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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

SUNDANCE REHABILITATION
CORPORATION

Defendant.

CIVIL ACTION NO. **1-01CV1867**
JUDGE WELLS

MAG. JUDGE STREEPY

COMPLAINT

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act, Title I of the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, and Title I of the Civil Rights Act of 1991 to correct actions undertaken by Defendant to retaliate against individuals affected by the Defendant's Separation Agreement, General Release and Covenant Not to Sue, because of their right to file a charge with the EEOC or participate in an EEOC investigation or proceeding.

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:

- a. Section 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. Section 217, to enforce the requirements of the Equal Pay Act of 1963 (the "EPA"), codified as Section 15 of the FLSA, 29 U.S.C. §215;
- b. Sections 704(a), 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e-3(a), 2000e-5(f)(1) and (3)("Title VII");
- c. Sections 4(d) and 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Sections 623(d) and 626(b) (the "ADEA") which incorporates by reference Sections 16(c) and 17 of the FLSA, as amended, 29 U.S.C. Sections 216(c) and 217; and
- d. Section 107(a) and 503 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. Sections 12117(a) and 12203 which incorporates by reference Sections 706(f)(1) and (3) of Title VII.

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 Northern District of Ohio, Eastern Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission" or "EEOC"), is the agency of the United States of America charged with the administration, interpretation and enforcement of the EPA, Title VII, ADEA, and the ADA and is expressly authorized to bring this action by:

- a. Section 17 of the FLSA, 29 U.S.C. Section 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705;
- b. Sections 704(a), 706(f)(1) and (3) of Title VII, 42 U.S.C. Sections 2000e-3(a), 2000e-5(f)(1) and (3);

- c. Sections 4(d) and 7(b) of the ADEA, 29 U.S.C. §§ 623 (d) and 626 (b) as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705; and
- d. Sections 107(a) and 503 of the ADA, 42 U.S.C. §§ 12117(a) and 12203 which incorporates by reference Sections 706(f)(1) and (3) of Title VII.

4. At all relevant times, Defendant SunDance Rehabilitation Corporation (SunDance), has continuously been a Connecticut corporation, doing business in at least 27 states, including the State of Ohio and the City of North Olmsted and has continuously had at least 20 employees.

5. At all relevant times, Defendant SunDance has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

6. At all relevant times, Defendant SunDance has continuously been an employer engaged in an industry affecting commerce under Section 101(5) 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. §§ 2000e(g) and (h) and has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

7. At all relevant times, Defendant SunDance has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630 (b), (g) and (h).

8. At all relevant times, Defendant SunDance has acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

9. At all relevant times, Defendant SunDance has continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§ 203(b), (i) and (j) or has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§ 203(r) and (s), in that said enterprise has continuously been an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.

STATEMENT OF TITLE VII RETALIATION CLAIMS

10. More than thirty days prior to the institution of this lawsuit, Elizabeth S. Salsbury filed a charge with the Commission alleging violations of Title VII by Defendant SunDance. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since at least March 5, 1999, Defendant SunDance has engaged in continuing unlawful employment practices at its North Olmsted, Ohio, facility in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a). The continuing practices include retaliating against individuals affected by its Separation Agreement, General Release and Covenant Not to Sue ("Separation Agreement"), because of their right to file a charge with the EEOC or participate in an EEOC investigation or proceeding.

12. The effect of the continuing practices complained of in paragraph 11, above, has been to deprive Elizabeth S. Salsbury and similarly situated individuals of equal employment opportunities and otherwise adversely affect their status because of their right to file charges with the EEOC or otherwise participate in an EEOC investigation or proceeding.

13. The continuing unlawful employment practices complained of in paragraph 11, above, were and are intentional.

STATEMENT OF EPA CLAIMS

14. Since at least March 5, 1999 Defendant SunDance has continually violated Section 15(a)(2) of the FLSA, 29 U.S.C. §215(a)(2), by retaliating against individuals affected by the Separation Agreement because of their right to file a charge with the EEOC or participate in an EEOC investigation or proceeding under the EPA.

15. As a result of the continuing acts complained of in paragraph 14, above, Defendant SunDance unlawfully has withheld and is continuing to withhold the payment of severance benefits to Elizabeth S. Salsbury and similarly situated individuals.

STATEMENT OF ADEA CLAIMS

16. Since at least March 5, 1999, the Defendant SunDance has continually engaged in unlawful employment practices at its North Olmstead, Ohio facility, in violation of Section 4(d) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623(d) by retaliating against individuals affected by the Separation Agreement because of their right file a charge with the EEOC or participate in an EEOC investigation or proceeding.

17. The effect of the continuing practice(s) complained of in paragraph 16, above, has been to deprive Elizabeth S. Salsbury and similarly situated individuals of equal employment opportunities and otherwise adversely affect their statutory right to because of their right to file a charge with the EEOC or participate in an EEOC investigation or proceeding.

STATEMENT OF ADA CLAIMS

18. Since at least March 5, 1999, the Defendant SunDance has continually engaged in unlawful employment practices at its North Olmstead, Ohio facility, in violation of Sections 107(a) and 503 of the ADA, 42 U.S.C. §§ 12117(a) and 12203 which incorporates by reference Sections 706(f)(1) and (3) of Title VII. The continuing practices include interfering with the right of individuals affected by the Separation Agreement to file a charge with the EEOC or participate in an EEOC investigation or proceeding.

19. The effect of the continuing practices complained of in paragraph 18, above, has been to deprive Elizabeth S. Salsbury and similarly situated individuals of equal employment opportunities and otherwise adversely affect their statutory right to engage in protected activity.

20. The unlawful employment practices complained of in paragraph 20, above, were and are intentional.

PRAYER FOR RELIEF

Wherefore, the Commission requests that this Court:

A. Grant a permanent injunction enjoining the Defendant SunDance, its officers, successors, assigns and all persons in active concert or participation with them, from engaging in the institution, maintenance and/or management of the April 1999 Separation Agreement, or any other similar plan, which retaliates because of an employee right to file a charge with the EEOC or participate in an EEOC investigation or proceeding.

B. Grant a permanent injunction enjoining the Defendant SunDance, its officers, successors, assigns and all persons in active concert or participation with them, from retaliating because of an employee's right to file a charge with the EEOC or participate in an EEOC investigation or proceeding

C. Order Defendant SunDance to institute and carry out policies, practices and programs which provide equal employment opportunities for employees who wish to file charges with the EEOC or participate in an EEOC investigation or proceeding, and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendant SunDance to make whole Elizabeth S. Salsbury and other similarly situated employees, by providing affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to immediately (1) reforming the April 1999 Separation Agreement to expressly permit employees to file charges with the EEOC and participate in EEOC investigations or proceedings without losing their severance pay and without violating the Separation Agreement, (2) restraining SunDance's continued withholding of severance pay as amounts owing as back wages with prejudgment interest, in amounts to be determined at trial, and (3) instituting further measures to remove barriers to employees who wish to file a charge with the EEOC or participate in an EEOC investigation or proceeding.

These further measures include delivering a corrective notice with a reformed Separation Agreement to Elizabeth S. Salsbury and similarly situated former employees and tolling all limitations periods for charge, claim or (under the EPA) suit filing until the date of actual delivery of the corrective notice, which sets the applicable time limitation running anew.

E. Grant such further relief as this Court deems necessary and proper in the public interest.

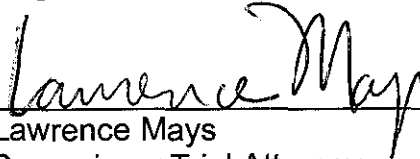
F. Award the Commission its costs of this action.

Respectfully submitted,

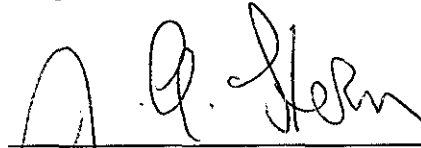
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