

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 11-cv-01702-RPM

MARIE ANDERSON,

Plaintiff,

v.

CHERRY CREEK NORTH BUSINESS IMPROVEMENT DISTRICT and
JULIE BENDER, CHERRY CREEK NORTH BUSINESS IMPROVEMENT DISTRICT
PRESIDENT AND CEO,

Defendants.

ORDER OF DISMISSAL PURSUANT TO FED.R.CIV.P. 12(b)(6) AND 12(b)(1)

In the first amended complaint, filed September 8, 2011, Marie Anderson alleges jurisdiction under 28 U.S.C. § 1331 and § 1343 for claims one, three, and nine and supplemental jurisdiction under 28 U.S.C. § 1367 for claims alleging violations of Colorado law in claims two, three, four, five, six, seven, and eight.

The defendants filed a motion to dismiss all claims on November 7, 2011, to which the plaintiff responded on November 28, 2011, and the defendants' replied on December 12, 2011.

Claims one and three of the amended complaint are brought under the Age Discrimination in Employment Act. The plaintiff failed to allege that the Cherry Creek North Business Improvement District had twenty or more employees during the relevant time as required for coverage of the ADEA, 29 U.S.C. § 630(b). That is a fatal defect. The ninth claim for relief requests a remedy under 42 U.S.C. § 1983 for a denial of due process but fails to allege the existence of a property right protectable under the

Constitution. Because of these defects, the first, third and ninth claims for relief fail to state claims and are dismissed.

Because the claims made under the federal question jurisdiction are dismissed, the state law claims will not be addressed under supplemental jurisdiction and will be dismissed without prejudice.

Upon the foregoing, it is

ORDERED that the first, third and ninth claims for relief are dismissed under Fed.R.Civ.P. 12(b)(6) and it is

FURTHER ORDERED that the remaining claims are dismissed, without prejudice, under Fed.R.Civ.P. 12(b)(1). The Clerk will enter judgment accordingly.

DATED: December 14, 2011

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge