

FILED

JUL 27 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *elm*
DEPUTY CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

AUSTIN COMMERCIAL, INC.
Defendant.

§
§
§
§
§
§
§
§

A 01 CA 493 SS
Civil Action No.

COMPLAINT
JURY TRIAL DEMAND

NATURE OF ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of race, and to provide appropriate relief to Dwight Revada who was adversely affected by such practices. Dwight Revada was a victim of unlawful discrimination when he was subjected to racial harassment as an employee of Defendant, Austin Commercial, Inc. (hereinafter "Austin Commercial").

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 Sections 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) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

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 Western District of Texas, Austin Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (hereinafter "the Commission"), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Austin Commercial, a corporation registered to do business in the State of Texas, has continuously been doing business in the State of Texas in the city of Austin, Texas and has continuously had at least fifteen employees.

5. At all relevant times, the Defendant, Austin Commercial has continuously 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

6. More than thirty days prior to the institution of this lawsuit, Dwight Revada filed a charge with the Commission alleging violations of Title VII by Defendant, Austin Commercial. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least on or about February 28, 2000, the Defendant, Austin Commercial, has engaged in unlawful employment practices at its Barton Skyway 2 jobsite, located in or around the city of Austin, Texas, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. §§ 2000e(k) and 2000e-2(a). The unlawful practices were to subject Dwight Revada to discrimination through harassment based on his race, Black. Dwight Revada was discriminated against because of his race, Black, when Defendant Austin Commercial's employees and supervisors at the Barton Skyway 2 jobsite engaged in invidious and blatant racial harassment between February 28, 2000 and June 1,

2000. Revada, Defendant's only Black employee on the job site, complains that he was subjected to several egregiously racist incidents, including two "noose" incidents.

- a. On or about February 28, 2000, an unknown person hung a noose between the offices of two of Revada's supervisors. Attached to the noose was a piece of paper with Revada's name. A white co-worker, George King, admitted to putting up the piece of paper, but did not admit to putting up the noose.
- b. At a later date, Revada's supervisor, Richard Weems, drew a stick figure hanging from a tree on a blackboard and wrote Revada's name next to the drawing.
- c. On several occasions, Tom Reid, the assistant superintendent, invited Revada to KKK meetings.
- d. Finally, there were racial slurs and atrocities written on the side of several port-o-potties at the job site (these included KKK symbols, drawings of hooded men, and statements like "niggers go home," and "no niggers"). Another Black male, Ollie McKinney, who worked for a sub-contractor, Fire Protection Company, complained to Tom Reid about the graffiti and demanded it be removed. There were a few days between when McKinney first saw the racial slurs and when he complained about them to Reid. Reid allowed the racial epithets to remain visible for several days. Eventually, Reid assigned Revada to spray paint over the racial slurs and graffiti. This action by Reid to force Revada, Defendant's only Black employee on the job site, to clean up the racial epithets, was another act of racial harassment against Revada.

8. The effect of the practices complained of in paragraph seven above has been to deprive Dwight Revada of equal employment opportunities and to otherwise adversely affect his status as an employee, because of his race, Black.

9. The unlawful employment practices complained of in paragraph seven above were and are intentional.

10. The unlawful employment practices complained of in paragraph seven above were and are being done with malice or reckless indifference to the federally protected rights of Dwight Revada .

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant, Austin Commercial, 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 race, including, but not limited to, tolerating the acts described in paragraph seven above;

B. Order the Defendant, Austin Commercial, to institute and carry out policies, practices, and programs which provide equal employment opportunities for persons of all races, and which eradicate the effects of its past and present unlawful employment practices;

C. Order the Defendant, Austin Commercial, to make whole Dwight Revada, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices;

D. Order the Defendant, Austin Commercial, to make whole Dwight Revada, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph seven above, including, but not limited to, medical expenses and job search expenses, in amounts to be determined at trial;

E. Order the Defendant, Austin Commercial, to make whole Dwight Revada, by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph seven above, including, but not limited to, emotional pain, suffering, loss of enjoyment of life, and humiliation, in amounts to be determined at trial;

F. Order the Defendant, Austin Commercial, to pay Dwight Revada punitive damages for its malicious and reckless conduct described in paragraph seven above, in amounts to be

determined at trial;

G. Grant such further relief as the Court deems necessary and proper in the public interest; and

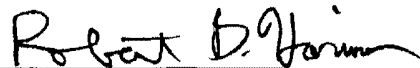
H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

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

Respectfully submitted,

GWENDOLYN YOUNG REAMS
Acting Deputy General Counsel



ROBERT B. HARWIN
Regional Attorney
State Bar No. 076083
(District of Columbia)



LINDA GUTIERREZ
Supervisory Trial Attorney
Texas State Bar No. 08642750



R. CHRIS PITTARD
Trial Attorney
Texas State Bar No. 00794465

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

San Antonio District Office
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78229-3555
(210) 281-7636
(210) 281-7669 (Fax)

ATTORNEYS FOR PLAINTIFF