

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK ELLIS, DDS,

Plaintiff

Case No. 12- cv-

v.

Hon.:

MIDWEST DENTAL OF DEARBORN, PLLC,
d/b/a MIDWESTERN DENTAL

Defendant.

PITT MCGEHEE PALMER RIVERS GOLDEN, P.C.

By: Robert W. Palmer (P31704)

Beth M. Rivers (P33614)

Attorneys for Plaintiff

117 W. Fourth Street, Suite 200

Royal Oak, Michigan 48067

(248) 398-9800

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff MARK ELLIS, DDS, by and through her attorneys, PITT MCGEHEE PALMER RIVERS & GOLDEN, P.C., in support of his complaint against Defendant, states as follows:

THE PARTIES

1. Plaintiff, Mark Ellis (hereinafter "Plaintiff"), is a citizen of the State of Illinois
2. Defendant Midwestern Dental of Dearborn (hereinafter "Midwest" or "Defendant"), is a Michigan limited liability corporation which operates a dental clinic in Dearborn, Wayne County, Michigan.

JURISDICTION AND VENUE

3. Plaintiff was employed at Defendant as Dental Manager in Defendant's facility in Dearborn, Michigan from July 23, 2007 until his termination on May 7, 2010.

4. On or about February 24, 2011, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission alleging national origin and religious discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 USC § 2000(e) et seq as amended.

5. On or about December 15, 2011, the EEOC issued a Notice of Right to Sue, which was not received by Plaintiff until March 13, 2012. The instant action is timely filed with respect to Plaintiff's Federal claims for violation of his rights pursuant to Title VII.

6. Plaintiff brings this action for damages alleging that he was unlawfully terminated on the basis of his national origin and religion in violation of Title VII of the Civil Rights Act of 1964 and the Elliott-Larsen Civil Rights Act, MCLA 37.2202(1) (A). In addition, Plaintiff is also entitled to damages as a result of Defendant's breach of contract

7. This Court has subject matter jurisdiction pursuant to 42 USC § 2000e, et seq. This court has supplemental jurisdiction over Plaintiff's State law claims pursuant to 28 USC § 1367.

8. Venue is proper under 28 USC §1391(b).

COMMON ALLEGATIONS

9. Plaintiff began his employment on July 23, 2007 as dental manager at Midwestern Dental office in Dearborn, Michigan.

10. Throughout his employment, Plaintiff's performance was fully satisfactory. He increased revenue and cash flow in the office each year of his employment which resulted in his

entitlement to a substantial bonus each year. Plaintiff also received satisfactory performance reviews.

11. As the dental manager, Plaintiff was entitled to a bonus based on the annual profit of the office. Despite the fact that the Dearborn office showed a profit, Defendant failed to pay Plaintiff a prorated bonus for 2007.

12. Plaintiff, who is an observant Jew, made several requests for accommodation so that he could observe the tenets of his faith. He indicated that it was his intent to wear a Yarmulke and Tzitzit while at work. Defendant's management told Plaintiff that this was not advisable, since the office was located in Dearborn with a large percentage of Arabic patients.

13. Defendant, however, permitted Muslim dentists to wear head covering or other clothing dictated by their religious beliefs.

14. In addition, Plaintiff requested that he be allowed to rearrange his schedule so that he would be at home by sunset on Friday, when the Sabbath began. Since Plaintiff's religious beliefs prevented him from operating a motor vehicle on the Sabbath, he needed to be home prior to sundown.

15. Defendant reluctantly allowed Plaintiff to leave early on Friday, but constantly questioned, ridiculed and harassed him about the legitimacy of his beliefs.

16. Muslim dentists were given an extra hour at lunch to attend prayers at a local Mosque.

17. On May 7, 2010, Defendant terminated Plaintiff's employment allegedly because the Dearborn office was "underperforming".

18. Respondent replaced Claimant with Dr. Moussad, a dentist of Arabic ethnicity.

19. After terminating Plaintiff's employment, Defendant failed to pay Plaintiff a

prorated bonus for 2010.

20. The explanation for Claimant's termination is pretextual and has no basis in fact as Claimant increased the Dearborn office's revenue significantly as compared with the prior three years, and in each year of his employment despite the downturn in the economy. In addition, the Dearborn office was performing better than other Midwest Dental offices in Michigan of comparable sizes such as the Sterling Heights office.

21. At the time of Plaintiff's termination, he was earning a base salary of \$125,000 per year and a bonus which in Plaintiff's last full year of employment was \$145,000. Plaintiff also received other benefits of employment, including health insurance, paid liability insurance and paid licenses, and educational allowances.

22. As a direct result of the Defendant's discriminatory treatment, Plaintiff has experienced and will continue to experience economic damages including lost wages and benefits and other forms of compensation, both past and future.

23. As a direct result of the Defendant's discriminatory treatment, Plaintiff has experienced and will continue to experience non-economic damages including humiliation, mental distress, outrage and loss of reputation.

COUNT I
VIOLATION OF TITLE VII
RELIGIOUS DISCRIMINATION

24. Plaintiff incorporates by reference all of the above paragraphs.

25. At all times relevant to this action, Plaintiff was an employee and Defendant was Plaintiff's employer for the purposes of Title VII.

26. Under Title VII, it was the obligation of the defendant to take steps to reasonably accommodate Plaintiff's religious practices and refrain from discriminating against Plaintiff for

his sincerely-held religious beliefs.

27. Notwithstanding its duties under Title VII, and in willful violation thereof, Defendant refused to accommodate Plaintiff's religious practices and took an adverse, discriminatory action against Plaintiff because of his religion by terminating his employment.

28 As a direct and proximate result of the unlawful religious discrimination under Title VII, Plaintiff has suffered, and will continue to suffer, all the injuries and damages as alleged in paragraphs 22 and 23 above.

Accordingly, Plaintiff requests the following relief:

- A. An order of immediate reinstatement to his former position or a comparable position with full seniority and restoration of pension rights and other benefits;
- B. An order awarding compensatory and consequential damages for the economic and non-economic losses sustained because of the unlawful discrimination;
- C. An order awarding attorney fees and costs and expenses related to the litigation of this claim;
- D. An Order awarding punitive damages due to the intentional nature of the discrimination; and,
- E. Such other relief as this court deems just and equitable.

COUNT II
VIOLATION OF THE ELLIOT-LARSEN CIVIL RIGHTS ACT
RELIGIOUS DISCRIMINATION

29. Plaintiff incorporates by reference all of the above paragraphs.

30. At all times relevant to this action, Plaintiff was a protected employee, and Defendant was Plaintiff's employer, for the purposes of Michigan Elliot-Larsen Civil Rights Act (ELCRA).

31. Under Michigan's Elliot-Larsen Civil Rights Act (ELCRA), it was the obligation of the Defendant to reasonably accommodate Plaintiff's religious belief and refrain from making employment decisions regarding Plaintiff where Plaintiff's religion was a motivating factor.

32. Notwithstanding its duties under the ELCRA, and in willful violation thereof, Defendant refused to accommodate Plaintiff's religious beliefs and took an adverse, discriminatory action against Plaintiff because of his religion by terminating his employment.

33. As a direct and proximate result of the unlawful religious discrimination under the ELCRA, Plaintiff has suffered, and will continue to suffer, all the injuries and damages as alleged in paragraphs 22 and 23 above.

Accordingly, Plaintiff requests the following relief:

A. An order of immediate reinstatement to his former position or a comparable position, with full seniority and restoration of pension rights and other benefits;

B. An order of compensatory and consequential damages in an amount he is found to be entitled to;

C. An order awarding attorney fees and costs and expenses related to the litigation of the ELCRA claim; and

D. Such further relief as this court deems just and equitable.

COUNT III
NATIONAL ORIGIN DISCRIMINATION – TITLE VII

34. Plaintiff incorporates by reference all of the above allegations as if fully stated herein.

35. At all times relevant to this action, Plaintiff was an employee and Defendant was Plaintiff's employer for the purposes of Title VII.

36. As an employer under Title VII, Defendant is prohibited from limiting, segregating, or classifying an employee in a way that deprives or tends to deprive the employee of an employment opportunity because of the individual's national origin - United States citizen, or to otherwise discriminate against an individual with respect to employment, compensation, or a term, condition or privilege of employment because of the individual's national origin.

37. In violation of the statutory duty set forth in Title VII, the Defendant discriminated against plaintiff when it terminated him due to his national origin.

38. In further violation of its duty, Defendant treated Plaintiff less favorably than similarly-situated employees of Arabic national origin employees.

As a direct and proximate result of the unlawful national origin discrimination under Title VII, Plaintiff has suffered, and will continue to suffer, all the injuries and damages as alleged in paragraphs 22 and 23, above.

Accordingly, Plaintiff requests the following relief:

A. An order of immediate reinstatement to his former position or a comparable position with full seniority and restoration of pension rights and other benefits;

B. An order awarding compensatory and consequential damages for the economic and non-economic losses sustained because of the unlawful discrimination;

C. An order awarding attorney fees and costs and expenses related to the litigation of this claim;

D. An Order awarding punitive damages due to the intentional nature of the discrimination; and,

E. Such other relief as this court deems just and equitable.

COUNT IV
VIOLATION OF ELLIOTT-LARSEN – NATIONAL ORIGIN

39 Plaintiff incorporates by reference all of the above allegations as if fully stated herein.

40 At all times relevant to this action, Plaintiff was an employee and Defendant was Plaintiff's employer for the purposes of Elliott-Larsen.

41. As an employer under Elliott-Larsen, Defendant is prohibited from limiting, segregating, or classifying an employee in a way that deprives or tends to deprive the employee of an employment opportunity because of the individual's national origin - United States citizen, or to otherwise discriminate against an individual with respect to employment, compensation, or a term, condition or privilege of employment because of the individual's national origin.

42. In violation of the statutory duty set forth in Elliott-Larsen, the Defendant discriminated against plaintiff when it terminated him due to his national origin.

43. In further violation of its duty, Defendant treated Plaintiff less favorably than similarly-situated employees of Arabic national origin employees.

As a direct and proximate result of the unlawful national origin discrimination under Elliott-Larsen, Plaintiff has suffered, and will continue to suffer, all the injuries and damages as alleged in paragraphs 22 and 23, above.

Accordingly, Plaintiff requests the following relief:

A. An order of immediate reinstatement to his former position or a comparable position with full seniority and restoration of pension rights and other benefits;

B. An order awarding compensatory and consequential damages for the economic and non-economic losses sustained because of the unlawful discrimination;

C. An order awarding attorney fees and costs and expenses related to the litigation of this claim; and

D. Such other relief as this court deems just and equitable.

COUNT V – BREACH OF CONTRACT

44. Plaintiff incorporates by reference all of the above allegations as if fully stated herein.

45. At the time of his hire, Plaintiff and Defendant entered into an employment contract which provided inter alia that Plaintiff would receive a bonus of 25% of the annual profit of the office.

46. Defendant promised Plaintiff that he would receive a pro-rata bonus for the time that he worked in any year in which he did not work a full year.

47. Defendant failed to pay Plaintiff his pro-rata bonus for 2007.

48. Defendant terminated Plaintiff in May 2010 and also failed to pay him his pro-rata bonus for 2010.

49. Defendant breached its employment contract with Plaintiff by failing to pay him his pro-rata bonuses for 2007 and 2010.

Accordingly, Plaintiff respectfully requests that this Honorable Court enter a judgment in the Plaintiff's favor, against Defendants in an amount which fairly and adequately compensates the Plaintiff for the damages and injuries he has suffered as a result and proximate result of the

wrongful conduct of Defendants, together with interest, costs and attorney fees.

Respectfully submitted,

PITT MCGEHEE PALMER RIVERS & GOLDEN, P.C.

By: s/Robert W. Palmer

Robert W. Palmer (P31704)

Attorneys for Plaintiff

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Dated: March 15, 2012

DEMAND FOR JURY BY TRIAL

NOW COMES Plaintiff, by and through her attorneys, Pitt McGehee Palmer River & Golden, P.C., and hereby demands a trial by jury of all issues in the within cause of action.

Respectfully submitted,

PITT MCGEHEE PALMER RIVERS & GOLDEN

By: s/Robert W. Palmer

Robert W. Palmer (P31704)

Beth M. Rivers (P33614)

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Dated: March 15, 2012