

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

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CIV.
v.)	
)	
CIRCLE S STORES, INC., and)	COMPLAINT
CIRCLE S GROCERY, INC., d/b/a)	JURY TRIAL DEMAND
CIRCLE S GROCERY STORE,)	
)	
)	
Defendants.)	
_____)	

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 sex, and to provide appropriate relief to Myron Smith and a class of men, including at least Michael Hanley and Peter Cergizan, who were adversely affected by such practices. The Commission alleges that Defendants Circle S Stores, Inc., and Circle S Grocery, Inc., d/b/a Circle S Grocery Store (“Circle S”) failed or refused to hire Myron Smith and a class of men for cashier/clerk positions because of their sex. The Commission also alleges that Circle S failed to make and preserve employment records as required by Section 709(c) of Title VII.

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, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) and 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 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 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, Defendants (the "Employer"), have continuously been New Mexico corporations doing business in the State of New Mexico and the cities of Bloomfield and Farmington as Circle S convenience and liquor stores, and have continuously had at least 15 employees.

5. At all relevant times, Defendants have continuously been an employer engaged in an industry affecting commerce within the meaning of 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, Myron Smith

filed a charge of discrimination with the Commission alleging violations of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least July 1, 2001, Circle S has engaged in unlawful employment practices at its New Mexico convenience and retail liquor stores, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-(a). These unlawful employment practices include failing or refusing to hire Myron Smith and a class of males, including at least Michael Hanley and Peter Cergizan, for cashier/clerk positions because of their sex.

8. The effect of the practices complained of in paragraph 7 above has been to deprive Myron Smith and a class of males of equal employment opportunities and otherwise adversely affect their status as applicants for employment because of their sex.

9. Since at least July 1, 2001, Defendants have failed, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed, including failing to preserve employment applications as required by law.

10. The unlawful employment practices complained of in paragraph 7 above were intentional.

11. The unlawful employment practices complained of in paragraph 7 above were done with malice and/or reckless indifference to the federally protected rights of Myron Smith and a class of males, including at least Michael Hanley and Peter Cergizan,

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 practices that deny employment opportunities to persons based on sex and any other employment practice which discriminates on the basis of sex.

B. Order Defendants to institute and carry out policies, practices, and programs which provide equal employment opportunities for men, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendants to make whole Myron Smith and a class of males, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful-place hiring and front pay for Myron Smith and a class of males, including at least Michael Hanley and Peter Cergizan.

D. Order Defendants to make and preserve all records, in accordance with the provisions of Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-8(c), relevant to the determination of whether unlawful employment practices have been or are being committed.

E. Order Defendants to make whole Myron Smith and a class of males, including at least Michael Hanley and Peter Cergizan, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including job search expenses, in amounts to be determined at trial.

F. Order Defendants to make whole Myron Smith and a class of males, including at least Michael Hanley and Peter Cergizan, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including emotional pain, suffering inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, in amounts to be determined at trial.

G. Order Defendants to pay Myron Smith and a class of males, including at least Michael Hanley and Peter Cergizan, punitive damages for its malicious and/or reckless disregard of their federally protected rights, in amounts to be determined at trial.

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

I. Award the Commission its costs of this action.

JURY DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this day of June 2004.

Respectfully submitted,

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