

03 4860

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
THE HOME DEPOT)
)
Defendant.)
_____)

Civil Action No.

COMPLAINT
AND
JURY TRIAL DEMAND

SEIBERT, J.
ORENSTEIN, M.J.

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 ("ADA") and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices based on disability and to provide relief to Carolyn Pisani ("Pisani"), who was adversely affected by such practices. As alleged with particularity below, Defendant The Home Depot ("Home Depot" or "Defendant") discriminated against Pisani because of her disability. Pisani is developmentally disabled in that she suffers from mental retardation resulting in learning disabilities that substantially limit the major life activity of learning.

Defendant violated the ADA by terminating Pisani because of her disability and by failing to accommodate her. Pisani was directed not to report to work on three separate weekends, and Defendant then terminated her for the resulting absences. Defendant also failed to accommodate Pisani in that it did not involve her job coach prior to the simultaneous discipline and termination.

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 (“ADA”), 42 U.S.C. § 12117(a), which incorporates by reference §§ 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, 42 U.S.C. § 1981a.

2. The unlawful employment practices alleged 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 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) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant Home Depot has continuously been a private entity doing business in the State of New York and has continuously employed at least fifteen employees.

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

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

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of the lawsuit, Carolyn Pisani filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Home Depot. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least May 15, 1999, Defendant has engaged in unlawful employment practices in violation of Sections 102 and 503 of the ADA, 42 U.S.C. §§ 12112 and 12203, as outlined below:

a. Pisani is developmentally disabled in that she suffers from mental retardation resulting in learning disabilities. Pisani's learning disabilities substantially limit the major life activity of learning.

b. Pisani is a qualified individual with a disability in that she is able to perform her job with a reasonable accommodation. Pisani's reasonable accommodation is the use of a job coach to assist her to understand the job and to make site visits to ensure her progress and to address any workplace difficulties with her.

c. Pisani was employed as a Sales Associate for Home Depot from June through October, 1999.

d. Pisani's job coach made numerous site visits to Pisani's workplace and communicated regularly with Pisani and her managers during her employment with Defendant. Managers of Home Depot were aware of Pisani's job coach and her role and that they should contact the job coach regarding any disciplinary action.

e. Pisani's performance was satisfactory at all times of her employment with Defendant.

f. During three consecutive weeks in September and October, 1999, Pisani was informed that she did not need to work on the following weekends. Home Depot then simultaneously disciplined and terminated Pisani on October 11, 1999 for allegedly not reporting to work during those three previous weekends.

g. Home Depot did not involve Pisani's job coach regarding its discipline or termination of Pisani and thus failed to accommodate Pisani and terminated her because of her disability.

9. The effect of the practices complained of above have been to deprive Pisani of equal employment opportunities and otherwise to affect adversely her status as an employee because of her disability.

10. The effect of the practices complained of above has been to inflict emotional pain, suffering, and inconvenience upon Pisani.

11. The unlawful employment practices complained of above were intentional.

12. The unlawful employment practices complained of above were done with malice and reckless disregard for Pisani's federally protected rights, in violation of 42 U.S.C. § 12101 et seq.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

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

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

C. Order Defendant to make Carolyn Pisani whole by providing any affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant to make Carolyn Pisani whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of above, including pain and suffering, emotional distress, indignity, inconvenience, loss of enjoyment of life, loss of self-esteem, and humiliation, in an amount to be determined at trial.

E. Order Defendant to pay Carolyn Pisani punitive damages for its malicious and reckless conduct, as described above, in an amount to be determined at trial.

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

G. Award the Commission its costs of this action.

JURY TRIAL DEMAND

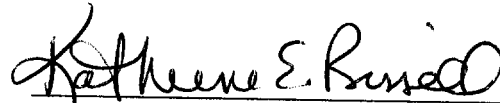
The Commission requests a jury trial on all questions of fact raised by this Complaint.

Eric S. Dreiband
General Counsel

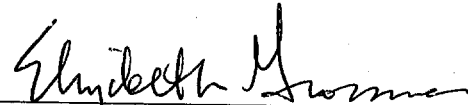
James L. Lee
Deputy General Counsel

Gwendolyn Y. Reams
Associate General Counsel

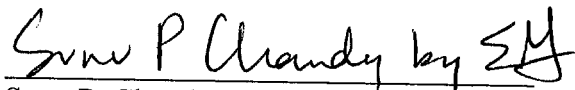
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507



Katherine E. Bissell
Regional Attorney



Elizabeth Grossman
Supervisory Trial Attorney



Sunu P. Chandy
Trial Attorney, US EEOC
33 Whitehall Street, 5th Floor
New York, New York 10004
Phone 212-336-3706
Fax 212-336-3623