

U.S. Equal Employment Opportunity Commission
Philadelphia District Office
21 S. 5th Street, Suite 400
Philadelphia, Pennsylvania 19106
(215) 440-2684
IASF-9222
Iris Santiago-Flores
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
v.)	Civil Action No.
)	
RICE COHEN INTERNATIONAL (an MSX International, Inc. company))	<u>COMPLAINT</u>
)	Jury Trial Demand
Defendant.)	

NATURE OF ACTION

_____ This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age and to provide appropriate relief to Mr. Richard T. Montoya, the Charging Party. As alleged with greater particularity in paragraph 8 below, Rice Cohen International, an executive search firm, discriminated against Mr. Montoya on the basis of his age, 52, by blatantly rejecting his application for the Federal Accounts Manager position advertised on its web-site and refusing to refer him for hire consideration because he was “too old,” in violation of the Age Discrimination in Employment Act. As a result of Defendant’s unlawful actions, Mr. Montoya suffered lost wages and other damages.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 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. Section 626(b) (the "ADEA"), which incorporates by reference section 16(c) of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. section 216(c).

2. The employment practices alleged to be unlawful were and are now being committed

within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

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 the ADEA and is expressly authorized to bring this action by section 7(b) of the ADEA, 29 U.S.C. section 626(b), as amended by section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant Rice Cohen International (the "Referral Agency"), has continuously been a corporation doing business in the State of Pennsylvania, the County of Bucks, and the Town of Yardley, and has continuously had at least twenty (20) employees.

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

6. At all relevant times, Defendant Referral Agency has procured employees for an employer and has been an employment agency within the meaning of Section 11 (c) of the ADEA, 29 U.S.C. § 630(c).

CONCILIATION

7. Prior to the 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. section 626(b).

STATEMENT OF CLAIMS

8. Since at least January 19, 2000, Rice Cohen International, the Defendant referral agency, engaged in unlawful employment practices at its Yardley, Pennsylvania facility, in violation of section 4(a)(1) of the ADEA, 29 U.S.C. section 623(a)(1). Specifically, because of his age, 52, Defendant rejected and/or refused to consider Richard T. Montoya's application for the Federal

Accounts Manager position which was advertised on its website over the internet.

A. Mr. Montoya's date of birth is May 5, 1947. He was 52 years old at the time his application was wrongfully rejected by Defendant, Rice Cohen International.

B. On January 15, 2000, Mr. Montoya applied for an available Federal Accounts Manager position (MS004) through the internet by sending his resume to the attention of Michael Shelton, Defendant's Account Executive, via e-mail address [mshelton @ricecohen.com](mailto:mshelton@ricecohen.com). According to the website advertisement, the job was a new position with a \$100 million HR consulting firm, and was located in the District of Columbia. The annual salary for this position was approximately \$85,000, plus commission and benefits. Shelton received Mr. Montoya's application and sent it to the attention of Donna Paulaski, Defendant's Consultant. Ms. Paulaski's responsibilities required her to review candidates' qualifications for placement with employer clients.

C. Mr. Montoya was well qualified for the position at the time of his application. Mr. Montoya's resume adequately summarized his extensive work experience in selling products and services directly to the federal government, credentials that would have made Mr. Montoya highly qualified for the Federal Accounts Manager position advertised by Respondent, and should have entitled him to further consideration.

D. On January 19, 2000, Mr. Montoya received an e-mail message from Defendant showing that Paulaski had addressed an e-mail message to Shelton referring to Mr. Montoya application, stating "thanks, Mike but he is too old! I don't see him having any exp. selling directly into fed gov. He is more of a consultant." This e-mail message was sent to Mr. Montoya by Ms. Paulaski, from e-mail address dpaulaski@ricecohen.com. Mr. Montoya printed the e-mail message out and kept a copy of this e-mail for his records.

E. Defendant failed to refer or hire Mr. Montoya for the advertised position because of his age, 52. After rejecting Mr. Montoya's application, Defendant continued to seek other applicants for the position.

9. The effect of the practices complained of in paragraph 8 above has been to deprive

Mr. Montoya of equal employment opportunities and otherwise adversely affect his status as an employee because of his age.

10. The unlawful employment practices complained of in paragraph 8, subparagraphs a through e above, were willful within the meaning of section 7(b) of the ADEA, 29 U.S.C. section 626(b).

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Referral Agency, its officers, successors, assigns and all persons in active concert or participation with it, from refusing to refer applicants to jobs and any other employment practice which discriminates on the basis of age against individuals 40 years of age and older.

B. Order Defendant Referral Agency 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 its past and present unlawful employment practices.

C. Grant a judgment requiring Defendant Referral Agency to pay appropriate back wages in an amount to be determined at trial, and an equal sum as liquidated damages, and prejudgment interest in lieu thereof to individuals whose wages are being unlawfully withheld as the result of the acts complained of above, including by not limited to Mr. Montoya.

D. Order Defendant Referral Agency to make whole Mr. Montoya as a result of the acts complained of above, by restraining the continued withholding of amounts owing as back wages with prejudgment interest, in amounts to be determined at trial.

E. Order Defendant Referral Agency to make whole Mr. Montoya by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to the referral and hire of Mr. Montoya to a comparable full-time permanent position.

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 its complaint.

Respectfully submitted,

GWENDOLYN YOUNG REAMS
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington, DC 20507

JACQUELINE H. McNAIR
Regional Attorney

JUDITH A. O'BOYLE
Supervisory Trial Attorney

IRIS SANTIAGO-FLORES
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Philadelphia District Office
21 South Fifth Street, Suite 400
Philadelphia, PA 19106
(215) 440-2684
(215) 440-2848 (Fax)