

JUDGE KAPLAN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-against-

MUSEUM OF MODERN ART,

Defendant,
-----X

Civil Action No.

COMPLAINT AND JURY TRIAL DEMAND

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

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UNITED STATES DISTRICT COURT
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EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, : Civil Action No.
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Plaintiff, :
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-against- :
 : COMPLAINT
 : AND
MUSEUM OF MODERN ART, : JURY TRIAL DEMAND
 :
Defendant, :
-----X

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and 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 Jeffrey Allen who was adversely affected by such practices. As alleged with particularity below, Jeffrey Allen, a qualified individual with a disability, was denied a position as a temporary Sales Associate because of his disability.

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 ("the ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and 706(f)(3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-5(f)(1) and 2000e-5(f)(3) 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 being committed within the jurisdiction of the United States District Court for the Southern 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 706(f)(3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (f)(3).

4. At all relevant times, Defendant Museum of Modern Art ("the Defendant MOMA") continuously has been a not-for-profit entity doing business in the State of New York and in the city of New York and continuously has had at least fifteen employees.

5. At all relevant times, the Defendant MOMA 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 701(h) of Title VII, 42 U.S.C. §§ 2000e-(g) and 2000e-(h).

6. At all relevant times, the Defendant MOMA 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, Jeffrey Allen filed a charge with the Commission alleging violations of Title I of the ADA by the Defendant MOMA.

All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least July 1994, the Defendant MOMA engaged in unlawful employment practices in violation of Title I of the ADA, 42 U.S.C. § 12112 (a) and (b). In or about July through December, 1994, the Defendant MOMA failed to hire Jeffrey Allen, a former employee, for the position of temporary Sales Associate because of his disability, deafness.

9. The effect of the practices complained of above has been to deprive Jeffrey Allen of equal employment opportunities and otherwise adversely affect his status as an employee because of his disability.

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

11. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Jeffrey Allen.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant MOMA, 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 the Defendant MOMA to institute and carry out policies, practices and programs which provide equal employment opportunities for qualified individuals with disabilities and which eradicate the effects of its past unlawful employment practices.

C. Order the Defendant MOMA to make whole Jeffrey Allen by providing compensation for pecuniary losses resulting from the unlawful employment practices described

in paragraphs 8 and 9 above, including appropriate back pay with prejudgment interest, in amounts to be determined at trial.

D. Order the Defendant MOMA to make whole Jeffrey Allen by providing compensation for nonpecuniary losses resulting from the unlawful employment practices described in paragraphs 8 and 9 above, including but not limited to emotional pain and suffering in amounts to be determined at trial.

E. Order the Defendant MOMA to pay Jeffrey Allen punitive damages for its reckless and malicious conduct, as described in paragraphs 8 and 9 above, in amounts 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 in this action.

JURY TRIAL DEMAND

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

Dated: December 31, 1997
New York, New York

Respectfully submitted,

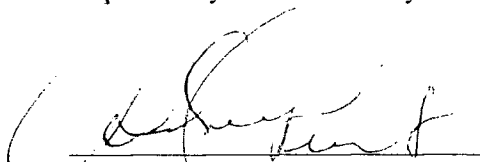
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