UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No.01-14291-CIV-GRAHAM/LYNCH

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Plaintiff,

v.

LINCARE, INC.

Defendant.
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ORDER

THIS CAUSE came before the Court upon Defendant Lincare, Inc.'s Motion for Summary Judgment.

THE COURT has considered the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises.

I. BACKGROUND

On February 5, 2001, Edwin Boone ("Mr. Boone") filed a charge of racial discrimination with the Equal Employment Opportunity Commission ("EEOC") against Defendant Lincare, Inc. ("Lincare"). Mr. Boone alleged that he had been discharged from his job as a service representative[1] with Lincare because he is black. On February 13, 2001, the EEOC mailed to Lincare a copy and notice of the charge of discrimination, and requested Lincare to provide a

[1]Position includes driving a company vehicle and delivering oxygen and other medical equipment to patients.

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statement of its position regarding Mr. Boone's allegations.

During its investigation of Mr. Boone's charge, the EEOC requested and obtained from Lincare: Mr. Boone's driving records, dates of employment, work performance, as well as the driving records of other employees hired for the same position as Mr. Boone. On June 6, 2001, the EEOC concluded its investigation and conducted a pre-determination interview with Lincare. The EEOC informed Lincare that the evidence indicated that Lincare had discriminated against Mr. Boone. The EEOC advised Lincare that it had ten (10) days to provide the EEOC with any new information that might affect the determination. Lincare did not provide the EEOC with any further information.

On August 16, 2001, the EEOC mailed a letter of determination to Lincare stating that it had reasonable cause to believe Mr. Boone was improperly discharged. In this letter, the EEOC invited Lincare to conciliate. Lincare's acceptance of the invitation to conciliate was to be received by the EEOC on August 27, 2001. On August 24, 2001, Lincare requested reconsideration of the determination, which the EEOC denied on August 28, 2001. On August 30, 2001, the EEOC mailed a notice of failure to conciliate to Lincare, and Lincare again requested reconsideration on August 31, 2001 and September, 19, 2001. The EEOC did not respond to either request.

II. DISCUSSION

Pursuant to 42 U.S.C. § 2000e-5(b), after the EEOC investigates a charge of employment discrimination, it must make a determination as to whether it has reasonable cause to believe the claim is true. The EEOC may determine that it has no cause to believe the claim and dismiss it, thereby leaving the complaining party to private remedies in court. On the other hand, the EEOC may determine that it does indeed have cause to believe the claim is true. If the EEOC reaches this determination, it must undertake an attempt to conciliate the matter before seeking judicial relief. See EEOC v. Sherwood Medical Industries, Inc., 452 F. Supp. 678, 681 (M.D. Fla. 1978).

The requirement to attempt conciliation reflects Congress's strong intent that the EEOC seek judicial relief only as a last resort. Therefore, only after investigating the charge, finding reasonable cause that an unlawful act has occurred, attempting to conciliate the dispute, and being unable to obtain voluntary compliance should the EEOC file a suit in court. See Id., at 683.

In order to fulfill its statutory duty to attempt conciliation, the EEOC must (1) outline to the employer the reasonable cause for its belief that Title VII has been violated; (2) offer an opportunity for voluntary compliance; and (3) respond in a reasonable and flexible manner to the reasonable attitudes of the employer. See EEOC v. Klingler Electric Corp., 636 F. 2d 104,

107 (5th Cir. 1981).[2]

Lincare contends that the EEOC failed to make a good faith attempt at conciliation because it did not outline the reasonable cause for its determination. Furthermore, Lincare argues that the EEOC did not offer it an opportunity for voluntary compliance and acted unreasonably in denying Lincare's repeated requests for reconsideration. Lincare maintains that it requested reconsideration because it believed the EEOC's determination was based primarily on information from a former employee who Lincare states has no first hand knowledge of Mr. Boone's job performance. Also, Lincare re-emphasized that Mr. Boone, who was hired on a 90-day trial period, was terminated due to his poor driving record and continual tardiness during his nine (9) days of employment. Lincare maintains that, under the circumstances, the EEOC failed to comply with its statutory duty by remaining inflexible and unresponsive, and summary judgment is therefore appropriate in this matter.

The EEOC, on the other hand, argues that it fulfilled its statutory duty by investigating the charge, informing Lincare of its basis of determination, and inviting Lincare to accept the invitation to conciliate. Nonetheless, the EEOC argues, Lincare

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[2] In Bonner v. City of Prichard, 661 F. 2d 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all cases decided by the Fifth Circuit before the close of business on September 30, 1981. Klingler was decided on February 5, 1981.

was unwilling to engage in voluntary compliance and only continued to deny it discriminated against Mr. Boone.

The Court finds that the EEOC acted prematurely in aborting its efforts at conciliation. The two-week period between the letter of determination containing the invitation to conciliate and the issuance of the failure to conciliate was an unreasonably short period of time. It would have been more appropriate for the EEOC to extend the time for Lincare to accept the invitation to conciliate. However, the Court also finds that summary judgment is far too harsh a sanction in this matter. Indeed, courts routinely stay these types of cases to permit further efforts at conciliation. See Klingler, 636 F. 2d at 107 (holding summary judgment too harsh a sanction and stay appropriate remedy where conciliation efforts prematurely aborted); EEOC v. Prudential Federal Savings & Loan Assoc., 763 F. 2d 1166, 1169 (10th Cir. 1985) (concluding that where district court determines further conciliation efforts are required the proper course is to stay the proceedings); see also 42 U.S.C. § 2000e-5(f)(1)(B) ("the court may, in its discretion, stay further proceedings for not more than sixty days pending . . . further efforts of the Commission to obtain voluntary compliance."). Therefore, a stay for sixty (60) days is ordered, wherein the parties shall make a good faith effort to negotiate the dispute.

The Court notes that Lincare must attempt to conciliate the matter. Simply denying the allegations and asking for reconsideration will not be sufficient to constitute a conciliation attempt.

III. CONCLUSION

Based on the foregoing, it is,

ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment is **DENIED** as moot.

ORDERED AND ADJUDGED that this case is stayed for sixty (60) days pending further efforts to conciliate. At the end of the sixty day conciliation period, the parties shall file a status report with the Court indicating whether they have resolved the issues in the case.

DONE AND ORDERED in Chambers at Miami, Florida, this 11th day of July, 2002.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Lynch
Heui Young Choi, Esq.
Irving M. Miller, Esq.
Muslima Lewis, Esq.