

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

_____)	
ANDRE CAIRO,)	
)	
Plaintiff,)	
)	
v.)	Civ. A. No. _____
)	
STARBUCKS CORP.,)	
)	
Defendant.)	
_____)	

COMPLAINT

1. This is an action for handicap discrimination brought under the Americans with Disabilities Act, 42 U.S.C. § 12112. As set forth below, Plaintiff Andre Cairo worked for Defendant Starbucks Corporation as a barista until January 2009, when he suffered one seizure which resulted in his hospitalization. After missing only 9 days of work as a result of his condition, Mr. Cairo informed his manager that he was ready, willing and able to return to work, and provided a note from his physician clearing him to return to work with the temporary restriction that his shift start at 8 a.m. or later. Rather than making this reasonable accommodation, or even discussing *any* means of accommodating him, Starbucks terminated Mr. Cairo effective February 6, 2009. Mr. Cairo now seeks reinstatement in his position as a barista, compensatory damages, punitive damages, attorneys’ fees and costs associated with bringing this action.

I. THE PARTIES

2. Plaintiff Andre Cairo is an adult resident of New Bedford, Massachusetts. Since approximately the age of seven, he has been diagnosed with a recurrent, episodic seizure condition, for which he has taken medication. Mr. Cairo worked for Defendant Starbucks

Corporation as a barista from approximately October 8, 2008, until he was terminated effective February 6, 2009. At the time of his termination, Mr. Cairo was qualified disabled person within the meaning of the ADA.

3. Defendant Starbucks Corporation is a foreign corporation incorporated under the laws of the State of Washington. Starbucks is one of the largest—if not the largest—coffee company in the world, with over a hundred stores located throughout Massachusetts.

II. STATEMENT OF THE FACTS.

4. Mr. Cairo has suffered from an episodic seizure disorder his entire life. As a result of that disorder, Mr. Cairo has had approximately seven seizures between the ages of 7 and 25, the age at which he was terminated by Starbucks.

5. Mr. Cairo was hired by Starbucks as a barista to work at its 84 State Street location on or about October 8, 2009.

6. At the time he was hired, Mr. Cairo had not suffered a seizure at any point in the last five years. As a result, he had recently stopped taking any anti-seizure medication.

7. At the time Mr. Cairo was hired, and throughout his employment, the Starbucks at 84 State Street was open to customers from 6 a.m. until 8:30 p.m.

8. The baristas at 84 State Street worked in three shifts: opening, mid-day and closing. Opening shifts started between 5:45 a.m. and 7 a.m. Mid-day shifts started at 11 a.m. and ended between 4 and 5 p.m. Closing shifts started between 4 and 5 p.m. and ended at approximately 9 p.m.

9. Mr. Cairo suffered his first seizure as an adult on or about January 15, 2009, while he was home sleeping. As a result of that seizure, Mr. Cairo was hospitalized for two days.

10. On or about January 17, 2009, Mr. Cairo called his manager to notify her of his condition and hospitalization and to explain that he could return to work on January 26, 2009.

11. On January 26, 2009, Mr. Cairo went to 84 State Street with a note from his treating physician stating that he could return to work, but that he should not work prior to 8 a.m. or after 9 p.m.

12. When Mr. Cairo presented his note to his manager, he explained that these were only temporary restrictions and that he could most likely return to working at his normal availability after approximately one month.

13. With these accommodations, Mr. Cairo was able to perform the essential functions of his job as a barista.

14. Indeed, in addition to its location at 84 State Street, Starbucks operated numerous other stores in Downtown Boston to which Mr. Cairo could have been assigned in order to accommodate the temporary limitation imposed by his disorder.

15. After notifying his manager about his condition, Mr. Cairo volunteered to “cover” a number of shifts for his co-workers—i.e., to work a shift in place of another barista who was unavailable to work that shift. Mr. Cairo’s manager would not allow him to take those shifts, however, due to the temporary limitations imposed by his disorder.

16. Rather than engaging Mr. Cairo in any interactive process or even attempting to accommodate the temporary limitations imposed by his disorder, Mr. Cairo’s manager asked him on two occasions if he could ask his physician to expand his work availability.

17. Mr. Cairo could not obtain any such modification, however.

18. Shortly thereafter, Mr. Cairo was called into work by his manager and assistant manager. At that meeting, Mr. Cairo was informed that he was being terminated due to his lack of availability, effective February 6, 2009.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

19. Plaintiff has exhausted his administrative remedies. He has filed his claim for disability discrimination with the Massachusetts Commission Against Discrimination (MCAD) and the United States Equal Employment Opportunity Commission (EEOC). More than 90 days have elapsed with neither Plaintiff nor his Counsel receiving a final determination from those agencies. In addition, Plaintiff has obtained a Notice of Right to Sue from the EEOC.

COUNT I DISABILITY DISCRIMINATION

20. The actions of Defendant, as set forth above, in failing to reasonably accommodate Mr. Cairo's disability violates the Americans with Disabilities Act, 42 U.S.C. § 12112. This claim is brought pursuant to 42 U.S.C. § 12117 and 42 U.S.C. § 2000e-5.

JURY DEMAND

Plaintiff demands a trial by jury on all of his claims.

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Preliminary and permanent injunctive relief ordering reinstatement of Plaintiff in his position of barista;
2. Compensatory damages in the form of back pay, front pay and lost benefits;
3. Punitive damages;
4. Damages for emotional distress;
5. Attorneys' fees and costs; and,

6. Such other relief as this Court deems just and proper.

Respectfully submitted,

ANDRE CAIRO,

By his attorneys,

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