

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

SEARS ROEBUCK AND CO.

Defendant.

HONORABLE 02-71225

ARTHUR J. TARNOW
CASE NO.

COMPLAINT
AND JURY TRIAL DEMAND

MAGISTRATE JUDGE CARLSON

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 on the basis of disability and to make whole Gerald Zuchlke ("Zuchlke").

The Equal Employment Opportunity Commission alleges that Defendant, Sears Roebuck and Co. ("Sears") violated the Americans with Disabilities Act by failing to reasonably accommodate Zuchlke, a qualified individual with a disability, as a Commission Salesperson at its Port Huron, Michigan establishment because of his disability.

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 Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. Section 1981(A).

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2. The employment practices hereafter alleged to be unlawful were committed in the Eastern District of Michigan, Southern Division.

PARTIES

3. The Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is an 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 Sections 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Sears was doing business in the State of Michigan and the City of Port Huron, and continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant Sears was continuously engaged in an industry affecting commerce within the meaning of 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 Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

6. At all relevant times, Defendant Sears was a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7.. More than thirty (30) days prior to the institution of this lawsuit, Zuehlke filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Sears. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Beginning in October 1998, Defendant Sears engaged in unlawful employment practices in violation of the ADA Sections 102(a), 102(b)(5)(A) and 102(b)(5)(B), 42 U.S.C. §§ 12112(a), 12112(b)(5)(A) and 12112(b)(5)(B), at its Port Huron, Michigan facility. The Defendant's

unlawful practices include, but are not limited to, failing to reasonably accommodate Zuehlke as a Commission Salesperson because of his disability, and harassing Zuehlke because of his disability.

9. Zuehlke is a qualified individual with a disability who was able to perform the essential functions of his position with or without reasonable accommodation.

10. The effect of the above-mentioned, unlawful employment practices has been to deprive Zuehlke of equal employment opportunities because of his disability.

11. The above-mentioned, unlawful employment practices were intentional.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any unlawful employment practice which discriminates on the basis of disability;

B. Order the Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices;

C. Order the Defendant Employer to provide training to its management employees regarding disability harassment and the ADA's requirement to provide a reasonable accommodation to disabled employees;

D. Order the Defendant Employer to make whole Zuehlke by providing him with appropriate lost earnings and benefits, with pre-judgment interest, in amounts to be proven at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices;

E. Order Defendant Employer to make whole Zuehlke by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph

8 above in amounts to be proven at trial.

- F. Grant the Commission its costs in this action; and
- G. Grant such further relief as the Court deems necessary and proper.

Respectfully submitted,

NICHOLAS M. INZEO
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3/28/02
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