

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-CV-00503 REB-KMT

JUDITH KAID,

Plaintiff,

v.

THE PAULS CORPORATION, LLC, a Colorado Limited Liability Company, aka THE PAULS CORPORATION; PAULS OPERATIONS, INC., a Colorado Corporation, aka PAULS OPERATIONS, LLC; PAULS REALTY MANAGEMENT, LLLP, a Colorado Limited Liability Limited Partnership aka PAULS REALTY MANAGEMENT, LP;

Defendants.

SCHEDULING ORDER

**1. DATE OF CONFERENCE AND APPEARANCES
OF COUNSEL AND PRO SE PARTIES**

A Status Conference is scheduled in this matter for September 3, 2008 at 9:00 a.m. before the Honorable Magistrate Judge Kathleen M. Tafoya, Courtroom A 601.

Appearance of Counsel is as follows:

Andrew Contiguglia, Reg. No. 26901
Lia Fazzone, Reg. No. 27832
400 S. Colorado Blvd, Suite 830
Denver, CO 80246
Attorneys for Plaintiff Judith Kaid

Patricia Thatcher, Esq.
Campbell Killin Brittan & Ray, LLC
270 St. Paul Street, Suite 200
Denver, CO 80206
Attorney for Defendants

2. STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 29 U.S.C. §626(c)(1). The pendent jurisdiction of this Court is also invoked regarding Plaintiff's state common law claims against the Defendants.

3. STATEMENT OF CLAIMS AND DEFENSES

a. *Plaintiff(s):*

The Plaintiff, Ms. Judith Kaid was a female, over the age of forty and thus a member of a class of persons statutorily protected from discrimination. Plaintiff contends that her employment was terminated by Defendants because of her age, sixty-one, at the time of termination, in violation of Section 4(a)(1) of the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq, and in violation of Employment Discrimination in Violation of the Colorado Anti-Discrimination Act, C.R.S. §24-34-401 to 406.

Plaintiff further contends that the Defendants had a duty to supervise their employees and agents and to inform them of discrimination against any employee based upon age and that they were discriminatory in their employment practices and allowed discrimination to take place. Last, that Ms. Kaid was wrongfully discharged from her employment.

b. *Defendant(s):*

Defendant, The Pauls Corporation, LLC, never employed Plaintiff and therefore is not properly named a defendant as to the claims alleged in Plaintiff's complaint.

The other defendants, Pauls Realty Management, LLLP, as successor to Pauls Operations, Inc. (collectively, "Pauls"), terminated Plaintiff from her position as a leasing consultant at the Lakecrest Apartments ("Lakecrest") for reasons wholly unrelated to

Plaintiff's age, namely: (1) Pauls decided to reduce the number of leasing consultants due to budgetary shortfalls at the Lakecrest property; (2) Plaintiff had a generally negative attitude toward her position and toward servicing existing tenants at Lakecrest; and (3) Plaintiff lacked motivation to perform all of her job responsibilities and any increased duties which may have been assigned to her at the property. In addition, while Plaintiff's performance as a leasing consultant may at times have been on par with her peers, in the last months of her employment, Plaintiff's leasing ratios were at times lower than her peers. In sum, Plaintiff's generally poor attitude, lack of motivation and job performance lead to her termination.

The Pauls Corporation, LLC and Pauls assert the following affirmative defenses to Plaintiff's claims: (1) Plaintiff fails to state a claim on which relief can be granted; (2) Plaintiff's claims against The Pauls Corporation, LLC are barred as The Pauls Corporation, LLC was not Plaintiff's employer at any time; (3) Plaintiff's claims are barred as the decision to terminate Plaintiff's employment was based upon reasonable factors other than age; (4) Plaintiff's claims are barred as the decision to terminate Plaintiff's employment was based upon good cause; (5) Plaintiff's right to recover monetary damages is limited by applicable federal and state laws; (6) Plaintiff's claims are barred, in whole or in part, because Defendants owed not duty to Plaintiff; (7) Plaintiff's claims are barred, in whole or in part, by Plaintiff's own conduct; (8) In terminating Plaintiff, Pauls Realty Management acted in good faith and with the requisite degree of care; and (9) Plaintiff's claims are groundless, frivolous and vexatious, entitling Defendants to costs, expenses, and attorneys' fees as provided by state and federal law.

4. UNDISPUTED FACTS

The following facts are undisputed:

a. That the Plaintiff was employed by defendants, PAULS OPERATIONS, INC., a Colorado Corporation, aka PAULS OPERATIONS, LLC and PAULS REALTY MANAGEMENT, LLLP, a Colorado Limited Liability Limited Partnership aka PAULS REALTY MANAGEMENT, LP.

b. The Plaintiff was employed from August 15, 2003 until January 10, 2007, when her employment was terminated by Pauls Realty Management, LLLP.

c. The Plaintiff was employed as a Leasing Consultant at Lakecrest at Gateway Park.

d. At the time of Ms. Kaid's termination, Misty May and Andrea Reas were Leasing Consultants at the Lakecrest property.

5. COMPUTATION OF DAMAGES

Plaintiff's Computation of Damages:

Plaintiff was unemployed for approximately 37.5 weeks after her employment with defendants was terminated. At the time of her termination, she was making a salary of \$13.14 per hour and working a minimum of 40 hours per week. In addition, Plaintiff was making commissions on top of her salary. Upon the commencement of her new employment, Plaintiff claims it took approximately 15 months before Plaintiff began earning commissions commensurate to those earned while with Defendants.

In addition, Plaintiff claims she is entitled to compensation for interest on her retirement contributions which she was unable to make during her unemployment, plus

a reasonable rate of return. She also claims she is entitled to unrealized 401k appreciation.

Plaintiff claims she is entitled to liquidated damages equal to her actual damages.

Plaintiff claims is entitled to post-judgment interest.

Plaintiff claims is entitled to attorney fees and costs associated with this action.

Defendants' Computation of Damages:

Defendants do not claim damages in this action, however, reserve their rights to seek the award of attorneys' fees and costs against Plaintiff as provided by applicable law.

**6. REPORT OF PRECONFERENCE DISCOVERY
AND MEETING UNDER FED. R. CIV. P. 26(f)**

- a. Date of rule 26(f) meeting.

The parties held their Rule 26(f) meeting by telephone on August 14, 2008.

- b. Names of each participant and party he/she represented.

The parties in attendance were:

Andrew Contiguglia, Esq.
Contiguglia / Fazzino, P.C.
400 S. Colorado Blvd, Suite 830
Denver, CO 80246
Attorney for Plaintiff Judith Kaid

Patricia Thatcher, Esq.
Campbell Killin Brittan & Ray, LLC
270 St. Paul Street, Suite 200
Denver, CO 80206
Attorney for Defendants

- c. Because of the recent pleadings filed by the parties, the date on which

Defendants filed their Answer, and the recent rescheduling of this Court's Scheduling

Conference, the parties agreed to alter the timing of the disclosure requirements pursuant to Fed. R. Civ. P. 26(a)(1).

d. The parties agreed to exchange rule 26(a)(1) disclosures on August 28, 2008.

e. The parties have not made any agreements to conduct informal discovery including joint interviews with potential witnesses, exchanges of documents, and joint meetings with clients to discuss settlement.

f. The parties do not anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form. The parties have been advised as to what steps they have taken or will take to (i) preserve electronically stored information; (ii) facilitate discovery of electronically stored information; (iii) limit associated discovery costs and delay; and (iv) avoid discovery disputes relating to electronic discovery.

7. CONSENT

The parties consents to a Magistrate judge for purposes set forth in 28 U.S.C. §636(b)(1)(A),

8. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings: The parties do not anticipate currently joining any additional parties. In the event that one or more of the parties decides to seek to join additional parties or to amend the pleadings, such party shall file the appropriate motion on or before October 17, 2008.

b. Discovery Cut-off: January 30, 2009.

c. Dispositive Motion Deadline: February 27, 2009.

d. Expert Witness Disclosure

(1) Plaintiff anticipates she may use testimony from expert witness(es) in the following fields: damage calculation, including but not limited to valuation of 401K account and appreciation. Pauls anticipates that it may use testimony from expert witness(es) in the following fields: damage calculation, including but not limited to valuation of 401K account and appreciation.

(2) State any limitations proposed on the use or number of expert witnesses: none.

(3) The parties shall designate all experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before December 21, 2008.

(4) The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before December 22, 2008.

(5) Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2)(B), no exception to the requirements of the rule will be allowed by stipulation of the parties unless the stipulation is approved by the court.

e. Deposition Schedule: The parties anticipate the following depositions:

<i>Name of Deponent</i>	<i>Date of Deposition</i>	<i>Time of Deposition</i>	<i>Expected Length of Deposition</i>	<i>Party Noticing Deposition</i>
Judith Kaid	TBD	9:00 a.m.	5 hours	Pauls
Lindsay Nylander	TBD	9:00 a.m.	3 hours	Kaid

Kim Ault	TBD	1:00 p.m.	2 hours	Kaid
Patrick Roach	TBD	9:00 a.m.	2 hours	Kaid

f. Interrogatory Schedule

Interrogatories shall be submitted by any party to any other party on or before December 24, 2008, and the responding party shall respond to any interrogatories pursuant to Fed.R.Civ.P. 33.

g. Schedule for Request for Production of Documents

Requests for Production of Documents shall be submitted by any party to any other party on or before December 24, 2008, and the responding party shall respond to any requests for production of documents pursuant to Fed.R.Civ.P. 34.

h. Discovery Limitations:

(1) Any limits which any party wishes to propose on the number of depositions: The number of depositions shall not exceed the limitation set forth in Fed.R.Civ.P. 30(a)(2).

(2) Any limits which any party wishes to propose on the length of depositions: The length of depositions shall not exceed the limitations set forth in Fed.R.Civ.P. 30(d)(1).

(3) Modifications which any party proposes on the presumptive numbers of depositions or interrogatories contained in the federal rules: None.

(4) Limitations which any party proposes on number of requests for production of documents and/or requests for admissions: The number of requests for production of documents served by any party shall not exceed thirty (30),

including discrete subparts. The number of requests for admission served by any party shall not exceed thirty (30), including discrete subparts.

9. SETTLEMENT

The parties certify, pursuant to Fed. R. Civ. P. 26(f), that their counsel has discussed the possibilities for a prompt settlement or resolution of the case. The parties seek this Court's reference to a magistrate judge for the purpose of conducting a settlement conference in this case.

10. OTHER SCHEDULING ISSUES

a. A statement of those discovery or scheduling issues, if any, on which counsel, after a good-faith effort, were unable to reach an agreement: The parties continue to discuss the propriety of Plaintiff naming The Pauls Corporation, LLC as a defendant in this case and the parties are attempting to reach a stipulation which would result in the dismissal of The Pauls Corporation, LLC as a defendant.

b. Anticipated length of trial and whether trial is to the court or jury: the parties anticipate a four day jury trial.

11. DATES FOR FURTHER CONFERENCES

a. A settlement conference will be held on _____ at _____ o'clock __.m.

It is hereby ordered that all settlement conferences that take place before the magistrate judge shall be confidential.

() Pro se parties and attorneys only need be present.

() Pro se parties, attorneys, and client representatives with authority to settle must be present. (NOTE: This requirement is not fulfilled by the presence of counsel. If an insurance company is involved, an adjustor authorized to enter into settlement must also be present.)

() Each party shall submit a Confidential Settlement Statement to the magistrate judge on or before _____ outlining the facts and issues, as well as the strengths and weaknesses of their case.

b. Status conferences will be held in this case at the following dates and times:

c. A final pretrial conference will be held in this case on at ____ o'clock __.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five days before the final pretrial conference.

12. OTHER MATTERS

An attorney who has appeared in a case may seek to withdraw only by written motion that conforms to the requirements of D.C.COLO.LCivR 83.3D. Withdrawal shall be effective only on court order.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures established by the judicial officer presiding over the trial of this case.

Attorneys and pro se parties must file a change of address as required by

D.C.COLO.LCivR 10.1M within ten days after any change of address, e-mail address, or telephone number.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A. The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all pro se parties.

13. AMENDMENTS TO SCHEDULING ORDER

This Scheduling Order shall be amended upon the showing of good cause.

DATED this _____ day of _____ 2008

BY THE COURT:

United States Magistrate Judge

APPROVED:

/s/ Andrew J. Contiguglia

Andrew Contiguglia, Esq.
Contiguglia / Fazzone, P.C.
400 S. Colorado Blvd, Suite 830
Denver, CO 80246
Attorney for Plaintiff Judith Kaid

/s/ Patricia Thatcher

Patricia Thatcher, Esq.
Campbell Killin Brittan & Ray, LLC
270 St. Paul Street, Suite 200
Denver, CO 80206
Attorney for Defendants