

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

NATHANIEL D. BETHEA , an individual, Plaintiff,	Case No.8:17-cv-00135
v.	
ACCESS BANK , a Nebraska bank, Defendant.	COMPLAINT JURY TRIAL DEMANDED

INTRODUCTION

1. Nathaniel D. Bethea (“Mr. Bethea”) is a 28-year-old male. Access Bank (“Access”) employed Mr. Bethea starting on December 8, 2014 as a bank teller. Mr. Bethea worked at Access Bank’s location in Papillion, Nebraska.

2. When Mr. Bethea requested time off for the Sabbath, Access referred him to its Human Resources representative who gave Mr. Bethea seven (7) days to provide certain items required by Access Bank before granting a religious accommodation. The very next day, however, Access Bank terminated Mr. Bethea.

3. Mr. Bethea’s employment at Access Bank was evidenced by years of dedicated service, profitable operation of Access Bank’s locations and an unblemished performance record.

4. Access Bank’s treatment and termination of Mr. Bethea violated federal and state laws prohibiting discrimination based on religion and and retaliation.¹

¹ Nebraska Fair Employment Practice Act; §§ 48-1104 and 48-1114(1); Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; Nebraska Disabilities, Neb. Rev. Stat. §48-1101 et seq.; Title VII of the Civil Rights Act of 1964, as Amended, 42 U.S.C. § 2000e-2, et seq.

PARTIES

5. Nathaniel D. Bethea is a male, aged 28. He resides Omaha, Nebraska.

6. Access Bank is a Nebraska banking entity and its principal place of business is 9812 West Dodge Road, Omaha, NE 68144. Access Bank operates multiple locations throughout Nebraska. The specific location at which Plaintiff worked was Papillion, Nebraska.

JURISDICTION & VENUE

7. This matter arises under state and federal law. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 based on Mr. Bethea's federal claims set forth in this Complaint. This Court has supplemental jurisdiction of the Nebraska state law claims pursuant to 28 U.S.C. §1367.

8. Venue is proper in this District pursuant to 28 U.S.C. §1381(b)(2), because the acts complained of here were orchestrated from, planned in and conducted in this District.

9. Mr. Bethea filed an administrative charge of discrimination with the Nebraska Equal Opportunity Commission ("NEOC") alleging Access Bank discriminated against him based on religion and retaliation. (Charge No. NEB 2-15/16-2-47224-RS) The NEOC dual-filed his charge with U.S. Equal Opportunity Commission ("EEOC"). (Charge No. 32E-2016-00311). Mr. Bethea received a right to sue letter dated January 18, 2017 from the EEOC, and it is attached as Exhibit A.

FACTS

10. Mr. Bethea started working at Access Bank beginning on December 8, 2014 as a bank teller. Mr. Bethea most recent assignment was as a bank teller at Access Bank's location in Papillion, Nebraska.

11. On or about December 9, 2015, Mr. Bethea asked Access Bank Branch Manager Neal Krauss and Assistant Manager Blair Scott for time off for his Sabbath. The two referred to Margie Schaffer, the Access Bank Human Resources representative.

12. Schaffer provided Mr. Bethea with a list of items he needed to provide for Access Bank to agree to the religious accommodation request. Schaffer allowed Mr. Bethea seven (7) days to provide the requested information.

13. The very next day, however, Branch Manager Krauss terminated Mr. Bethea. According to Krauss, the terminations was based on a "formal complaint" from Access Bank teller Becca Strawhecker, who purportedly complained when Mr. Bethea used "foul" language in a text message asking her to work for him on his Sabbath. According to Krause, Mr. Bethea was

terminated for undermining his supervisor when he failed to confirm that he had found another employee to work for him when that would have required overtime by the replacement employee.

14. Thereafter, Access Bank took the extreme step of “banning and barring” Mr. Bethea from all Access Bank locations. Access Bank further required Mr. Bethea to close his accounts with Access Bank.

15. Access Bank’s decision to terminate Mr. Bethea’s employment was unjustified and insupportable.

CLAIM I

ACCESS BANK VIOLATED TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 & NFEPA BY DISCRIMINATING AGAINST MR. BETHEA BASED ON RELIGION

16. Mr. Bethea incorporates by reference paragraphs 1-15, inclusive, as if fully set forth.

17. According to Title VII of the Civil Rights Act of 1964,

It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s ... religion;

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s ... religion.

42 U.S.C. § 2000e-2.

18. Similarly, Nebraska’s Fair Employment Practices Act (“NFEPA”) provides:

It shall be an unlawful employment practice for an employer:

(1) To fail or refuse to hire, to discharge, or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s ... religion.

19. Access Bank failed to provide Mr. Bethea with any paperwork documenting performance problems or other performance-related issues.

20. The only “foul” language of which there is any evidence is a text message from Mr. Bethea to Strawhecker in which Mr. Bethea stated:

“I need us the little to stick together and I’ll pay no b.s. ***
So If you make 13 an hour I’d pay u 13 an hour just fyi.

21. Access Bank did not discipline others at Access Bank who used foul language. Other employees, including the Branch and Assistant Branch Managers, regularly used foul language when customers were not present.

22. Plainly, Access Bank treated Mr. Bethea more harshly than other employees.

23. Access Bank failed to provide any response whatsoever to Mr. Bethea’s request for accommodations.

WHEREFORE, Mr. Bethea requests judgment ordering an award of damages pursuant to 42 U.S.C. § 2000e-2 and Neb. Rev. Stat. § 48-1119(4) based on Access Bank’s discriminatory terms and conditions of employment.

CLAIM II

ACCESS BANK RETALIATED AGAINST AMR. BETHEA IN VIOLATION TITLE BII & NEBRASKA’S FEPA

24. Mr. Bethea incorporates by reference paragraphs 1-23, inclusive, as if fully set forth.

25. Title VII and the NFEPA prohibit retaliation. “Persons requesting religious accommodation under Title VII are protected against retaliation for making such requests.” EEOC Enforcement on Retaliation and Related Issues, at No. 915.004 (<https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm>); See 42 U.S.C. § 2000e-3(a); Neb. Rev. Stat. § 48-1114.

26. Access Bank retaliated against Mr. Bethea for making his request for accommodations, as evidenced by terminating Mr. Bethea less than 24 hours after he made his request.

27. Access Bank’s reasons for Mr. Bethea’s termination, whether foul language or somehow undermining a supervisor, are not credible. The assertion of foul language as a basis for termination would require termination of nearly all Access Bank employees, including the

Branch Manager and Assistant Manager. Further, Mr. Bethea's use of an abbreviation, "b.s.," was not made in front of Access Bank clients or made publicly.

28. Access Bank's other proffered reason for termination—undermining his supervisor—is unfounded. There is no validity to a claim that Mr. Bethea undermined his supervisor by seeking a replacement employee, thus assisting with providing an accommodation.

WHEREFORE, Mr. Bethea requests judgment ordering an award of damages pursuant to federal and Nebraska statutes prohibiting retaliation

REQUEST FOR RELIEF

Mr. Bethea requests judgment in his favor and awarding him the following:

1. Damages for Mr. Bethea's lost and future wages based on his termination;
2. Damages for Mr. Bethea's emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life;
3. Punitive damages for Access Bank's knowing violation of federal discrimination laws;
4. Costs and attorney fees; as allowed by law, and
5. Such other and further relief as the Court deems appropriate.

PLAINTIFF MAKES DEMAND FOR TRIAL BY JURY.

DATE: April 18, 2017.

NATHANIEL D. BETHEA, Plaintiff,

By: s/ Terry A. White, #18282
Terry A. White, NE # 18282
CARLSON & BURNETT LLP
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Attorney for Plaintiff

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

EXHIBIT A

To: **Nathaniel D. Bethea**
3830 Edna St
Bellevue, NE 68147

From: **St. Louis District Office**
1222 Spruce Street
Room 8.100
Saint Louis, MO 63103

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

32E-2016-00311

Joseph J. Wilson,
State & Local Program Manager

(314) 539-7816**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☒

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Joseph J. Wilson
James R. Neely, Jr.,
Director

January 18, 2017

(Date Mailed)

Enclosures(s)

CC:

ACCESS BANK
8712 W Dodge Rd
Omaha, NE 68114

Scott S. Moore
BAIRD HOLM
1700 Farnam St, Ste 1500
Omaha, NE 68102