

FILED

SEP 16 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

DAVID W. DANIEL, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
SEARS, ROEBUCK AND COMPANY,)
)
Defendant.)
_____)

CIVIL ACTION NO. 4:98-CV-136-H(3)

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of national origin and to provide appropriate relief to Francisco G. Santana, who was adversely affected by such practices. Sears, Roebuck and Company failed or refused to hire Francisco G. Santana because of his national origin, Hispanic (Mexican-American).

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

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of North Carolina, Eastern 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 Title VII and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Sears, Roebuck and Company (the "Employer"), has continuously been a corporation doing business in the State of North Carolina and the City of Morehead City, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce under Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Francisco G. Santana filed a charge with the Commission

alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least December 1995, Defendant Employer has engaged in unlawful employment practices at its Morehead City, N.C. facility, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). The unlawful practices included failing or refusing to hire Francisco G. Santana because of his national origin. Francisco G. Santana is a Spanish surnamed, naturalized United States citizen born in Mexico, who speaks English with a distinguishable Spanish accent. Francisco G. Santana was a qualified applicant for the position of Loss Prevention Agent with at least ten years of experience as a Loss Prevention Agent at a Sears store in California. After failing or refusing to hire Francisco G. Santana, Defendant Employer subsequently hired several less qualified non-Hispanics as Loss Prevention Agents.

8. The effect of the practice complained of in paragraph 7 above has been to deprive Francisco G. Santana of equal employment opportunities and otherwise adversely affect his status as an applicant for employment, because of his national origin, Hispanic (Mexican-American).

9. The unlawful employment practice complained of in

paragraph 7 above was intentional.

10. The unlawful employment practice complained of in paragraph 7 above was done with malice or with reckless indifference to the federally protected rights of Francisco G. Santana.

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 failing or refusing to hire any individual due to national origin or any other employment practice which discriminates based on national origin.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of Hispanic (Mexican-American) national origin, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Francisco G. Santana, by providing appropriate affirmative relief necessary to eradicate the effects of its unlawful employment practices, including appropriate backpay with prejudgment interest, in

amounts to be determined at trial, and rightful place
instatement.

D. Order Defendant Employer to make whole Francisco G. Santana by providing compensation for past and future pecuniary losses resulting from the unlawful employment practice described in paragraph 7 above, including but not limited to medical expenses, in amounts to be determined at trial.

E. Order Defendant Employer to make whole Francisco G. Santana by providing compensation for past and future nonpecuniary losses resulting from the unlawful practice complained of in paragraph 7 above, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation, in amounts to be determined at trial.

F. Order Defendant Employer to pay Francisco G. Santana punitive damages for its malicious and reckless conduct, as described in paragraph 7 above, in amounts to be determined at trial.

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

H. 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.

Dated this 14th day of September, 1998.


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