

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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EQUAL EMPLOYMENT OPPORTUNITY	:	Civil Action No.
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<u>COMPLAINT</u>
	:	<u>JURY TRIAL DEMANDED</u>
THERMAL FOAMS, INC.	:	
	:	
Defendant.	:	
	:	
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NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act of 1967, as amended, ("ADEA") to correct unlawful employment practices on the basis of age by Thermal Foams, Inc. (hereafter "Defendant"), and to make whole Diane Hartman, Alice Malone, Earlie Burton, James Thompson and Thomas Johnson who were affected by Defendant's discriminatory practices. As alleged in greater detail below, Defendant discriminated against these individuals by selecting them for lay-off because of their age.

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), 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 unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Western District of New York.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission, is an 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 the Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-523 (1984), 98 Stat. 2705.

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 20 employees.

5. At all relevant times, Defendant has continuously been an employer within the meaning of Section 11(b) of the ADEA, 29 U.S.C. § 630(b).

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. On or about August 19, 2003, Defendant laid off Diane Hartman, Alice Malone, Earlie Burton, James Thompson and Thomas Johnson. They were all over the age of 40 and were Defendant's five oldest full-time employees. Defendant did so without articulating any objective criteria for their selection.

8. Diane Hartman, Alice Malone, Earlie Burton, James Thompson and Thomas Johnson were production employees working in Defendant's Buffalo facility.

9. Both before and after these five were let go, Defendant hired less experienced employees, whose average age was under thirty, into positions for which the five, whose average age was fifty, were better qualified.

10. Prior to the lay-offs, Defendant's managers made age-related statements, including comments that an employee was "too old" and questions concerning employees' ages.

11. The effect of the practices complained of above has been to deprive Diane Hartman, Alice Malone, Earlie Burton, James Thompson and Thomas Johnson of equal employment opportunities and otherwise adversely affected their status as an employee because of age.

12. The unlawful employment practices complained of above were willful 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 the Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practices which discriminate on the basis of age;

B. Order the Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals who are 40 years of age and older, and which eradicate the effects of their past and present unlawful employment practices;

C. Grant a judgment requiring the Defendant to pay denied or lost pay and benefits in an amount to be determined at trial, and an equal sum of liquidated damages, plus prejudgment interest, to Charging Parties and other similarly situated individuals;

E. Order the Defendant to re-hire Charging Parties and other similarly situated individuals into an appropriate positions or, in lieu thereof, order the defendant to pay them front pay;

F. Grant such further relief as the Court deems necessary and proper;

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.

Respectfully submitted,

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