

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

FILED

MAR 14 2005

MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

SIDLEY AUSTIN BROWN & WOOD LLP,

Defendant.

Case No. 05 CV 0208

Judge James B. Zagel
Magistrate Judge Ashman

**ANSWER OF DEFENDANT SIDLEY AUSTIN
BROWN & WOOD LLP TO COMPLAINT**

NOW COMES Defendant Sidley Austin Brown & Wood LLP (“Sidley” or “Defendant”), by its attorneys, and for its Answer to the Complaint of Plaintiff United States Equal Employment Opportunity Commission states as follows:

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 Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the “ADEA”), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217.

Answer: Sidley admits that Plaintiff has invoked the jurisdiction of this Court under the statutes specified, but denies that this Court has subject matter jurisdiction over this action.

PARTIES

2. 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 the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

Answer: Sidley admits that Plaintiff has been granted statutory authority to enforce the ADEA, but denies that this action is authorized by that statute or any statute.

3. At all relevant times, Defendant Sidley Austin Brown & Wood (“Defendant” or “Defendant Employer”), a Delaware limited liability partnership and its affiliates, which include an Illinois limited liability partnership, an English general partnership, and a New York general partnership, has been continuously doing business in the City of Chicago, State of Illinois, and has continuously had at least twenty (20) employees.

Answer: Sidley admits that SABW Holdings LLP is a Delaware Limited Liability Partnership with affiliates which include a Delaware Limited Liability Partnership, an Illinois Limited Liability Partnership, a New York General Partnership and an English General Partnership. Sidley Austin Brown & Wood LLP is the Illinois Limited Partnership and it has had at least 20 employees since its inception. Sidley denies the remaining allegations in paragraph 3.

4. At all relevant times, Defendant has 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).

Answer: Sidley admits the allegations in paragraph 4.

CONCILIATION

5. Prior to institution of this lawsuit, the Commission’s representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

Answer: Sidley admits that a conciliation meeting occurred, but denies the remaining allegations in paragraph 5.

STATEMENT OF CLAIMS

6. Defendant Employer has engaged in unlawful employment practices nationwide, in violation of Section 4(a) of the ADEA, 29 U.S.C. § 623(a):

(A) In maintaining and implementing, since at least 1978, an age-based retirement policy, Defendant Employer has discriminated against a class of attorney employees on account of their age in violation of the ADEA. The class of persons aggrieved includes Defendant Employer’s attorney employees age 40 and older who were adversely affected by the retirement policy.

(B) Defendant Employer has discriminated against a class of attorney employees age 40 and older by downgrading or expelling them on account of their age in or about October 1999 in violation of the ADEA.

Answer: Sidley denies the allegations in paragraph 6.

7. The effect of the practices complained of in paragraph 6 above has been to deprive a class of attorney employees age 40 and older of equal employment opportunities and otherwise adversely affect their status as employees, because of their age.

Answer: Sidley denies the allegations in paragraph 7.

8. The unlawful employment practices complained of in paragraphs 6 and 7 above were and are willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

Answer: Sidley denies the allegations in paragraph 8.

FIRST SEPARATE DEFENSE

The Complaint, and each purported cause of action alleged therein, fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

The Complaint, and each purported cause of action alleged therein, is barred by the doctrine of laches.

THIRD SEPARATE DEFENSE

Plaintiff, by reason of its own course of conduct and actions, and by reason of the conduct and actions of those for whom Plaintiff purports to seek relief, has waived the right, if any, to assert its Complaint and each purported cause of action alleged therein.

FOURTH SEPARATE DEFENSE

Plaintiff, by reason of its own course of conduct and actions, and by the conduct and actions of those for whom Plaintiff purports to seek relief, is estopped from asserting its Complaint and each purported cause of action alleged therein.

FIFTH SEPARATE DEFENSE

Plaintiff's claims and the right of recovery of the individuals for whom Plaintiff purports to seek relief are barred, in whole or in part, by the applicable statute of limitations.

SIXTH SEPARATE DEFENSE

The Complaint, and each cause of action alleged therein, is barred because Plaintiff, and the individuals for whom Plaintiff purports to seek relief, have failed to exhaust all administrative remedies, and/or otherwise failed to comply with the statutory prerequisites to the bringing of this action, pursuant to 29 U.S.C. § 626.

SEVENTH SEPARATE DEFENSE

The Complaint, and each purported cause of action alleged therein, is barred because the decisions made with respect to the individuals for whom Plaintiff purports to seek relief were made in good faith and were reasonably based on factors other than age.

EIGHTH SEPARATE DEFENSE

Each of the decisions Defendant made in connection with the individuals for whom Plaintiff purports to seek relief was made for good cause within the meaning of ADEA. 29 U.S.C. § 623.

NINTH SEPARATE DEFENSE

To the extent discovery reveals that those for whom Plaintiff purports to seek relief have failed to mitigate or reasonably attempt to mitigate their damages, if any, as required by law, such damages are barred.

TENTH SEPARATE DEFENSE

Plaintiff, and some or all of the individuals for whom Plaintiff purports to seek relief, may be barred, in whole or in part, from recovery of damages as alleged and prayed for in the Complaint, based on material after-acquired evidence.

ELEVENTH SEPARATE DEFENSE

To the extent that Plaintiff makes claims under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., and such claims concern events which were not made the subject of a timely EEOC charge, they are barred.

TWELFTH SEPARATE DEFENSE

Plaintiff cannot recover monetary relief on behalf of individuals who have not filed a timely EEOC charge.

THIRTEENTH SEPARATE DEFENSE

Plaintiff cannot recover relief on behalf of individuals who have given a release to Defendant, or entered into an accord and satisfaction with Defendant.

WHEREFORE Defendant Sidley Austin Brown & Wood LLP prays that the Court will enter judgment dismissing the claims of Plaintiff United States Equal Employment Opportunity Commission against it in their entirety with prejudice and will award it its costs, reasonable attorneys' fees, and such other and further relief as the Court deems proper.

Dated: March 14, 2005

Respectfully submitted,

SIDLEY AUSTIN BROWN & WOOD LLP

By: _____

One of Its Attorneys

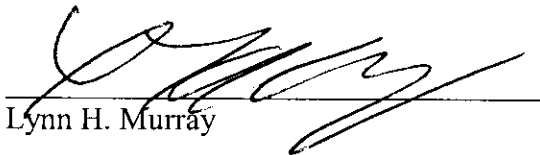
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CERTIFICATE OF SERVICE

I, Lynn H. Murray, an attorney, hereby certify that on March 14, 2005, I caused a true and correct copy of the foregoing **ANSWER OF DEFENDANT SIDLEY AUSTIN BROWN & WOOD LLP TO COMPLAINT** and **APPEARANCE** to be served upon the following via messenger delivery:

John C. Hendrickson
Gregory M. Gochanour
Debrah L. Hamilton
Laurie Elkin
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Lynn H. Murray