

JUDGE SCHEINDLIN

05 CV 8304

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

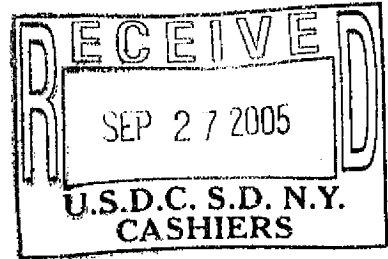
-against-

LA BRANCHE & Co., Inc.

Defendant,

Civil Action No.

COMPLAINT
AND
JURY TRIAL DEMAND



NATURE OF THE ACTION

This is an action under Title I of the Americans With Disabilities Act of 1990, as well as Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Peter Servidio who was adversely affected by such practices. As alleged with greater particularity below, Defendant LaBranche & Co., Inc. ("Defendant") created a hostile work environment for Servidio based on his disability, retaliated against him when he complained of the harassment, and subjected him to constructive discharge.

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 of 1990 ("ADA"), 42 U.S.C. §12117(a), which incorporates by reference Section 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 42 U.S.C §2000e-6 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 Southern District of New York, and venue is therefore proper.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission ("Commission" or "EEOC"), 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 Section 706 (f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1).

4. At all relevant times, Defendant has continuously been a New York corporation doing business in the State of New York, and has continuously had at least fifteen employees.

5. At all relevant times, Defendant 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. §§ 2000e-(g) and (h).

6. At all relevant times, Defendant 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 this lawsuit, Servidio filed a charge with the Commission alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Sevidio is a qualified individual with a disability: (a) he has bipolar disorder/manic

depression which substantially limits him in one or more major life activities, including, but not limited to, sleeping; (b) Defendant regarded Servidio as disabled, and (c) Servidio has a record of a disability of bipolar disorder/manic depression since at least 1994.

9. Since at least 2000, Defendant has engaged in the creation of a hostile environment on the basis of Servidio's disability, as set forth below:

a. Servidio was hospitalized for approximately one week in June, 2000 because of his disability, bipolar disorder/manic depression.

b. From the date of his hospitalization through his constructive discharge in December, 2003, Servidio's supervisors and co-workers made him the frequent target of offensive comments about his disability and the fact that he had been hospitalized. For example, shortly after Servidio's return to work, the Head Clerk questioned him about returning from a "mental ward" and teased him about his use of medication. Defendant's supervisors often initiated or participated in the harassment themselves and failed to deter Servidio's co-workers from contributing to the hostile environment. Supervisors and coworkers frequently made comments to the effect that Servidio was crazy, suicidal, in and out of mental institutions, and ready to "go postal," meaning that he could potentially hurt or kill other people.

c. As early as December 2000, Servidio complained to the Head Clerk about the harassment. The Head Clerk told Servidio that when offensive comments were made to him, he should respond to the comments with similar insults. In July 2001, Servidio also complained to the Post Captain about the comments. In early November 2003, Servidio again complained to the Head Clerk. Defendant took no action to cease the harassment at any time. 10. Since at least November, 2003, Defendant has engaged in retaliation against Servidio. On or about November 24,

2003, Servidio complained to Defendant's Human Resources Department concerning the above-referenced offensive comments about his disability, hospitalization, and use of medication. On November 25 and 26, Servidio met with the Chief Executive Officer and the Specialist Supervisor, who made negative comments about his hospitalization, threatened him, stating that they would make his life and career extremely difficult if he pursued his complaints of discrimination, and directed him to stop pursuing the matter. This threatening behavior continued through Servidio's last day on the premises. Defendant was particularly intimidating immediately after receiving a letter about Servidio's complaints from an attorney.

11. As a result of the continued harassment and retaliation, Servidio's working conditions became so intolerable that he could not continue to work for Defendant. Servidio suffered a panic attack and experienced high blood pressure on December 1, 2003. His condition deteriorated markedly in the next ten days. On December 12, 2003, Servidio was constructively discharged.

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

13. The unlawful employment practices complained of in paragraphs 9-11 above were and are intentional.

14. The unlawful employment practices complained of in paragraphs 9-11 above were done with malice or reckless indifference to the federally protected rights of Servidio, in violation of the ADA, 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 it, from engaging in any employment practice which discriminates on the basis of disability.

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

C. Order Defendant to make whole Servidio by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 9-111 above, including but not limited to appropriate back pay with prejudgment interest and job search expenses, 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, front pay and reinstatement.

D. Order Defendant to make whole Servidio by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described in paragraphs 9-111 above, including but not limited to emotional pain, suffering and inconvenience, in amounts to be determined at trial.

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

F. Award the Commission its costs in this action.

JURY TRIAL DEMAND

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

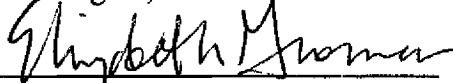
Dated: September 27, 2005
New York, New York

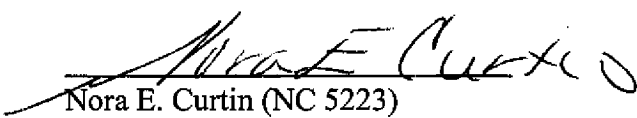
Respectfully submitted,

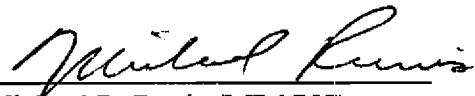
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