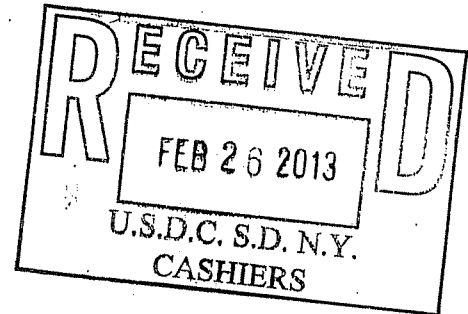


JUDGE CROTTY

13 CIV 1293

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

- against -

THE CITY OF NEW YORK,

Defendant.

COMPLAINT

13 Civ. ____ ()

ECF CASE

JURY TRIAL DEMANDED

The United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, alleges as follows:

1. This action is brought by the United States against the City of New York ("NYC"), to enforce the statutory and regulatory provisions of Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12111 *et seq.*, which incorporates through 42 U.S.C. § 12117 the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5.

JURISDICTION AND PARTIES

2. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. §§ 1331 and 1345. This Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to grant equitable relief and monetary damages pursuant to 42 U.S.C. § 12117.

3. NYC is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a).

4. NYC is an employer within the meaning of 42 U.S.C. §§ 12111(5) and 2000e(b), and a covered entity within the meaning of 42 U.S.C. § 12111(2).

5. Regina Sessoms-Skeete ("Skeete") is an individual with a disability within the meaning of 42 U.S.C. § 12102. Skeete suffers from agoraphobia and claustrophobia, which substantially limits her major life activities.

FACTS

6. In 2005, Skeete saw a notice that the New York City Police Department ("NYPD") was seeking applicants for school crossing guard positions. Skeete is qualified for the position of school crossing guard.

7. Skeete applied, and was told to report on September 20, 2005, to One Police Plaza, on the first floor.

8. Skeete reported to One Police Plaza on September 20, 2005, to fill out background information forms in connection with her application for a position.

9. Immediately after Skeete completed the background information forms, an NYPD representative provided Skeete with a letter, dated September 20, 2005, directing her to report to One Lefrak Plaza, on the 16th floor, for medical testing.

10. At the time the NYPD directed Skeete to report for medical testing, it had not extended Skeete a conditional offer of employment.

11. On account of her disability, Skeete could neither take an elevator to the 16th floor, nor walk up 16 flights of stairs in an enclosed stairwell.

12. Skeete wrote to the NYPD Health Services on October 19, 2005, advising that she had not been on an elevator in 28 years, identified herself as a person with a disability, and asked for an accommodation: "Is it possible for me to get this same medical examination and drug testing anywhere else in a hospital or Clinic without coming to the 16th floor [?]."

13. The NYPD never responded to Skeete's request for an accommodation.

14. Skeete subsequently contacted the NYPD Employment Section by phone and spoke with an NYPD Sergeant, who advised her to send a letter from her psychotherapist explaining Skeete's situation. Skeete did so, producing a note from her doctor dated October 31, 2005.

15. The NYPD never responded to Skeete's request for accommodation and her note from her psychotherapist.

16. Skeete renewed her request for an accommodation on November 29, 2005; March 14, 2006; and June 19, 2006. The NYPD never responded to any of Skeete's requests.

17. Skeete timely filed a charge with the U.S. Equal Employment Opportunity Commission ("EEOC") in which she alleged that she had been discriminated against in

employment on the basis of her disability by NYC and NYPD. Pursuant to 42 U.S.C. § 2000e-5, incorporated by reference in 42 U.S.C. § 12117(a), the EEOC investigated the charge, found reasonable cause to believe that the allegations of discrimination on the basis of disability were true, attempted unsuccessfully to conciliate a voluntary resolution of the charge, and subsequently referred the matter to the Department of Justice.

FIRST CLAIM FOR RELIEF

Violation of the Americans with Disabilities Act, 42 U.S.C. § 12112(d)(2)

18. The United States respectfully incorporates the allegations of paragraphs 1 through 17 as if fully set forth herein.

19. The Americans with Disabilities Act ("ADA") generally prohibits medical and psychological exams until an offer of employment has been made. See 42 U.S.C. § 12112(d)(2).

20. When the NYPD referred Skeete to a medical examination prior to making her a conditional offer of employment, it violated 42 U.S.C. § 12112(d)(2).

SECOND CLAIM FOR RELIEF

Violation of the Americans with Disabilities Act, 42 U.S.C. § 12112(a)

21. The United States respectfully incorporates the allegations of paragraphs 1 through 20 as if fully set forth herein.

22. The ADA prohibits discrimination on the basis of disability, among other things, "in regard to job application procedures." 42 U.S.C. § 12112(a). Discrimination under the ADA includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee." 42 U.S.C. § 12112(b)(5)(A).

23. When the NYPD refused to provide a reasonable accommodation in response to Skeete's request that the medical examination be conducted at a site where she could take the examination on a lower floor, it violated 42 U.S.C. § 12112(a).

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court grant the following relief:

(A) Enjoin NYC and the NYPD from engaging in any act or practice that discriminates against any employee or applicant for employment on the basis of disability in violation of Title I of the ADA;

(B) Enjoin NYC and the NYPD to provide training on Title I of the ADA, including the duty to make reasonable accommodations, to all current and future NYC and NYPD supervisory employees and all NYC and NYPD human resources supervisory employees who participate in making personnel decisions, including, but not limited to, hiring or promoting employees;

(C) Award compensatory damages and injunctive relief to Skeete as would fully compensate her for injuries caused by the NYPD's discriminatory conduct; and

(D) Award such other additional relief as justice may require.

Dated: New York, New York
FEBRUARY 26, 2013

ERIC H. HOLDER, JR.
Attorney General

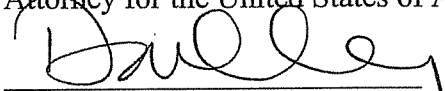
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