

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

APR 27 2004

JUDGE JOHN W. DARRAH
UNITED STATES DISTRICT COURT

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**)

Plaintiff,)

v.)

**WHITEHALL HOTEL, LTD. and
WHITEHALL HOTEL RESTAURANT,
INC.,**)

Defendants.)

CIVIL ACTION NO. 03 C 6851

FIRST AMENDED COMPLAINT

DOCKETED

APR 28 2004

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices. The Equal Employment Opportunity Commission ("EEOC") alleges that Whitehall Hotel, Ltd. and Whitehall Hotel Restaurant, Inc. failed to accommodate Eric Oden's disability and solicited from him and other applicants information about their disabilities, prior to making them an offer of employment.

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 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Section 706 and Section 707 of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5, and § 2000e-7.
2. The employment practices alleged to be unlawful were committed within the State of Illinois.

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PARTIES

3. Plaintiff EEOC is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3), 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Whitehall Hotel, Ltd. and Whitehall Hotel Restaurant, Inc. ("Defendants") were continuously doing business in the State of Illinois and continuously had at least 15 employees.

5. At all relevant times, Defendants had continuously been employers engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

6. At all relevant times, Defendants were covered entities under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Eric Oden filed a charge with the EEOC alleging violations of Title I of the ADA by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. In 2001 Defendants failed to accommodate Eric Oden, in violation of Section 102(b)(5) of Title I of the ADA, 42 U.S.C. § 12112(b)(5).

9. The effect of the practices complained of in paragraph 8 above has been to deprive Eric Oden of equal employment opportunities and otherwise adversely affect his status as an employee, because of his disabilities.

10. The unlawful employment practices complained of in paragraph 8 above were intentional.

11. The unlawful employment practices complained of in paragraph 8 above

were done with malice or with reckless indifference to the federally protected rights of Eric Oden.

12. Since at least 1999 Defendants have engaged in a pattern or practice of soliciting from applicants information concerning their disabilities, prior to making them an offer of employment, in violation of Section 102(d)(2) of Title I of the ADA, 42 U.S.C. § 12112(d)(2).

13. The effect of the practices complained of in paragraph 12 above has been to deprive Eric Oden of equal employment opportunities and otherwise adversely affect his status as an employee, because of his disabilities, and to interfere with the employment opportunities of and adversely affect other applicants.

14. The unlawful employment practices complained of in paragraph 12 above were intentional.

15. The unlawful employment practices complained of in paragraph 12 above were done with malice or with reckless indifference to the federally protected rights of Eric Oden and other applicants.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in employment practices which discriminate on the basis of disability.

B. Order Defendants to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of the unlawful employment practices of Defendants.

C. Order Defendants to make whole Eric Oden by providing compensation for pecuniary losses resulting from the unlawful employment practices described in paragraph 8 above, in amounts to be determined at trial.

D. Order Defendants to make whole Eric Oden by providing compensation for nonpecuniary losses resulting from the unlawful practices complained of in paragraph 8 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

E. Order Defendants to pay Eric Oden punitive damages for their malicious and reckless conduct, as described in paragraph 8 above, in an amount to be determined at trial.

G. Order Defendants, because of the unlawful practices complained of in paragraph 8 above, to make whole Eric Oden by providing him appropriate back pay with pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices, including but not limited to rightful place reinstatement of Eric Oden;

H. Order Defendants to make whole Eric Oden and adversely affected applicants by providing them compensation for pecuniary losses resulting from the unlawful employment practices described in paragraph 12 above, in amounts to be determined at trial.

I. Order Defendants to make whole Eric Oden and adversely affected applicants by providing compensation for nonpecuniary losses resulting from the unlawful practices complained of in paragraph 12 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

J. Order Defendants to pay Eric Oden and adversely affected applicants punitive damages for its malicious and reckless conduct, as described in paragraph 12 above, in an amount to be determined at trial.

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

L. 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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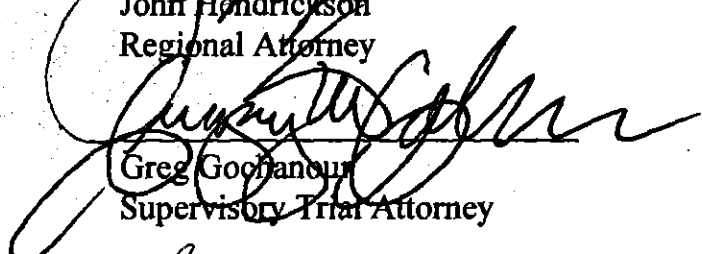
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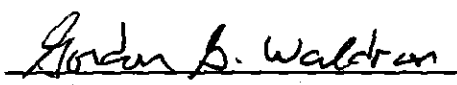
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