

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

_____	:	
EQUAL EMPLOYMENT	:	
OPPORTUNITY COMMISSION	:	
and	:	
MICHAEL HILL,	:	
	:	
Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	
	:	No. 2:05-cv-05150-JCJ
TARGET CORPORATION,	:	
	:	
Defendant.	:	
_____	:	

INTERVENER COMPLAINT

Intervener-Plaintiff, Michael Hill, by and through his attorney, Julie A. Uebler, Esquire, brings this Intervener Complaint and asserts the following claims against Target Corporation (“Target”).

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3), Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, and Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981.

2. This Court has jurisdiction over Mr. Hill’s claims under the Pennsylvania Human Relations Act, 43 P.S. §§ 955(a) and (d), pursuant to supplemental jurisdiction as codified at 28 U.S.C. § 1367.

3. The amount in controversy in this case exceeds the jurisdictional amount for arbitration of One Hundred Fifty Thousand Dollars (\$150,000.00), exclusive of interest and costs.

4. Mr. Hill has exhausted all administrative remedies, having filed timely complaints of race discrimination and retaliation with the Equal Employment Opportunity Commission (“EEOC”) and the Pennsylvania Human Relations Commission (“PHRC”).

5. The actions complained of herein occurred within the jurisdictional limit of this Court. Venue is properly invoked pursuant to 28 U.S.C. §§ 1391(b) and (c).

PARTIES

6. Intervener-Plaintiff, Michael Hill, is an African-American citizen of the United States. At all relevant times, Mr. Hill was an employee of Target.

7. Target has been properly named a defendant in the action brought by the EEOC. Target has, at all relevant times, continuously been and is now doing business in the Commonwealth of Pennsylvania and the city of Springfield. At all relevant times, Target has had at least fifteen (15) employees, and has been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

8. Mr. Hill began his employment with Target in July 2003 as a Senior Merchant at its Springfield, Pennsylvania store. The Senior Merchant position was a store executive position. At the time of Mr. Hill’s hire, Target identified the Senior

Merchant position to him as an apprentice to the Store Team Lead (the highest position at the store level).

9. At the time Mr. Hill started his employment with Target, he had extensive experience in retail management.

10. After eight weeks of training, in September 2003, Mr. Hill began his assignment at the Springfield store reporting to Jeff Barnes (White), the Store Team Lead.

11. Soon after Mr. Hill started working for Mr. Barnes, Mr. Barnes often yelled at Mr. Hill in front of other subordinate employees, and attempted to belittle him.

12. In November 2003, Mr. Hill met with Mark Kerin, Mr. Barnes' boss and the District Team Lead for the district that included the Springfield store. During their meeting, Mr. Hill told Mr. Kerin about Mr. Barnes' treatment of him. Mr. Hill also told Mr. Kerin that he would like to handle the problem directly.

13. On another day in or around November 2003, Mr. Kerin purchased items at the store. Mr. Barnes said: "Let Mike pay for it, he makes a lot of money," to which Mr. Hill replied: "I'm third in this line." Mr. Barnes' response was that he was "going to keep it that way."

14. In an effort to address the problems he was having with Mr. Barnes, Mr. Hill initiated a meeting among himself, Mr. Barnes, and Panda Allia (White), Target's Human Resources representative at the Springfield store. During the meeting, Mr. Hill told Mr. Barnes that he objected to the way he was being treated. Mr. Barnes said he had not realized what he had been doing.

15. Between November 2003 and January 2004, Mr. Kerin was replaced as the District Team Lead by Craig Snyderman (White), who happened to be a friend of Mr. Barnes with whom he had worked often in the past.

16. During a visit to the Springfield store in or about January 2004, Mr. Snyderman met one-on-one with each of the Store Executives. During his meeting with Mr. Hill, Mr. Snyderman said that he had heard from Mr. Kerin that Mr. Hill had experienced problems with Mr. Barnes.

17. Later the same day, Mr. Barnes ran into Mr. Hill on the sales floor and asked about Mr. Hill's meeting with Mr. Snyderman. Mr. Barnes then stated words to the effect that: "Well, did he tell you we are never going to put a Black person in the store manager position?"

18. Soon thereafter, in late January or February 2004, when Mr. Barnes and Mr. Hill were walking the sales floor on the way to a staff meeting, they discussed the display area set up for Black History month. Mr. Barnes made dismissive comments about the display, suggesting that the merchandise would be sent to Charge Back (which is a reference to throwing it out).

19. Afterwards, during a Monday morning meeting with the Store Executives, Mr. Barnes made an extremely insensitive statement suggesting that "Black women were the lowest form of life." Mr. Hill was the only African-American in the meeting. The other Store Executives appeared to be embarrassed by Mr. Barnes' statement, and there was an awkward silence in the room before the meeting continued.

20. In or around February 2004, racial tensions between Caucasian and African American Supervisors (the managers below Executive level) at the store, which

had been building for some time, came to a head. One of the White Supervisors, Stephanie Wagner, commented disparagingly to her colleagues about the “ghetto” pictures that Mr. Hill had hung in his office. Mr. Hill had hung a variety of framed photos of celebrities in his office, many of whom were Black, including Allen Iverson, Muhammad Ali and Biggie Smalls (a rap musician). The Black Supervisors were offended by Ms. Wagner’s statement and attitude.

21. The discord created by Ms. Wagner’s comments prompted Mr. Hill to meet with all the Supervisors and directly address the racial tensions. By the end of the meeting, the Supervisors had committed to make changes in their behavior to improve their relationships.

22. Thereafter, Mr. Hill and Mr. Barnes met to discuss store management issues. During that discussion, Mr. Hill advised Mr. Barnes of racial tensions among the Supervisors and the related meeting. Mr. Hill also advised Mr. Barnes of a perception among the minority Supervisors that they would not be promoted to the Executive level at the Springfield store. Mr. Barnes responded to this information by stating that he “didn’t have any of these problems until I got a Black Senior Merchant.” Mr. Hill asked Mr. Barnes to explain what he meant, and Mr. Barnes simply stated: “Well, I didn’t.”

23. Rather than praise Mr. Hill for his efforts, Mr. Barnes undermined Mr. Hill’s management authority and minimized the significance of the race-related tensions. Mr. Barnes met with Ms. Wagner behind closed doors and told her to “let it go,” and suggested that some people are “overly sensitive.”

24. By late February, Mr. Hill complained to Mr. Snyderman about Mr. Barnes’ behavior. At that time, Mr. Hill was very reluctant to identify the race-based

nature of Mr. Barnes' statements because he was new to Target and he did not want to be perceived to be "playing the race card." Mr. Hill told Mr. Snyderman that things were getting worse with Mr. Barnes, and that the work environment was making him ill. Mr. Hill asked for a transfer to another Target location. Mr. Snyderman told Mr. Hill that a transfer was not an option.

25. By March 2, 2004, the stress of dealing with the racially hostile work environment resulted in physical manifestations and Mr. Hill was rushed to the hospital with chest pains. Mr. Hill was subsequently on a paid disability leave of absence for six weeks.

26. After returning from leave, Mr. Hill met with Mr. Snyderman in early May and complained specifically about the race-related statements made by Mr. Barnes and the impact it was having on his ability to perform his job. The complaint was made in accordance with Target's internal complaint procedures. Although Mr. Snyderman claimed that such statements would not be tolerated, he also told Mr. Hill that he should not take them "so literally." He went on to say: "What you have to understand is that sometimes people say these things, and that doesn't mean they are racists." Mr. Snyderman also asked Mr. Hill whether Mr. Hill thought he was a racist.

27. In addition to the race-based statements, Mr. Hill also raised a concern with Mr. Snyderman about a conversation he had with Mr. Barnes early in their working relationship. Mr. Hill conveyed to Mr. Snyderman that Mr. Barnes had told him that if he wanted to "get rid of somebody," then "say things to them" when no one else is around to "make them quit."

28. During the meeting with Mr. Snyderman in early May, Mr. Hill explicitly requested a transfer to another store. Mr. Snyderman refused.

29. Within weeks after making his complaint to Mr. Snyderman, Mr. Hill met with Mr. Barnes to directly address his concerns. Mr. Hill told Mr. Barnes that he objected to Mr. Barnes' racially insensitive statements, and that he had reported his concerns to Mr. Snyderman. Mr. Barnes replied: "When people f--k with me, I f---k with them."

30. Thereafter, Mr. Barnes intentionally interfered with Mr. Hill's ability to perform his job duties. For example, Mr. Barnes interfered with Mr. Hill's direction to his subordinates by giving them contrary instructions when Mr. Hill was out of the store. He also made efforts to discredit Mr. Hill with his subordinates.

31. When Mr. Hill spoke with Ms. Allia, Target's Human Resources representative at the Springfield store, about his continuing concerns about Mr. Barnes in late May 2004, Ms. Allia asked him whether he thought Mr. Barnes was a racist. She told Mr. Hill that sometimes people make stupid remarks, but that does not mean they are being malicious.

32. At the conclusion of an early morning break with the Executives, Mr. Hill, Mr. Barnes and Ms. Allia stayed behind, and Ms. Allia told the others about racist statements and race-based jokes that were allegedly made by another company manager. In response, Mr. Barnes stated that he thought this other manager "might have a white sheet in his closet." Mr. Barnes also admitted that he had spoken with the manager's supervisor about the statements and that the supervisor ignored it.

33. Despite the fact that Ms. Allia was Target's highest ranking Human Resources professional at the Springfield store, she said nothing about the racially-charged statements or about Target's obligations to prevent them.

34. Mr. Barnes dismissed the egregiousness of the other manager's behavior by saying that it was probably the way he was raised and further suggesting that "when you are raised that way as a child, it sticks with you."

35. In the same conversation, Mr. Barnes indicated that his mother used to work with Black people, and she always said they were lazy.

36. In July 2004, Mr. Hill contacted Mr. Snyderman and told him that things with Mr. Barnes were getting worse. Mr. Hill again requested a transfer, which was denied.

37. In early August 2004, on a day after Mr. Hill had been off, Mr. Barnes yelled at and berated Mr. Hill about the state of the stock room in front of other employees. Mr. Hill could no longer handle the stress of Mr. Barnes' mistreatment. He told Mr. Barnes that he had to leave the store to see his doctor.

38. On August 4, 2004, Mr. Hill met with Mark Baker (White), Target's Regional Human Resources Manager, to complain about the racially hostile work environment, Mr. Snyderman's refusal to take his complaints seriously, and Mr. Barnes' retaliation following his prior complaints to Mr. Snyderman. Mr. Hill emphasized that the work environment was making him ill. Mr. Hill confirmed his complaint in an e-mail to Mr. Baker on August 6, 2004.

39. On August 16, 2004, Mr. Baker sent an e-mail to Mr. Hill indicating that he had asked Mr. Snyderman to "begin" an investigation into Mr. Hill's complaints. He

had also offered Mr. Hill a demotion to another store. Based on the fact that Mr. Baker did nothing more than send Mr. Hill's complaint back to Mr. Snyderman, Mr. Hill reasonably concluded that Target would not take his complaints seriously and that the hostile work environment would continue. Mr. Hill resigned his employment with Target on September 13, 2004, as soon after receiving Mr. Baker's message as he was able to secure alternative employment, because the work environment at Target had become intolerable and was severely impacting his health.

40. Mr. Hill was subjected to a racially hostile work environment. He was further subjected to retaliation because he made complaints of the discriminatory conduct, which constituted protected activity under federal and state anti-discrimination statutes.

41. The unlawful employment practices detailed in this Complaint were intentional and/or were committed with malice or with reckless indifference to Mr. Hill's right to be free from discrimination in the workplace.

42. As a direct result of Target's unlawful employment practices, Mr. Hill has suffered a loss of earnings and earnings potential.

43. As a direct result of Target's unlawful employment practices, Mr. Hill has suffered emotional distress, humiliation, the loss of self-esteem, physical illness, and a loss of life's pleasures.

COUNT I

Race Discrimination and Retaliation in violation of
Title VII of the Civil Rights Act of 1964, as amended

44. Intervener-Plaintiff hereby incorporates by reference paragraphs 1 through 43 as though fully set forth herein.

45. Target violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981a, in that it discriminated against Mr. Hill on account of his race (Black) and retaliated against him for making complaints of discrimination.

COUNT II

Race Discrimination and Retaliation in violation of the
Pennsylvania Human Relations Act

46. Intervener-Plaintiff hereby incorporates by reference paragraphs 1 through 45 as though fully set forth herein.

47. Target violated the provisions of the Pennsylvania Human Relations Act, 43 P.S. §§ 955(a) and (d) in that it discriminated against Mr. Hill on account of his race (Black) and retaliated against him for making complaints of discrimination.

COUNT III

Race Discrimination and Retaliation in violation of
Section 1981 of the Civil Rights Act of 1866

48. Intervener-Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth herein.

49. Target violated the provisions of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, in that it discriminated against Mr. Hill on account of his race

(Black), interfered with his right to make and enforce contracts based on his race, and retaliated against him for making complaints of discrimination.

PRAYER FOR RELIEF

WHEREFORE, Michael Hill respectfully requests that this Court:

A. Enter a declaratory judgment that Defendant's acts, policies, practices and procedures complained of herein have violated Mr. Hill's rights as secured to him by law;

B. Require Defendant to reinstate Mr. Hill to a position equivalent to the one from which he was constructively discharged and to award him full wages and benefits commensurate to that position;

C. Award to Mr. Hill compensation for all past and future pecuniary losses resulting from Target's unlawful employment practices, including but not limited to lost earnings, lost promotional opportunities, lost earnings growth opportunities, all compensation and benefits lost due to the actions of Defendant, all out-of-pocket losses, as well as an award for front pay if reinstatement is not possible;

D. Award to Mr. Hill compensation for past and future non-pecuniary losses resulting from Target's unlawful employment practices, including but not limited to, pain and suffering, emotional distress, humiliation, embarrassment, and a loss of life's pleasures, in amounts to be determined at trial;

E. Award to Mr. Hill punitive damages for Target's malicious and reckless conduct as described herein, in amounts to be determined at trial;

F. Grant to Mr. Hill all costs, disbursements and reasonable attorneys' fees relating to the enforcement of his rights.

G. Grant to Mr. Hill prejudgment interest; and

H. Grant to Mr. Hill such additional relief as the Court deems just and proper under the circumstances.

JURY TRIAL DEMAND

Intervener-Plaintiff requests a jury trial on all questions of fact raised by his Complaint.

Respectfully submitted,

UEBLER LAW

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Attorney for Intervener-Plaintiff,
Michael Hill

VERIFICATION

I, Michael Hill, verify under penalty of perjury that the factual information set forth in the foregoing Complaint in Intervention is true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 28 U.S.C. § 1746 relating to unsworn declarations.

Michael Hill

Dated: _____

CERTIFICATE OF SERVICE

I, Julie A. Uebler, hereby certify that a true and correct copy of the foregoing Intervener Complaint was served by first class mail, postage prepaid, on December 23, 2005 to the following:

Mr. Woody Anglade, Esquire
Equal Employment Opportunity Commission
21 South 5th Street, Suite 400
Philadelphia, PA 19106

Ms. Barbara A. O'Connell, Esquire
Sweeney & Sheehan
1515 Market Street, 19th Floor
Philadelphia, PA 19102-1983

Mr. Donald M. Lewis, Esquire
Mr. Joseph G. Schmitt, Esquire
Halleland, Lewis, Nilan & Johnson, P.A.
U.S. Bank Plaza South, Suite 600
220 South Sixth Street
Minneapolis, MN 55402-4501

Julie A. Uebler