

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Case No. 17-cv-13466-LVP-RSQ
Hon.

v.

PROFESSIONAL ENDODONTICS, P.C.,,

Defendants.

Miles L. Uhlar	JACKSON LEWIS P.C.
Equal Employment Opportunity Commission	Emily M. Petroski (P63336)
Detroit Field Office	2000 Town Center, Suite 1650
Patrick V. McNamara	Southfield, Michigan 48075
477 Michigan Avenue, Room 865	(248) 936-1900
Detroit, MI 48226	emily.petroski@jacksonlewis.com
(313) 226-4620	Attorneys for Defendant

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S COMPLAINT AND RELIANCE ON JURY DEMAND**

Defendant, Professional Endodontics, P.C. (hereinafter “Defendant”), by and through its attorneys, Jackson Lewis P.C., submits the following as its Answer and Affirmative Defenses to Plaintiff’s Complaint.

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act, to correct unlawful employment practices on the basis of age, and to provide appropriate relief to Karen Ruerat, who was adversely affected by such practices.

As alleged with greater particularity in paragraphs 12 and 13 below, the EEOC alleges that Defendant, Professional Endodontics, P.C. (“Defendant”), maintains a policy that mandates retirement at age 65, and fired Ruerat four days after her 65th birthday pursuant to such policy.

ANSWER: Defendant admits only that this is an action under the ADEA. Defendant denies that it engaged in any unlawful employment practices on the basis of age, or engaged in any unlawful employment practices that need to be corrected. Defendant denies that it maintains a policy that mandates retirement at age 65 or that Ruerat was fired pursuant to any such alleged policy. Responding further, Defendant denies any allegation that it violated the ADEA, treated Karen Ruerat (hereinafter “Ruerat”) unlawfully, that it is liable to Ruerat for any legally cognizable damages in any amount whatsoever, or that Ruerat or the EEOC are entitled to any relief as a matter of fact and law.

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 Section 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217.

ANSWER: Defendant neither admits nor denies the allegations in Paragraph 1 of the Complaint because they contain legal conclusions to which no response is required.

2. The employment practices alleged to be unlawful were committed and are now being committed within the jurisdiction of the United States District Court for the Eastern District of Michigan.

ANSWER: Defendant admits only that Plaintiff alleges that certain employment practices which Plaintiff claims were unlawful were committed within the jurisdiction of the United States District Court of the Eastern District of Michigan. Defendant denies any allegation that it engaged in any unlawful employment practices, treated Ruerat unlawfully, or otherwise violated the ADEA. Defendant denies any remaining allegations in Paragraph 2 of the Complaint.

3. Plaintiff, the Equal Employment Opportunity Commission, (“EEOC” or 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: Defendant neither admits nor denies the allegations in Paragraph 3 of the Complaint because they contain legal conclusions to which no response is required, and therefore, leaves Plaintiff to its proofs.

4. At all relevant times, Defendant has continuously been a corporation doing business in the State of Michigan and the City of Southfield and has continuously had at least 20 employees.

ANSWER: Defendant admits only that it is a professional corporation which operates an endodontics clinic in Southfield, Michigan, and that it employed at least 20 employees as of January 28, 2016. Defendant neither admits nor denies the remaining allegations in Paragraph 4 of the Complaint as they

contain legal conclusions to which no response is required, and therefore, leaves Plaintiff to its proofs.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce under Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

ANSWER: Defendant neither admits nor denies the allegations in Paragraph 5 of the Complaint because they contain legal conclusions to which no response is required, and therefore, leaves Plaintiff to its proofs.

ADMINISTRATIVE PROCEDURES

6. More than thirty (30) days prior to the institution of this lawsuit, Karen Ruerat filed a charge with the Commission alleging violations of the ADEA by Defendant.

ANSWER: Defendant admits the allegation in Paragraph 6 of the Complaint.

7. On June 22, 2017, the Commission issued to Defendant a Letter of Determination finding reasonable cause to believe that the ADEA was violated and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and provide appropriate relief.

ANSWER: Defendant admits only that it received a letter dated April 17, 2017 from Investigator Jacquelyne Fizer-Jordan which indicated that she was “recommending a Cause finding”, that it received another letter from Investigator Jacquelyne Fizer-Jordan dated July 13, 2017 which also indicated that she was “recommending a Cause finding”, and that it received another letter from Investigator Fizer-Jordan dated July 19, 2017, along with

a Conciliation Agreement. Defendant denies any allegations in Paragraph 7 of the Complaint that are inconsistent with the foregoing.

8. The Commission engaged in communications with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the Letter of Determination.

ANSWER: Defendant denies the allegations in Paragraph 8 of the Complaint, including any allegation that there were any discriminatory practices to remedy.

9. The Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

ANSWER: Defendant denies the allegations in Paragraph 9 of the Complaint.

10. On September 11, 2017, the Commission issued to Defendant a Notice of Failure of Conciliation.

ANSWER: Defendant denies the allegations in Paragraph 10 of the Complaint.

11. All conditions precedent to the institution of this lawsuit have been fulfilled.

ANSWER: Defendant denies the allegations in Paragraph 11 of the Complaint.

STATEMENT OF CLAIMS

12. Since at least January 28, 2016, Defendant Employer has engaged in unlawful employment practices at its Southfield, MI location in violation of Section 4 of the ADEA, 29 U.S.C. § 623(a)(1), by maintaining a policy and

practice of forcing employees to retire at age 65 and terminating Ruerat because she had turned 65 years old.

ANSWER: Defendant denies the allegations in Paragraph 12 of the Complaint. Responding further, Defendant denies any allegation that it violated the ADEA or maintained a policy or practice of forcing employees to retire at age 65, or that it otherwise terminated Ruerat because she had turned 65.

13. Ruerat began working for Defendant on May 22, 1978. For the next thirty-seven (37) years, she was employed by Defendant as a window greeter / receptionist. Ruerat turned 65 years old on January 24, 2016. She was terminated on January 28, 2016, pursuant to Defendant's policy.

ANSWER: Defendant admits that Ruerat began working for it on or about May 22, 1978, and admits based on information and belief that Ruerat was born in 1951. Defendant denies that it violated the ADEA, maintained a policy or practice forcing employees to retire at age 65, or that Ruerat was terminated pursuant to any such alleged policy. Defendant denies any allegations in Paragraph 13 of the Complaint that are inconsistent with the foregoing.

14. The effect of the unlawful conduct complained of in paragraphs 12 and 13, above, has been to deprive Ruerat of equal employment opportunities and otherwise adversely affect her status as an employee because of her age.

ANSWER: Defendant denies the allegations in Paragraph 14 of the Complaint.

15. The unlawful employment practices complained of in paragraphs 12 and 13, above, were and are willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

ANSWER: Defendant denies the allegations in Paragraph 15 of the Complaint. Responding further, Defendant denies that it engaged in any unlawful employment practices, including, but not limited to those complained of in Paragraphs 12 and 13.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. GRANT a permanent injunction enjoining Defendant Employer, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it, from discharging employees on the basis of age;

B. ORDER Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices.

A. GRANT a judgement requiring Defendant Employer to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to Karen Ruerat, whose wages are being unlawfully withheld as a result of the acts complained of above;

B. ORDER Defendant to make whole Karen Ruerat by providing the affirmative relief necessary to eradicate the effects of its unlawful practices described above, including but not limited to reinstatement, or in the alternative, payment of appropriate front pay;

C. GRANT such further relief as the Court deems necessary and proper in the public interest; and

F. AWARD the Commission its costs for this action.

WHEREFORE, Defendant respectfully requests that this Court deny Plaintiff the relief requested, dismiss the Complaint in its entirety with prejudice, and, instead, award Defendant its costs and attorneys' fees in defending against this action, plus any other relief, legal or equitable, this Court deems appropriate.

GENERAL DENIAL

Defendant denies each and every allegation in the Complaint that is not specifically admitted herein.

RELIANCE ON JURY DEMAND

Defendant hereby relies on Plaintiff's jury demand, and demands for itself a trial by jury on each and every count of Plaintiff's Complaint so triable in law or in equity.

AFFIRMATIVE DEFENSES

Defendant submits the following as its Affirmative Defenses to the allegations contained in Plaintiff's Complaint:

1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which monetary, equitable, or injunctive relief may be granted.

2. All or part of Plaintiff's claims may be barred by the failure of the EEOC or Ruerat to exhaust and/or timely exhaust their internal and external administrative remedies and/or their failure to meet the applicable jurisdictional requirements.

3. All or part of Plaintiff's claims may be barred by the doctrine of unclean hands and/or because of Plaintiff's or Ruerat's conduct and actions or inactions.

4. All or part of Plaintiff's claims may be barred in whole or in part by the operation of the doctrines of laches, accord and satisfaction, and/or waiver.

5. All or part of Plaintiff's claims may be barred by the applicable statutes of limitations.

6. All or part of Plaintiff's claims may be barred by the doctrines of equitable, collateral, and/or judicial estoppel.

7. Plaintiff's claims are barred because any actions taken by Defendant in connection with Ruerat's employment were taken for legitimate, non-discriminatory and lawful business reasons having nothing to do with Ruerat's age.

8. To the extent discovery may disclose such information, Plaintiff's Complaint and each alleged cause of action therein may be barred in whole or in part by the doctrine of after-acquired evidence, or such doctrine may limit or eliminate any alleged damages, or otherwise preclude Plaintiff's claims.

9. Any claim for punitive damages is barred because Defendant did not engage in willful discriminatory conduct toward Plaintiff and did not at any time act with malice toward Ruerat or with reckless disregard of her legal rights.

10. Although Defendant denies that it has committed or has responsibility for any act that could support the recovery of punitive damages in this lawsuit, if any, to the extent any such act is found, recovery of punitive damages against Defendant is unconstitutional under numerous provisions of the United States Constitution, including, but not limited to, the Excessive Fines Clause of the Eighth Amendment and the Due Process clauses of the Fifth and Fourteenth Amendments; and numerous provisions of the Michigan Constitution, including the Excessive Fines Clause of Article I.

11. Plaintiff's claims for monetary damages or other monetary remedies are barred because Ruerat failed to mitigate or to adequately mitigate her damages.

12. Damages, if any, must be reduced by the income Ruerat has received, or should have received, in mitigation.

13. Defendant is entitled to set-offs with respect to Plaintiff's claimed damages.

14. Any claim for physical, mental or emotional damages and lost wages, in whole or in part, may be barred by the exclusive remedy provision of the Michigan Worker's Disability Compensation Act, MCL 418.101, et seq.

15. Defendant has engaged attorneys to represent it in defense of Plaintiff's frivolous, unfounded and unreasonable action and Defendant is thereby entitled to an award of reasonable attorneys' fees and costs upon judgment in its favor.

16. The Commission failed to engage in conciliation, failed to participate in conciliation in good faith, failed to exhaust or complete the conciliation process, or otherwise failed to fulfill its obligations to conciliate, thereby precluding this claim or any recovery.

17. Defendant hereby reserves the right to assert additional defenses, if and to the extent that such defenses are applicable.

WHEREFORE, Defendant respectfully requests that this Court deny Plaintiff the relief requested, dismiss Plaintiff's Complaint in its entirety with prejudice, and, instead, award Defendant its costs and attorneys' fees in defending this action, plus any other relief, legal or equitable, this Court deems appropriate.

JACKSON LEWIS P.C.
Attorneys for Defendant

/s/Emily M. Petroski
Emily M. Petroski (P63336)
2000 Town Center, Ste. 1650
Southfield, MI 48075
(248) 936-1900 (ofc)
(248) 936-1901 (fax)
Emily.Petroski@jacksonlewis.com

Dated: December 22, 2017

CERTIFICATE OF SERVICE

On this 22nd day of December, 2017, the undersigned did cause to be filed the foregoing document with the Court using the CM/ECF system, which will send notice of its filing to all counsel of record.

JACKSON LEWIS P.C.
Attorneys for Defendant

/s/Emily M. Petroski

Emily M. Petroski (P63336)
2000 Town Center, Ste. 1650
Southfield, MI 48075
(248) 936-1900 (ofc)
(248) 936-1901 (fax)
Emily.Petroski@jacksonlewis.com