

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 ) CIV-03-933 BB/RLP (ACE)  
v. )  
 )  
ALLIANCE RESIDENTIAL, LLC, d/b/a ) **AMENDED COMPLAINT**  
ALLIANCE RESIDENTIAL COMPANY )  
 )  
Defendant. )  
\_\_\_\_\_ )

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age and to provide appropriate relief to Patricia Shook who was adversely affected by such practices while working as a Leasing Consultant at the Summit Apartments in Albuquerque, New Mexico. The Commission alleges that Ms. Shook, a part-time employee, was denied a full-time position, laid off and replaced the same day by a significantly younger, less experienced employee because of her age, 74.

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 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the "ADEA"), which incorporates by

reference Sections 16 (c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Mexico.

### 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 the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant Alliance Residential ("Defendant" or "Employer"), an Arizona corporation, has continuously been and is doing business in the State of New Mexico and the City of Albuquerque, and has continuously had at least 20 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630 (b), (g) and (h).

### CONCILIATION

6. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of

the ADEA, 29 U.S.C. § 626(b).

### STATEMENT OF CLAIMS

7. On or about November 1, 2002, the Defendant Employer engaged in unlawful employment practices at the Summit Apartments, a facility managed by Defendant in Albuquerque, New Mexico, in violation of Sections 4(a) (1) and (2) of the ADEA, 29 U.S.C. § 623 (a) (1) and (2). These practices include:

- a) not offering Ms. Shook a full-time position as a Leasing Consulting because of her age, 74;
- b) laying off Ms. Shook because of her age, 74; and
- c) offering the Leasing Consultant position to a younger, less experienced person.

8. The effect of the practices complained of in paragraph 7 above has been to deprive Ms. Shook of equal employment opportunities and otherwise adversely affect her status as an employee because of her age.

9. The unlawful employment practices complained of in paragraph 7 above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

### 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 engaging in any employment practice which discriminates on the basis of age against individuals 40 years of age and older.

B. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices.

C. Grant a judgment requiring Defendant Employer to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages or prejudgment interest in lieu thereof to individuals whose wages are being unlawfully withheld as a result of the acts complained of above including, but not limited to, Patricia Shook.

D. Order Defendant Employer to make whole all individuals adversely affected by the unlawful practices described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful practices including, but not limited to, the reinstatement of Ms. Shook and/or front pay.

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

F. 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 13<sup>th</sup> day of August 2003.

Respectfully submitted,

GWENDOLYN YOUNG REAMS  
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
1801 L Street, NW  
Washington, D.C. 20507

**Filed Electronically**  
MARY JO O'NEILL  
Regional Attorney

**Filed Electronically**  
C. EMANUEL SMITH  
Supervisory Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Phoenix District Office  
3300 N. Central Ave.  
Suite 690  
Phoenix, Arizona 85012

**Filed Electronically**  
LORETTA MEDINA  
Senior Trial Attorney

VERONICA A. MOLINA  
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Albuquerque District Office  
505 Marquette NW, Suite 900  
Albuquerque, New Mexico 87102

(505) 248-5230

Attorneys for Plaintiff