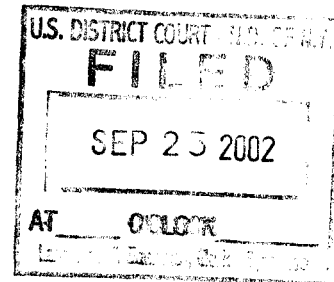


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



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EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
ZAPPALA FARMS, LLC,)
)
Defendant.)
_____)

Civil Action No.

**COMPLAINT
AND
JURY TRIAL DEMAND**

02 -CV- 1220

NPM GJD

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 Elias Mendoza, who was adversely affected by such practices. As alleged with particularity below, Defendant Zappala Farms, LLC (“Zappala”) discriminated against Mendoza because of his disability, a severed hand, when it decreased his pay and when it terminated his employment. Defendant also violated the ADA when it retaliated against Mendoza by terminating his employment in response to his refusal to sign a revised Work Agreement reflecting the pay decrease.

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 Northern 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 Zappala 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 Zappala 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 Zappala 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, Elias Mendoza filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Zappala. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least June 11, 2001, 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. In April 2001, Mendoza entered into an “Agricultural Work Agreement” with Zappala, for the period of April 9, 2001 through October 10, 2001, earning \$7.00 per hour.

b. On or about June 11, 2001, Zappala decreased Mendoza’s rate of pay to \$5.15 per hour.

c. On or about June 26, 2001, Mendoza’s supervisor told Mendoza that the owner of Zappala “did not think Mendoza was worth \$7.00 per hour” because he was missing his right hand. Mendoza’s right hand was severed in an accident in 1994.

d. Mendoza’s supervisor also told Mendoza that if he refused to sign a new work agreement reflecting his decrease in pay, his employment would be terminated immediately. When Mendoza refused to sign the agreement, he was terminated.

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

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

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 Mendoza’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:

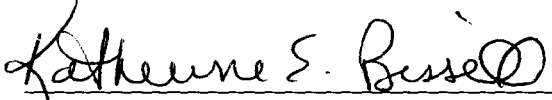
- A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice that discriminates on the basis of disability or perceived disability.
- B. Order Defendant to institute and 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 Elias Mendoza whole by providing any affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- D. Order Defendant to make Elias Mendoza 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 Elias Mendoza 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.

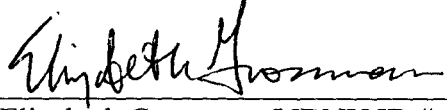
JURY TRIAL DEMAND

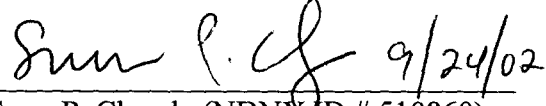
The Commission requests a jury trial on all questions of fact raised by this Complaint.

Gwendolyn Y. Reams
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