

FILED

OCT 25 2002

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

vs.

GREENVILLE FORD-MERCURY, INC.,

Defendant.

No. 00-CV-0770-DRH

ORDER

HERNDON, District Judge:

Before the Court is Defendant's motion for stay of order and judgment pending appeal (Doc. 61). The Equal Employment Opportunity Commission ("EEOC") filed this action against Defendant under Title I of the Americans with Disabilities Act of 1990, **42 U.S.C. § 12101 et seq.**, and Title I of the Civil Rights Act of 1991. EEOC alleged that Defendant terminated Donald Holding on April 10, 1997 because of his disability- diabetes. A jury trial was held on July 22, 23, and 24, 2002. On July 24, 2002, the jury returned a verdict in favor of EEOC and against Defendant and awarded Donald Holding \$25,000 in compensatory damages for emotional harm and \$60,000 in punitive damages. The Court entered an order of injunction (Doc. 58) and a final judgment (Doc. 59) on August 6, 2002. Defendant filed a notice of appeal

on September 3, 2002.

FEDERAL RULE OF CIVIL PROCEDURE 62(d) provides:

[w]hen an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Posting a supersedeas bond is not an absolute requirement for obtaining a stay of execution pending appeal. **See *Olympia Equipment Leasing Co. v. Western Union Telegraph Co.*, 786 F.2d 794, 795 (7th Cir. 1986)**(“**We merely said that posting a bond entitles the appellant to a stay of execution pending appeal . . . if he does not post a bond, he risks the district judge’s deciding to deny a stay.**”). There are two situations where a bond requirement would be inappropriate: where the defendant’s ability to pay the judgment is so plain that the cost of the bond would be a waste of money, and where the requirement would put the defendant’s other creditors in undue jeopardy. **Id.** In either of these cases, the Court may order alternative security. **Id.**


The Court finds that a stay is warranted in this case only if Defendant posts a supersedeas bond in the amount of \$60,000. Defendant’s ability to pay the judgment is not so plain that the cost of the bond would be a waste of money. The testimony at trial demonstrated that Defendant’s financial condition is unstable and questionable. Additionally, the Court finds no evidence that requiring Defendant to

post a bond would put Defendant's other creditors in undue jeopardy. Therefore, the Court finds that Defendant is required to post a bond in the amount of \$60,000 to stay execution of order and judgment pending appeal.

Accordingly, the Court **GRANTS in part and DENIES in part** Defendant's motion (Doc. 61). The Court **STAYS** execution of order and judgment pending Defendant's appeal. However, this stay will not become effective until, if ever, Defendant posts the required supersedeas bond with the Clerk of the Court.

IT IS SO ORDERED.

Signed this 25th day of October, 2002.



DAVID R. HERNDON
United States District Judge