

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ED
CT COURT
MARYLAN

2004 JUL -8 A 11: 57

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
10 South Howard Street, Third Floor)
Baltimore, MD 21201)

Plaintiff,)

v.)

AVADO BRANDS, INC. d/b/a DON PABLO'S)
RESTAURANT,)
1 Restaurant Park)
Owings Mills, MD 21117)

Defendant.)

CIVIL ACTION NO.:

COMPLAINT

RDB 04 CV 2094

NATURE OF THE ACTION

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") brings this action pursuant to Title VII of the Civil Rights Act of 1964, as amended, to compel specific performance of a Negotiated Settlement Agreement resolving a charge filed on the basis of race (Black) discrimination with regard to harassment and discharge based on race, and retaliation, and to make whole Veronica Bowmaker ("Bowmaker"), the Charging Party. The Commission alleges that it entered into a Negotiated Settlement Agreement ("Agreement") with Avado Brands, Inc. d/b/a Don Pablo's Restaurants ("Avado Brands") on December 1, 2003, in settlement of Charge No. 120-2002-10318, which Bowmaker filed with the Commission. The Commission further alleges that Bowmaker has breached the Agreement in that it has failed and refused to abide by the terms of the Agreement.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, 1345. This action is authorized and instituted pursuant to: (a) Section 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 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 District of Maryland.

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 VII and is authorized to bring this lawsuit pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Avado Brands (the "Employer"): (a) has continuously been a corporation doing business in Owings Mills, Maryland and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce under 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, Bowmaker filed a charge with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least October 29, 2003, Defendant Employer has failed and refused to

comply with the terms of the Agreement it entered into with Bowmaker and the Commission on or about October 29, 2003 and December 1, 2003 respectively. A copy of the Agreement is attached hereto as Exhibit A.

8. The unlawful practices complained of in paragraph 7 above were willful.

9. The unlawful practices complained of in paragraph 7 above were and are intentional.

10. The unlawful practices complained of in paragraph 7 above were done with malice or with reckless indifference to the federally protected rights of Bowmaker.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A Grant a judgment ordering Defendant to pay Bowmaker the amount of damages Defendant negotiated and agreed to pay, prejudgment interest, and legal costs associated with the collection of the amount due and owing.

B. Grant a permanent injunction compelling specific performance of the Agreement entered into and executed by Defendant, the Commission, and Bowmaker.

C. Order Defendant to make whole Bowmaker by providing her compensation for any past and future pecuniary losses resulting from the breach of the Agreement described in paragraph 7 above.

D. Order Defendant to pay punitive damages for its malicious and/or reckless conduct described in paragraph 7 above.

E. Order such further relief, including a monetary penalty, as this Court deems necessary and proper in the public interest.

F. Award the Commission its costs of this action.

Respectfully submitted,

ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel



GERALD S. KIEL
Regional Attorney
Bar No. 07770



TRACY HUDSON SPICER
Supervisory Trial Attorney
Bar No. 08671



CECILE C. QUINLAN
Senior Trial Attorney
Bar No. 06072

**Equal Employment Opportunity
Commission**
Baltimore District Office
City Crescent Building
10 So. Howard Street
Baltimore, Maryland 21202
(410) 962-4239

10-20-03 02:01pm From-EEOC Baltimore DO

410 962 4270

T-652 P.002/004 F-268



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Baltimore District Office

10 S. Howard Street, 3rd Floor
 Baltimore, MD 21201
 PH: (410) 962-3932
 TDD: (410) 962-6065
 FAX: (410) 962-4270
 EEOC Web Site: www.eeoc.gov

NEGOTIATED SETTLEMENT AGREEMENT
CHARGE NO.: 120-2002-10318

The following Agreement refers to charge number 120-2002-10318 on file with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964, as amended (Title VII). The Charging Party is Veronica Bowmaker ("Bowmaker"). The Respondent is Avado Brands Inc. dba Don Pablo's Restaurant ("Avado").

2. The Charging Party agrees not to institute a lawsuit or any other charge or proceeding with respect to the above referenced charge or any incidents or other events that it relates to. EEOC agrees not to use the above-referenced charge as the jurisdictional basis for filing a lawsuit against the Respondent. However, nothing in this agreement shall be construed to preclude EEOC and/or any aggrieved individual(s) from bringing suit to enforce this agreement in the event that the Respondent fails to perform the promises and representations contained herein. Neither does it preclude the Charging Party or the Commission from filing charges in the future.
3. EEOC reserves all rights to proceed with respect to matters like and related to these matters but not covered in this agreement and to secure relief on behalf of aggrieved persons not covered by the terms of this agreement.
4. The Respondent agrees that it shall comply with all requirements of Title VII as set forth in the non-discrimination provision below.
5. It is understood that this Agreement does not constitute an admission by Respondent of any violation of state or federal law.
6. The parties agree that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under Title VII of the Civil Rights Act of 1964, as amended, or the Age Discrimination in Employment Act of 1967, as amended, or because of the filing of a charge; giving of testimony or assistance; or participation in any manner in any investigation, proceeding or hearing under Title VII of the Civil Rights Act of 1964, as amended.

EXHIBIT A

11

10/20/03 MON 14:03 [TX/RX NO 7102] 0002

Received 11-10-03 03:43pm

From-706 342 9283

To-EEOC Baltimore DO

Page 002

10-20-03 02:01pm From-EEOC Baltimore DO

410 962 4270

T-652 P.003/004 F-268

EMPLOYMENT POLICIES AND PRACTICES**1 Non-Discrimination Provision**

Respondent agrees not to discriminate on the basis of race, color, gender, religion or national origin in all phases of employment, including recruitment, hiring, job assignment, training and other terms or privileges of employment.

2. Policy

- a. Respondent will provide no fewer than two (2) hours of training in federal laws prohibiting harassment and discrimination to its current management/supervisory employees. Respondent will provide equal employment opportunity and anti-harassment training to future management/supervisory employees;
- b. Respondent will furnish EEOC with written documentation, including a signed attendance list, that it has complied with paragraph (a) of this Agreement within five days of compliance;
- c. Respondent will post EEOC's poster in places visually accessible to applicants and employees of the Respondent;

CHARGING PARTY RELIEF

- a. Respondent agrees to pay Charging Party nine thousand dollars (\$9,000) in a check payable to Veronica Bowmaker. Respondent will issue a Form 1099 to Charging Party who will be solely responsible for making the appropriate filings with federal, state, and local taxing authorities.
- b. Respondent will not retaliate against the Charging Party or any other person(s) because the individual(s) provided information or assistance, or participated in any other manner, investigation, or proceeding relating to this conciliation agreement.
- c. Eliminate from Bowmaker's employment record any and all documents and entries relating to the facts and circumstances which led to the filing of the instant charge of discrimination and the related events which occurred thereafter.
- d. Respondent agrees to provide Charging Party with a neutral reference letter and also provide a neutral reference with regards to future employment reference inquiries.

7. Avado agrees to provide written notice to the Director of the Baltimore District

10/20/03 MON 14:03 [TX/RX NO 7102] 003

16-28-03 01:31pm Case 1:04-cv-02094-RDB Document 10-6 Filed 07/08/04-69 Page 03 of 38 F-386
10/28/03 12:28 PM FAX 706 342 8283 Don Pablo and Hope

10-08-03 08:48am From-EEOC Baltimore DO

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T-610 P.005/005 F-072

Office within 10 days of satisfying the obligation in paragraph (a) of subheading "Charging Party Relief" of the Agreement.

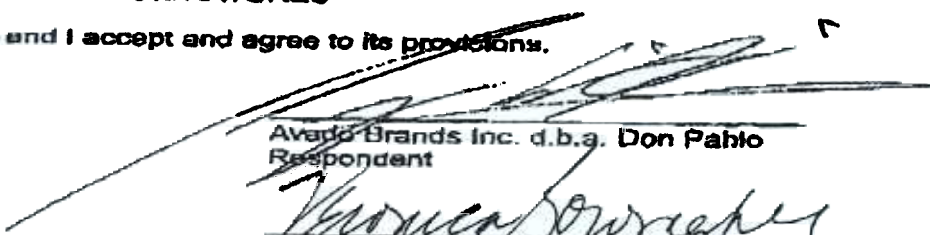
8. The parties agree that this Agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of the Agreement.
9. In reliance on the promises made under subheading "Policy" paragraphs (a), (b), (c) and subheading "Charging Party Relief, paragraph (1) and (3), EEOC agrees to terminate the investigation which it has begun and not use the above referenced charge as the jurisdictional basis for a civil action under Title VII. EEOC does not waive or in any manner limit its right to investigate or seek relief in any other charge including, but not limited to, a charge filed by a member of the Commission against the Respondent

SIGNATURES

I have read this agreement and I accept and agree to its provisions.

10/23/03
Date

10/29/03
Date


Avado Brands Inc. d.b.a. Don Pablo
Respondent


Veronica Bowmaker
Charging Party

Approved on Behalf of the Commission:

12-1-03
Date


Gerald S. Kiel
District Director (Acting)

10/08/03 WED 08:50 [TX/RX NO 7024] 003

Received 10-28-03 12:28pm From-706 342 8283

To-EEOC Baltimore DO Page 003

Received 11-18-03 02:13pm From-410 821 7740

To-EEOC Baltimore DO Page 002

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Equal Employment Opportunity Commission

DEFENDANTS

AVADO BRANDS, INC. d/b/a DON PABLO'S RESTAURANT
1 Restaurant Park
8000 Arundel Mills Road
Arundel Mills, MD 21117

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Gerald S. Kiel, RA, Tracy H. Spicer, STA and Cecile C. Quinlan, Sr. Trial Atty.
EEOC, Baltimore District Office
10 S. Howard Street, Third Floor
Baltimore, MD 21201

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|--|----------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Nation | ☐ 3 | ☒ 3 | | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury—Med. Malpractice ☐ 365 Personal Injury—Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determ. Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Defendant has engaged in unlawful employment practices alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e-5(f)(1) and (3) and Section 102 of the CRA of 1991, 42 U.S.C. Section 1981A.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 7/8/04 SIGNATURE OF ATTORNEY OF RECORD Cecile C. Quinlan, Attorney for Plaintiff

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____