

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK

HILDA L. SOLIS, Secretary of Labor, :
United States Department of Labor, :

Plaintiff, :

v. :

Civil Action

File No. 1:12-CV-1278
(FJS/TWD)

CHAMPAGNE DEMOLITION, LLC, a limited :
liability company, and JOSEPH A. CHAMPAGNE, :
Individually. :

Defendants. :

COMPLAINT

Plaintiff, HILDA L. SOLIS, Secretary of Labor, United States Department of Labor, brings this action for an order for all appropriate relief pursuant to the provisions of section 11(c) of the Occupational Safety and Health Act of 1970, as amended, (“the Act”) (84 Stat. 1590, 29 U.S.C. 651 et seq.), seeking to enforce the provisions of Section 11(c) of the Act, codified at 29 U.S.C. § 660(c), and regulations published at 29 C.F.R. Part 1977.

I

This action is brought by the Secretary pursuant to authority granted by Section 11(c)(2) of the Act, 29 U.S.C. §660(c)(2).

II

Jurisdiction over this action is conferred upon the Court by Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2).

III

Defendant CHAMPAGNE DEMOLITION, LLC is a New York limited liability company existing under the laws of the State of New York and at all times material hereto has been an employer engaged in the business of demolition and disposal of construction debris, including removal and disposal of asbestos containing materials.

IV

CHAMPAGNE DEMOLITION, LLC maintains its principal location for the regular transaction of business at 7 Binghamton Street, Albany, New York, 12202, within the jurisdiction of this Court.

V

Defendant CHAMPAGNE DEMOLITION, LLC is now and has been at all times material herein, a person as defined in section 3(4) of the Act, codified at 29 U.S.C. § 652(4), and at all times material hereto has been an employer engaged in a business affecting commerce within the meaning of Section 3(5) of the Act, 29 U.S.C. § 652(5).

VI

Defendant JOSEPH A. CHAMPAGNE, transacting business at 7 Binghamton Street, Albany, New York, 12202, is now and has been at all times material herein, a manager at defendant CHAMPAGNE DEMOLITION, LLC with among other things, the authority to hire and fire employees on behalf of CHAMPAGNE DEMOLITION, LLC.

VII

Defendant JOSEPH A. CHAMPAGNE is now and has been at all times material herein, a person as defined in section 3(4) of the Act.

VIII

Prior to June 11, 2010 and at all times material herein, Donald Miles was employed by defendant CHAMPAGNE DEMOLITION, LLC.

IX

Donald Miles was at all times material herein an employee who was employed by an employer as defined by sections 3(5) and 3(6) of the Act.

X

Defendant CHAMPAGNE DEMOLITION, LLC did not take any disciplinary actions against Donald Miles while he was an employee of CHAMPAGNE DEMOLITION, LLC.

XI

On or about June 10, 2010, an employee of defendant CHAMPAGNE DEMOLITION, LLC, who was at that time working for defendant CHAMPAGNE DEMOLITION, LLC at its Gloversville High School worksite, reported to Donald Miles that the project supervisor was overseeing improper asbestos removal practices.

XII

On or about June 10, 2010, Donald Miles called defendant CHAMPAGNE DEMOLITION, LLC to report the allegations referred to in paragraph XI to defendant CHAMPAGNE DEMOLITION, LLC's management and spoke with Robert Schiller, who was at all times relevant herein, a manager and Mr. Miles's supervisor at defendant at CHAMPAGNE DEMOLITION, LLC.

XIII

On or about June 10, 2010, Robert Schiller informed defendant JOSEPH A. CHAMPAGNE about Mr. Miles's allegations.

XIV

On or about June 11, 2010 defendants discharged employee Donald Miles because he engaged in activity protected by section 11(c)(1) of the Act.

XV

On or about June 11, 2010, Leon Ostrander (a.k.a. "Sam" or "Sammy"), who was at all times material herein a supervisor employed by CHAMPAGNE DEMOLITION, LLC, called Donald Miles and left him a voicemail message in which he acknowledged that Mr. Miles had made "accusations" against him, and said, among other things, "I'm going to get you Donny, I'm going to get you."

XVI

On or about June 11, 2010, defendant JOSEPH A. CHAMPAGNE called Donald Miles and left him a voicemail message in which he referred to himself as Mr. Miles's "former employer" and informed Mr. Miles that he had filed a police report against him and that he intended to sue him.

XVII

On or about July 6, 2010 defendant CHAMPAGNE DEMOLITION, LLC filed a lawsuit in New York Supreme Court alleging that Donald Miles had stolen from and defamed defendants CHAMPAGNE DEMOLITION, LLC and JOSEPH A. CHAMPAGNE and seeking over \$250,000.00 in damages as well as punitive damages, and attorneys' fees. Defendants' lawsuit also accused Mr. Miles of engaging in improper asbestos removal procedures.

XVIII

On or about July 9, 2010 Donald Miles filed a timely administrative complaint with the plaintiff alleging that the aforesaid discharge constituted discrimination in violation of section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

XIX

Upon receipt of Mr. Miles's complaint, plaintiff caused an investigation to be conducted by the Occupational Safety and Health Administration's Albany Area Office pursuant to Section 11(c)(2) of the Act, wherein it was determined that defendants had violated Section 11(c)(1) of the Act.

XX

The defendants have failed and refused, and continue to fail and refuse to employ Donald Miles and to compensate him for the time he should have continued to work for defendant CHAMPAGNE DEMOLITION, LLC.

XXI

On information and belief, since defendant CHAMPAGNE DEMOLITION, LLC discharged Donald Miles, defendants and/or its agents have engaged in a series of unwarranted and harassing acts directed towards Donald Miles including but not limited to taking efforts to prevent Donald Miles from obtaining new work since June 11, 2010.

XXII

By the Acts described in paragraphs XI through XXI above, and by each of said acts, defendants did intentionally discriminate, and are discriminating, against Donald Miles because Mr. Miles exercised rights secured by the Act, and thereby did engage in, and are engaging in, conduct in violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

WHEREFORE, cause having been shown, plaintiff prays that this Court enter judgment against defendants as follows:

- (a) Finding that defendants CHAMPAGNE DEMOLITION, LLC and JOSEPH A. CHAMPAGNE discriminated against Mr. Miles in violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1);
- (b) Directing defendants to offer to reinstate Mr. Miles to his previous position, with full benefits and other perquisites of employment, and without any break in seniority, effective June 11, 2010;
- (c) Directing defendants to completely expunge from Mr. Miles's employment records all references to the circumstances in this matter;
- (d) Permanently enjoining defendants, their officers, agents, servants, employees and all persons acting or claiming to act in their behalf and interest from violating the provisions of section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1);
- (e) Directing defendants to take all appropriate relief, including but not limited to, payment to Donald Miles of lost wages and compensatory damages suffered by reason of such unlawful discrimination, plus pre-judgment and post-judgment

interest calculated at the rate set forth in the Internal Revenue Code Section 6621, 26 U.S.C. § 6621, from the date of discharge until the present;

- (f) Granting emotional and financial distress damages and a reasonable amount of punitive damages;
- (g) Granting the Secretary her costs;
- (h) Directing defendants to post, in a prominent place, for 60 consecutive days and compliance with, a notice stating they will not in any manner discriminate against employees because of engagement in activities protected by section 11(c) of the Act, and for the cost of this action; and
- (i) Ordering such other appropriate relief as may be necessary.

DATED: August 14, 2012
New York, New York

M. PATRICIA SMITH
Solicitor of Labor

s/ Patricia Rodenhausen
PATRICIA M. RODENHAUSEN
Regional Solicitor

BY: s/ Allison L. Bowles
ALLISON L. BOWLES
Allison Bowles Bar No. 515903

Patricia M. Rodenhausen
Regional Solicitor
Office of the Solicitor
U.S. Department of Labor
201 Varick Street, Room 983
New York, New York 10014

U.S. Department of Labor,
Attorneys for Plaintiff.

Telephone: (646) 264-3658
Facsimile: (646) 264-3660
E-mail: rodenhausen.patricia@dol.gov
bowles.allison@dol.gov