

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE A. COLEMAN,

Plaintiff,

v.

ROBINSON BROTHERS ENVIRONMENTAL,
MICHAEL ROBINSON, SR. & MIKE ROBINSON, JR.,

Defendants.

ORDER

06-C-0492-C

This is a civil action for monetary relief in which plaintiff Bruce A. Coleman, who is proceeding pro se, alleges that he applied for a job with defendant Robinson Brothers Environmental, Inc., but was not hired because of his age, in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 623. The complaint is accompanied by a right-to-sue letter addressed to plaintiff from the United States Equal Employment Opportunity Commission. This court appears to have jurisdiction over plaintiff's lawsuit under 28 U.S.C. § 1331.

The next step is for plaintiff to serve his complaint on the defendants. Before he attempts such service, however, plaintiff should be aware that the ADEA makes it unlawful for an *employer* to fail or refuse to hire or to discharge any individual or otherwise

discriminate against any individual . . . because of such individual's age." 29 U.S.C. § 623. The Act authorizes individuals to bring suit against employers, whom the Act defines as "persons" employing twenty or more individuals, and agents of such persons. 29 U.S.C. § 626(2), 630(b).

In addition to the defendant employer, Robinson Brothers Environmental, plaintiff has named as defendants two individuals who appear by their surnames to be owners or executive officers of the defendant corporation. Under the principle of respondeat superior, employers may be held responsible under the ADEA for discriminatory actions taken by individuals responsible for hiring or firing employees. Smith v. Metropolitan School Dist. Perry Township, 128 F.3d 1014, 1024 (7th Cir. 1997) (discussing employer liability for actions of agents under ADA); Williams v. Banning, 72 F.3d 552, 553-554 (7th Cir. 1995) (discussing agent liability under Title VII). However, the Act does not authorize suits brought directly against individuals. United States Equal Employment Opportunity Commission v. AIC Sec. Investigations, Ltd., 55 F.3d 1276, 1281 (7th Cir.1995) (no individual liability under Title VII, ADA or ADEA); Cheng v. Benson, 358 F. Supp. 2d 696, 700 (N.D. Ill. 2005) (collecting cases). Therefore, if plaintiff serves defendants Michael Robinson Sr. and Mike Robinson Jr. with his complaint, these defendants will be free to move promptly for their dismissal from the case and this court would be required to grant such a motion. Plaintiff can avoid the expense of serving these individuals by providing the court with notice of their voluntary dismissal pursuant to Fed. R. Civ. P. 41.

With respect to service of plaintiff's complaint, under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendant. However, that is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. If plaintiff acts promptly, he should be able to serve his complaint on the defendant corporation well before the deadline for doing so established in Rule 4.

To help plaintiff understand the procedure for serving a complaint on a corporation, I am enclosing with this memorandum a copy of document titled "Procedure for Serving a Complaint on a Corporation in a Federal Lawsuit." In addition, I am enclosing to plaintiff an extra copy of his complaint and forms he will need to send to the defendant corporation in accordance with the procedures set out in Option 1 of the memorandum. I am not enclosing instructions for service of a complaint on an individual at this time. If plaintiff does not request their voluntary dismissal at the outset, he is free to write to this court to request instructions for serving the individual defendants.

ORDER

This court being satisfied that it has jurisdiction to hear plaintiff's ADEA lawsuit in this court, IT IS ORDERED that plaintiff promptly serve his complaint on the defendant corporation and that he file proof of service of his complaint as soon as service has been accomplished. If plaintiff so chooses, he may submit a notice of dismissal of his claim against the individual defendants pursuant to Fed. R. Civ. P. 41 in lieu of serving them with

his complaint or he may write promptly to request instructions for serving individuals in a federal lawsuit. If, by October 27, 2006, plaintiff fails to submit proof of service of his complaint on the defendant corporation or explain his inability to do so, I will direct plaintiff to show cause why his case should not be dismissed for lack of prosecution.

Entered this 8th day of September, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge