

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

FILED BY [Signature]
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CARLOS JENKES
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S.D. OF FLA. - MIAMI

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

CIVIL ACTION NO.:
97-4223-CIV-UNGARO-BENAGES

AMENDED COMPLAINT
JURY TRIAL DEMAND
INJUNCTIVE RELIEF SOUGHT

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, constructively discharged, failed to hire and/or failed to rehire Robert Anderson, then age 74, Arthur Carrat, then age 70, Stanley Corcell, then age 67, and Frank Poer, then age 68, with respect to 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

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, constructively discharging, failing to hire and/or failing to rehire 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, constructively discharged, failed to hire and/or failed to rehire Robert Anderson with respect to 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, constructively discharged, failed to hire and/or failed to rehire Arthur Carratt with respect to 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, constructively discharged, failed to hire and/or failed to rehire Stanley Corcell with respect to 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, constructively discharged, failed to hire and/or failed to rehire Frank Poer with respect to 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, constructively discharging, failing to hire and/or failing to rehire 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, rightful-place hiring or rehiring 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.

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