Inc., violated the ADEA when it removed, discharged and/or constructively discharged Robert Anderson, then age 74, Arthur Carrat, then age 70, Stanley Corcell, then age 67, and Frank Poer, then age 68, from their positions as Money Room Division Heads on the basis of their respective ages and assigned their duties to younger employees.

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 Section 7(b) of the Age

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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 (the "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, Calder Race Course, 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, conference 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 May 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 removing, discharging and/or constructively discharging individuals because of their age.

- (a) Robert Anderson was 74 years old in May of 1996. He was an experienced, long-term employee of the Defendant who was qualified for his position of Money Room Division Head. In May of 1996, Defendant removed, discharged and/or constructively discharged Robert Anderson from his position of Money Room Division Head. Subsequently, Defendant assigned Robert Anderson's job responsibilities to significantly younger, less experienced employees who were not laid off, but retained.
- (b) Arthur Carratt was 70 years old in May of 1996. He was an experienced, long-term employee of the Defendant who was qualified for his position of Money Room Division Head. In May of 1996, Defendant removed, discharged and/or constructively discharged Arthur Carratt from his position of Money Room Division Head. Subsequently, Defendant assigned Arthur Carratt's job responsibilities to significantly younger, less experienced employees who were not laid off, but retained.

(c) Stanley Corcell was 67 years old in May of 1996. He was an experienced, long-term employee of the Defendant who was qualified for his position of Money Room Division Head. In May of 1996, Defendant removed, discharged and/or constructively discharged Stanley Corcell from his position of Money Room Division Head. Subsequently, Defendant replaced Stanley Corcell with a significantly younger employee who was not laid off, but retained. Defendant also retained several other Money Room Division Heads who were significantly younger and less experienced than Stanley Corcell.

(d) Frank Poer was 68 years old in May of 1996. He was an experienced, long-term employee of the Defendant who was qualified for his position of Money Room Division Head. In May of 1996, Defendant removed, discharged and/or constructively discharged Frank Poer from his position of Money Room Division Head. Subsequently, Defendant assigned Frank Poer's job responsibilities to significantly younger, less experienced employees who were not laid off, but retained.

8. The effect of the practices complained of in paragraph 7 above has been to deprive Robert Anderson, Art Carrat, Stanley Corcell and Frank Poer of equal employment opportunities and otherwise adversely affect their status as employees because of their age.

9. The unlawful employment practices complained of in paragraph 7 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 removing, discharging and/or constructively discharging 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.

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 pay appropriate back wages in an amount to be determined at trial, and an equal sum as liquidated damages and prejudgment interest to individuals whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to, paying wages to Robert Anderson, Art Carratt, Stanley Corcell and Frank Poer.

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 Robert Anderson, Art Carratt, Stanley Corcell and Frank Poer.

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

F. 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

EVE G. LOWE  
(Acting) Regional Attorney



MICHAEL J. FARRELL  
Trial Attorney  
Florida Bar No. 0053228

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Miami District Office  
One Biscayne Tower  
2 S. Biscayne Blvd., #2700  
Miami, FL 33131  
(305) 530-6005  
(305) 530-7660

**CIVIL COVER SHEET CIV - UNGARO - BENAGES**

97-4223

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I (a) PLAINTIFFS**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DEFENDANTS**

CALDER RACE COURSE, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Dade (IN U.S. PLAINTIFF CASES ONLY)

**MAGISTRATE JUDGE JOHNSON**

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael J. Farrell  
EEOC, 1 Biscayne Tower, Suite 2700  
2 S. Biscayne Blvd., Miami, FL 33131

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE:

DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

**II. BASIS OF JURISDICTION** (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (For Diversity Cases Only)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign National  | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY: This is an action under the Age Discrimination in Employment Act of 1967, as amended, to correct unlawful employment practices on the basis of age and to provide appropriate relief to Robert Anderson, Arthur Carratt, Stanley Corcell and Frank Poer. 7 days estimated (for both sides) to try entire case.

**V. NATURE OF SUIT** (PLACE AN X IN ONE BOX ONLY)

<b>A CONTRACT</b>	<b>A TORTS</b>	<b>B FORFEITURE/PENALTY</b>	<b>A BANKRUPTCY</b>	<b>A OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R R & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>B SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
<b>A REAL PROPERTY</b>	<b>A CIVIL RIGHTS</b>	<b>B PRISONER PETITIONS</b>	<b>A LABOR</b>	<b>A FEDERAL TAX SUITS</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

**VI. ORIGIN**

- (PLACE AN X IN ONE BOX ONLY)
- 1 Original Proceeding
  - 2 Removed from State Court
  - 3 Remanded from Appellate Court
  - 4 Refiled
  - 5 Transferred from another district (specify)
  - 6 Multidistrict Litigation
  - 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A **CLASS ACTION** DEMAND \$ \_\_\_\_\_ JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 12/18/97 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY: Receipt No. \_\_\_\_\_ Amount: \_\_\_\_\_  
Date Paid: \_\_\_\_\_ N/Ifp: \_\_\_\_\_