

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(Trenton Vicinage)

U.S. EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION :
 : C.A. No. 3:23-cv-03093-MAS
 :
Plaintiff(s), :
 :
vs. :
 :
HATZEL & BUEHLER, INC. :
 :
Defendant. :

**DEFENDANT’S ANSWER WITH AFFIRMATIVE DEFENSES
TO PLAINTIFF’S COMPLAINT**

Defendant, Hatzel & Buehler, Inc. (“Defendant”) by and through its counsel, hereby answers Plaintiff’s Civil Action Complaint (“Complaint”) as follows:

NATURE OF THE ACTION

It is admitted only that this action was initiated by the U.S. Equal Employment Opportunity Commission (hereinafter referred to as “Plaintiff” or “EEOC”) against Defendant and that Plaintiff purports to bring claims for violations of the Age Discrimination in Employment Act of 1967, as amended (“ADEA”). It is specifically denied that Defendant is liable pursuant to the statutes and regulations cited. All remaining allegations of this paragraph are specifically denied.

JURISDICTION AND VENUE

1. The allegations of paragraph 1 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, it is admitted that this Court has jurisdiction of the claim. It is denied that the claim has merit.

2. The allegations of paragraph 2 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, it is admitted that the acts alleged in the Complaint purportedly took place in this District. It is denied that Defendant engaged in any unlawful employment practices.

PARTIES

3. It is admitted only that Plaintiff is an agency of the United States of America. The remaining allegations of paragraph 3 of the Complaint are conclusions of law to which no response is required.

4. It is admitted only that Defendant is a New York corporation, that it employs twenty or more employees, and that it currently conducts business in New Jersey, including Mercer County. The remaining allegations of paragraph 4 are denied.

5. The allegations of paragraph 5 of the Complaint are conclusions of law to which no response is required.

6. The allegations of paragraph 6 of the Complaint are conclusions of law to which no response is required.

ADMINISTRATIVE PROCESS

7. It is admitted only that on August 9, 2022, the EEOC issued a Determination and sent a letter to Defendant to commence conciliation discussions; the Determination and letter are written documents that speaks for themselves and any characterizations thereof are denied.

8. It is admitted only that the EEOC engaged in communications with Defendant. The remaining allegations of this paragraph are denied.

9. Admitted. By way of further response, it is denied that the EEOC provided responsive case-specific information requested by Defendant in the course of its communications with the EEOC relative to the EEOC's proposed conciliation terms.

10. Admitted. By way of further response, Defendant denies that the EEOC made adequate efforts to conciliate the Charge filed by Dean Weintraub or any other claims on behalf of persons who did not file administrative charges.

11. The allegations of paragraph 11 of the Complaint are conclusions of law to which no response is required.

GENERAL FACTUAL BACKGROUND

12. Admitted in part; denied in part. It is admitted only that in November 2020, Wes Howell, Jr. became Vice President, Branch Manager of Defendant's operations in Hamilton, New Jersey. The remaining allegations of this paragraph are denied.

13. Denied as stated. It is admitted only that, since November 2020, Mr. Howell participates in all hiring decisions and recruitment for Defendant's New Jersey branch. The remaining allegations of this paragraph are denied.

14. Denied as stated. It is admitted only that Mr. Howell has participated in job interviews for positions in the New Jersey branch region. It is specifically denied that he typically takes notes during interviews of individuals or that there is any requirement that he do so. The remaining allegations of this paragraph are denied.

15. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

16. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

17. Denied as stated. It is admitted only that since November 2020, Defendant has employed individuals in positions of Project Manager or Estimator from various sources including, but not limited to, in-house employee referrals, referrals from union locals, or from third-party talent/recruiting companies. The remaining allegations of this paragraph are denied.

18. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

19. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 and, therefore, they are denied and strict proof of the same is hereby demanded.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 and, therefore, they are denied and strict proof of the same is hereby demanded.

22. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 and, therefore, they are denied and strict proof of the same is hereby demanded.

24. Denied as stated. It is admitted only that Mr. Howell has interviewed and hired several candidates for the position of Project Manager since Mr. Weintraub filed his Charge of Discrimination on or about January 27, 2022. The remaining allegations of this paragraph are denied.

25. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

26. Denied as stated. It is admitted only that Mr. Howell, after reviewing the resume of Thomas Silvera for an electrical estimator job position, interviewed him regarding his work experience on September 7, 2021. It is also admitted that after interview Mr. Silvera was not hired by Defendant. The remaining allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

27. Denied as stated. It is admitted only that according to the summary presented to Defendant by a third-party talent/recruiting company Galen Rader on August 31, 2021, Mr. Silvera was presented as having “15+ years of experience as an Electrical Estimator and PM.” Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 27 and, therefore, they are denied and strict proof of the same is hereby demanded.

28. Admitted. By way of further response, Mr. Howell contacted Galen Rader after Mr. Silvera’s resume had been forwarded to Mr. Durrua as set forth in this paragraph, to request that an in-person interview be set up for Mr. Silvera with him and Mr. Durrua.

29. Denied as stated. It is admitted only that Mr. Howell and Mr. Durrua interviewed Mr. Silvera on September 7, 2021, and that after interview Mr. Silvera was not hired by Defendant. The remaining allegations of this paragraph are denied and strict proof of the same is hereby demanded.

30. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

31. Denied as stated. It is admitted only that Mr. Silvera was not hired for the position of estimator because the only work experience that Mr. Silvera discussed during his interview involved estimating for government and solar power projects over the previous ten years, neither of which is the type of estimating work that Defendant does or needs in its New Jersey division. The remaining allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 and, therefore, they are denied and strict proof of the same is hereby demanded.

33. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

CAUSES OF ACTION

Count I: Denial of Hiring Because of Age

34. Defendant incorporates by reference its responses to paragraphs 1 through 33 of the Complaint as though fully set forth herein.

35. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

36. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded. It is specifically denied that Defendant engaged in any unlawful practices.

37. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded. It is specifically denied that Defendant engaged in any unlawful practices.

Count II: Discriminatory Recruitment Practices Because of Age

38. Defendant incorporates by reference its responses to paragraphs 1 through 37 of the Complaint as though fully set forth herein.

39. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

40. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded. It is specifically denied that Defendant engaged in any unlawful practices.

41. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded. It is specifically denied that Defendant engaged in any unlawful practices.

Count III: Recordkeeping Violation - ADEA

42. Defendant incorporates by reference its responses to paragraphs 1 through 41 of the Complaint as though fully set forth herein.

43. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

44. The allegations of paragraph 44 of the Complaint are conclusions of law to which no response is required.

Count III: Recordkeeping Violation – Title VII

45. Defendant incorporates by reference its responses to paragraphs 1 through 44 of the Complaint as though fully set forth herein.

46. Denied. The allegations of this paragraph are specifically denied and strict proof of the same is hereby demanded.

PRAYER FOR RELIEF

In response to the “WHEREFORE” clause of the EEOC’s Complaint, Defendant denies that the EEOC is entitled to any relief whatsoever and requests that the Court dismiss the Complaint in its entirety with prejudice and grant such other relief as the Court deems just and appropriate.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The EEOC’s claims on behalf of Mr. Weintraub are barred by the EEOC’s failure to appropriately engage in the conciliation process with regard to Mr. Weintraub’s claims and the EEOC’s claims on his behalf.

SECOND AFFIRMATIVE DEFENSE

The EEOC’s claims on behalf of Mr. Silvera are barred by the EEOC’s failure to appropriately engage in the conciliation process with regard to Mr. Silvera’s claims and the EEOC’s claims on his behalf.

THIRD AFFIRMATIVE DEFENSE

The EEOC’s claims on behalf of “unidentified project manager and estimator applicants/candidates/potential candidates” are barred by the EEOC’s failure to appropriately engage in the conciliation process with regard to these unidentified individual’s claims and the EEOC’s claims on their behalf.

FOURTH AFFIRMATIVE DEFENSE

The EEOC’s discrimination claims on behalf of Mr. Weintraub, Mr. Silvera and “unidentified project manager and estimator applicants/candidates/potential candidates” are barred for failure to state a claim.

FIFTH AFFIRMATIVE DEFENSE

The EEOC's claims on behalf Mr. Silvera and "unidentified project manager and estimator applicants/candidates/potential candidates" are barred by the EEOC's and the identified and unidentified individuals' failures to fully exhaust the administrative process.

SIXTH AFFIRMATIVE DEFENSE

The EEOC's claims on behalf of Mr. Silvera and "unidentified project manager and estimator applicants/candidates/potential candidates" are barred by the EEOC's failure to satisfy all procedural requirements and prerequisites before asserting such claims in this lawsuit.

SEVENTH AFFIRMATIVE DEFENSE

The EEOC's claims on behalf of Mr. Silvera and "unidentified project manager and estimator applicants/candidates/potential candidates" are barred by the EEOC's failure to file the Complaint within applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Any acts or omissions complained of by Defendant were based on legitimate non-discriminatory factors.

NINTH AFFIRMATIVE DEFENSE

The EEOC's claims are not actionable because the EEOC cannot show that any reason offered by Defendant for any employment decision was in any way a pretext for purposeful, intentional, and/or legally prohibited discrimination.

TENTH AFFIRMATIVE DEFENSE

There is no basis of law or fact on which the EEOC is entitled to recover damages from Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

The EEOC cannot show any entitlement to any form of injunctive or other equitable relief from Defendant.

TWELFTH AFFIRMATIVE DEFENSE

Defendant denies the EEOC is entitled to recover any damages or other relief; in the alternative, the EEOC's damage claims for Mr. Weintraub, Mr. Silvera and "unidentified project manager and estimator applicants/candidates/potential candidates" are barred in whole or in part by reason of those individuals' failure to mitigate their alleged damages or, in the alternative, to the extent that Mr. Weintraub, Mr. Silvera or "unidentified project manager and estimator applicants/candidates/potential candidates" have mitigated their damages, Defendant is entitled to a credit or offset.

THIRTEENTH AFFIRMATIVE DEFENSE

All actions taken by Defendant as alleged in the Complaint were lawful and made in good faith compliance with all applicable provisions of law, rules and regulations, and were not based upon any reason in violation of public policy or other factors protected by law.

FOURTEENTH AFFIRMATIVE DEFENSE

The EEOC's claims are barred, in whole or in part, because Defendant acted reasonably and in good faith at all times material herein, based on all the relevant facts and circumstances known to Defendant at the time that it so acted.

WHEREFORE, having fully answered and responded to the allegations contained in the EEOC's Complaint, Defendant hereby prays that:

1. The EEOC's claims be dismissed with prejudice in their entirety;
2. Each and every prayer for relief contained in the Complaint be denied;

3. Judgment be entered in favor of Defendant;
4. All costs, including reasonable attorneys' fees be awarded to Defendant and against the EEOC pursuant to applicable law;
5. Defendant be granted such other and further relief as this Court may deem just and proper.

RESERVATION OF DEFENSES AND OBJECTIONS

Defendant hereby reserves the right to interpose such other defenses and objections as the continuing investigation may disclose.

JURY DEMAND

Defendant hereby demands a trial by jury as to all issues.

CERTIFICATION

Pursuant to local Federal Procedure 11.2, I hereby certify that the matter in controversy is not subject to any other action pending in any state, court, arbitration, or administrative proceeding.

MARSHALL, DENNEHEY

Dated: August 7, 2023

By: */s/ Lawrence Berg*
LAWRENCE BERG, ESQUIRE
Attorney for Defendant,
Hatzel & Buehler, Inc.
15000 Midlantic Drive, Suite 200
P.O. Box 5429
Mount Laurel, NJ 08054
TEL: (856) 414-6000
FAX: (856) 414-6077
E-MAIL: lbberg@mdwgc.com
Our File No. 08002-00563