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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NEIL RITZ
247 Glen Oaks Drive
East Amherst, New York 14051,

Plaintiff,

- vs. -

VANTAGE EQUIPMENT, LLC
5985 Court Street Road
Syracuse, New York 13206,

Defendant.

COMPLAINT

Case No. _____

Plaintiff, by his attorneys CHIACCHIA & FLEMING, LLP, for his Complaint against the defendant, alleges:

INTRODUCTION

1. This is an action for employment discrimination brought to secure relief, legal and equitable, for discrimination and retaliation on the basis of his age in violation of the Age Discrimination in Employment Act (29 U.S.C. § 621, *et seq.*) and under the Human Rights Laws of the State of New York, Executive Law section 290 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. sections 1331, 1343 and 1367.

3. The unlawful employment practices alleged herein were committed in the Western District of New York.

PARTIES

4. The plaintiff, NEIL RITZ, (“RITZ”), at all times hereinafter mentioned was and still is a resident of the County of Erie and State of New York, and resides at 247 Glen Oaks Drive, East Amherst, New York 14051.

5. Defendant, VANTAGE EQUIPMENT, (“VANTAGE”), upon information and belief, was and continues to be a foreign limited liability company organized and existing by virtue of the laws of the State of Delaware. Plaintiff was employed at the defendant’s sales department which was located at 2260 Sheridan Drive, Buffalo, New York 14223 in the County of Erie. The defendant was an employer of the plaintiff under the applicable Federal and State statutory provisions.

NATURE OF CLAIM

6. This claim seeks restitution to the plaintiff of all employment rights, privileges, benefits, promotions, and income that the plaintiff would have had but for VANTAGE’s unlawful discriminatory practices.

7. This action further seeks compensatory damages for the harm done to the plaintiff.

ADMINISTRATIVE PROCEEDINGS

8. The plaintiff timely filed charges of employment discrimination with the New York State Division of Human Rights and the Equal Employment Opportunity Commission on or about April 26, 2006.

9. Plaintiff received a “Notice of a Right to Sue” from the EEOC. The plaintiff has exhausted his administrative requirements and this Complaint is timely.

STATEMENT OF CLAIM

10. VANTAGE’s pattern of discrimination and retaliation against RITZ is set forth in the following sub-paragraphs:

a. In or around July of 2005, I was informed by Todd Kaley, Vice President of Sales, that I was being put through a probationary period due to lack of sales and gross profit. At this same time, I already had over a million dollars in sales. Upon information and belief, this number was much higher than other salesmen working for Vantage. I asked Kaley if I was the only salesman on probation, to which he responded “yes”.

b. For a period of approximately six months, from July of 2005 through December of 2005, the company hired approximately six new, inexperienced sales representatives in the age range of late 20’s to late 30’s. At this time I was the oldest employee of Vantage.

c. In or around the end of June, per Kaley's orders, a portion of my sales territory was taken away from me and given to another sales representative. This particular territory, when covered by me, had brought in over \$800,000 in sales. When I questioned Kaley about this, he told me that he felt I did not have the "desire to sell" that I once had. At the time the territory was taken away from me I was in the top percentile for sales for the company.

d. At almost every sales meeting I attended, from July of 2005 until my termination, the term "young and aggressive" was constantly used to describe what the company was looking for in salespeople.

e. During the course of business, it was customary to receive monthly reports of sales and rentals with rates and pricing. I was told by Kaley that I could only discount rental rates by 3%. Other younger salesmen were allowed to rent equipment with 10%-15% discounts.

f. On one occasion in particular I was told that some equipment was not available for rent, only sale. I learned a few weeks later that another younger salesman was allowed to rent out the equipment.

g. On or around December 12, 2005, I was terminated.

FIRST CAUSE OF ACTION

11. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 10 of this Complaint with the same force and effect as if set forth herein.

12. Defendant has discriminated against the plaintiff in the terms and conditions of his employment on the basis of his age in violation of Age Discrimination in Employment Act.

13. As a direct and proximate consequence of defendant's unlawful and discriminatory employment policies and practices, the plaintiff has suffered a loss of income, including past and future salary, benefits and career opportunities. He has also suffered injury to his health, emotional distress, mental anxiety, loss of enjoyment of life, loss of reputation and humiliation. Plaintiff will continue to suffer these irreparable injuries and monetary damages as a result of defendant's discriminatory practices unless and until this Court grants relief.

SECOND CAUSE OF ACTION

14. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 13 of this Complaint with the same force and effect as if set forth herein.

15. Defendant has discriminated against the plaintiff in the terms and conditions of his employment on the basis of his age in violation of New York's Human Rights Law.

16. As a direct and proximate consequence of defendant's unlawful and discriminatory employment policies and practices, the plaintiff has suffered a loss of income, including past and future salary, benefits and career opportunities. He has also suffered injury to his health, emotional distress, mental anxiety, loss of enjoyment of life, loss of reputation and humiliation. Plaintiff will continue to suffer these irreparable injuries and monetary damages as a result of defendant's discriminatory practices unless and until this Court grants relief.

WHEREFORE, the plaintiff respectfully prays for a judgement against the defendant as follows:

- a. Declaring that the acts and practices complained of in the first cause of action are in violation of the Age Discrimination in Employment Act and the New York State Human Rights Law;
 - b. Enjoining and restraining these said violations;
 - c. Directing the defendant to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect the plaintiff's employment situation or opportunities;
 - d. Directing the defendant to place the plaintiff in the same economic position he would have occupied but for the defendant's discriminatory treatment, including but not limited to lost wages and other lost benefits;
 - e. Awarding the plaintiff compensatory damages in an amount to be determined based on each respective cause of action and punitive damages in an amount to be determined on the first four causes of action;
 - f. Awarding the plaintiff the costs of this action together with reasonable attorneys' fees;
- and
- g. Granting such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the plaintiff demands a trial by jury in this action.

Dated: May 15, 2007
Hamburg, New York

/s/ Andrew P. Fleming
Andrew P. Fleming
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