

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
(Martinsburg Division)**

ALVIN MCGRUDER,

Plaintiff,

v.

Docket No. 3:08cv83

**AHERN & ASSOCIATES, INC., and
TERRY WATTS, in his Individual capacity,**

Defendants’.

AMENDED COMPLAINT

Plaintiff, by and through his attorney, complains and alleges a cause of action as follows:

I. JURISDICTION AND VENUE

1. This court has jurisdiction of the claim herein pursuant to 42 USC §2000e-5(f)(3), 28 USC §§1331 and 1343(4). This civil action arises under the laws of the United States. Plaintiff is alleging a violation of his rights under Title VII of the Civil Rights Act of 1964, as amended, 42 USC §§2000e et seq.

2. Venue herein is proper under 28 USC §1391(b) and 42 USC §§2000e-5(f)(3). Ahern & Associates, Inc. (hereinafter referred to as “Defendant Ahern”), is a corporate resident of the State of West Virginia, doing business therein, and the unlawful employment practice of which Plaintiff is complaining was committed in the State of West Virginia.

II. PARTIES

3. Plaintiff, Alvin McGruder, is an individual, and has resided in Kearneysville, Jefferson County, West Virginia, at all times pertinent hereto. From approximately May 10, 2005, until May 21, 2006, Plaintiff was employed by Defendant Ahern, in the position of laborer, and reported to and worked under the supervision of Defendant Terry Watts (hereinafter referred to as "Defendant Watts").

4. Defendant, Ahern & Associates, is a corporation existing under the laws of the State of West Virginia. Defendant has had its principal place of business at 5725 Kanawha Turnpike, S.W., South Charleston, West Virginia 25309, at all times pertinent hereto. At all times pertinent hereto, Defendant has been engaged in an industry affecting commerce and has had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year.

5. Defendant Watts, is an individual and has been employed by Ahern & Associates, at the location described in paragraph 4, and in the position of supervisor at all times pertinent hereto.

III. PROCEDURAL REQUIREMENTS

6. On or about May 22, 2007, Plaintiff filed an Amended Complaint, with a charge of discrimination with the Equal Employment Opportunity Commission, thereby satisfying the requirements of 42 USC §2000e-5(b), (e). Such charge was filed within one hundred and eighty (180) days of the unlawful employment practice. On or about February 22, 2008, less than 90 days prior to the filing of this complaint, the Equal Opportunity Commission issued to the Plaintiff a notice of Right to Sue with respect to such charge of discrimination.

7. The incidents described in Part IV below were part of a continuing series of incidents of racial disparagement and harassment, which began on or about August 10, 2005, and which constitute a continuing violation of the Plaintiff's Title VII rights.

IV. CLAIM FOR RELIEF
HOSTILE ENVIRONMENT OF RACIAL DISCRIMINATION

8. Plaintiff is an Afro-American male and as such is a member of a group protected under Title VII from discrimination on the basis of race.

9. Commencing on or about May 6, 2006, Defendant Watts engaged in a persistent pattern of severe and pervasive harassment involving disparaging racial comments, which created a hostile environment for Plaintiff in the workplace.

10. Plaintiff did not welcome the conduct described in paragraph 9, and advised Defendant Watts that such conduct was unwelcome.

11. Plaintiff was subjected to disparaging racial comments and harassment because of his race and ethnicity.

12. The disparaging racial comments and harassment described in paragraph 9 has a greater impact on persons of Plaintiff's race and ethnicity in the workplace than on persons of other race or ethnicity.

13. The disparaging racial comments harassment adversely affected Plaintiff's psychological well being.

14. The disparaging racial comments harassment unreasonably interfered with Plaintiff's work performance.

15. The disparaging racial comments harassment to which Plaintiff was subjected would affect the psychological well being and unreasonably interfere with the work performance of a reasonable person of Plaintiff's race.

16. Disparaging racial comments and harassment was sufficiently widespread, pervasive and prevalent in Defendant Aherns' workplace at all times pertinent hereto to charge Defendant Ahern with constructive notice of it.

17. Plaintiff gave Defendant Ahern actual notice of racial discrimination and harassment on or about August 24, 2006, by filing an Original Complaint with West Virginia Human Rights Commission (hereinafter referred to as "the Commission"),

signed by Yodora Booth, Director of Operations of the Commission; and Plaintiff filed an Amended Complaint, with the Commission, on June 28, 2007.

18. Defendant Ahern failed to investigate Plaintiff's complaint.

19. Defendant Ahern failed to take adequate remedial action.

20. Disparaging racial comments and harassment continued to occur following Plaintiff's complaint.

21. Defendant Ahern had the power to alter or affect the terms and conditions of Plaintiff's employment by transferring the Plaintiff's to another job site or duty, or by reprimanding and/or firing Defendant Watts.

22. Defendant Watts was acting within the scope of his employment and furthering the objectives of Defendant Ahern by harassing Plaintiff because Defendant Ahern allowed Defendant Watts to, *inter alia*, harass and make disparaging racial remarks towards the Plaintiff.

23. Plaintiff sustained emotional suffering and injury attributable to the disparaging racial remarks and harassment.

24. Defendants Ahern and Watts acted with malice and with reckless indifference to Plaintiff's civil rights and emotional and physical well being.

WHEREFORE, Plaintiff respectfully prays that this court:

1. Issue an order enjoining Defendant Ahern and Defendant Watts, to cease and desist from the conduct described in Part IV, above, and from harassing Plaintiff in any manner whatsoever.

2. Issue an order requiring Defendant Ahern to take steps to protect Plaintiff and other employees similarly situated from the type of conduct described in Part IV, above, and from all other forms of racial harassment and harassment in the future.

3. Issue an order requiring Defendant Ahern to adopt and disseminate a policy protecting employees from harassment in the workplace and establishing reasonable and adequate procedures for investigating complaints of sexual harassment and taking suitable remedial action.

4. Order reinstatement of Plaintiff in the position he would occupy and with all the benefits he would have had if he had not suffered adverse employment action attributable to racial discrimination and harassment, or award Plaintiff front pay in the amount of \$250,000.00, if reinstatement is determined at trial to be impractical.

5. Award Plaintiff back pay, including overtime pay, pension benefits, and other employment benefits which would have accrued if Plaintiff's employment had not been terminated.

6. Award Plaintiff compensatory damages for his emotional suffering and related medical and therapeutic expenses in the amount of \$500,000.00.

7. Award Plaintiff punitive damages in the amount of \$2,000,000.00.

8. Award Plaintiff attorneys' fees, including expert witness fees, pursuant to 42 USC §2000e5(k).

9. Award Plaintiff costs, interest, and such other relief as this Court may deem proper.

10. Plaintiff demands a jury trial.

Dated: August 15, 2008

ALVIN MCGRUDER
By Counsel

/s/ Sherman L. Lambert, Sr.

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CERTIFICATE OF SERVICE

I, Sherman L. Lambert, Sr., Attorney for Plaintiff, Alvin McGruder, do hereby certify that I have served a true copy of **PLAINTIFF'S AMEND COMPLAINT**, by serving same upon Brian J. Moore, Esquire, legal counsel for Defendants', to his business address at Jackson & Kelly, PLLC, 1600 Laidley Tower, Charleston, WV 25301, by electronic filing with the Clerk of the Court using the CM/ECF system, on this 15th day of August 2008.

/s/ Sherman L. Lambert, Sr.

SHERMAN L. LAMBERT, SR.