

2005 JUN 29 P 11:25
FILED

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

EMPIRE HEALTHCHOICE HMO, INC.,

Defendant.

CV 05 31 61
CIVIL ACTION NO.

SPATT, J. COMPLAINT
JURY TRIAL DEMAND

WALL, M.J.

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 Thomas Guiffrida, James Frullo and other similarly situated employees at Empire HealthChoice HMO, Inc. Guiffrida, age 58 and Frullo, age 61, as well as other employees age 40 and older were denied promotions, harassed and otherwise denied the same terms and conditions as younger employees. Frullo was also terminated due to his age. In addition, both Guiffrida and Frullo were retaliated against because they protested age discrimination and/or engaged in protected activity.

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 Section 16(c) of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. § 216(c).

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

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, Empire HealthChoice HMO, Inc. has continuously been doing business in the State of New York and Nassau and Suffolk County, and has continuously had at least 20 employees.

5. At all relevant times, Defendant, Empire HealthChoice HMO, Inc. 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. Since at least February 2002, Defendant Empire HealthChoice HMO, Inc. engaged in unlawful employment practices at its Bohemia and Jericho Facilities in violation of the ADEA, 29 U.S.C. ¶ 623, by not granting to employees age 40 and over the same terms and

conditions of employment that employees under 40 years of age received. These include, but are not limited to:

- A. Not granting promotions of "grade 24 auditor" under the same conditions as younger employees, to Thomas Guiffrida, James Frullo, Martin Durschlag, and other similarly situated employees age 40 and over.
- B. Not granting medically excused absences to James Frullo that were granted to younger employees, because of Frullo's age, over 40.

8. Since at least February 2002, Empire HealthChoice HMO, Inc. engaged in unlawful employment practices at its Bohemia and Jericho Facilities in violation of the ADEA, 29 U.S.C. ¶ 623, by retaliating against Guiffrida and Frullo for protesting the age discriminatory actions taken against them and others, and for their engaging in the protected activity of filing charges with EEOC and/or cooperating with EEOC investigations. The unlawful employment practices include, but are not limited to:

- A. Involuntarily transferring Guiffrida to the Bohemia office, continued denial of his promotion, and excessive scrutiny by management.
- B. Denial to Frullo of excused medical time off, excessive scrutiny by management, scheduling of work meetings when he was unavailable, and discharge.

9. The effect of the practices complained of in paragraphs 7 and 8 above has been to deprive Guiffrida and Frullo and other similarly situated individuals of equal employment opportunities and otherwise adversely affect their status as employees because of their age.

10. The unlawful employment practices complained of in paragraphs 7 and 8 above were wilful 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 discriminating against employees age 40 and over on the basis of age and any other 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, and 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 Guiffida and Frullo and other similarly situated individuals such as Durschlag.

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 promotion of Guiffida and other similarly situated individuals such as Durschlag, and the reinstatement of Frullo.

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.

Respectfully submitted,

Eric S. Dreiband
General Counsel

James L. Lee
Deputy General Counsel

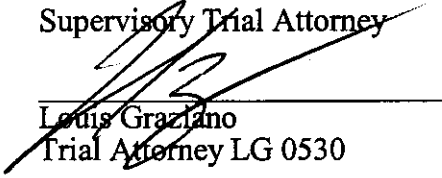
Gwendolyn Young Reams
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

1801 "L" Street, N.W.
Washington D.C. 20507

Elizabeth Grossman EG 2478
Acting Regional Attorney

Lisa Sirkin
Supervisory Trial Attorney


Louis Graziano
Trial Attorney LG 0530

New York District Office
33 Whitehall St. 5th Fl.
New York NY 10004
212-336-3698
212-336-3623 (Fax)