

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES T. KILLEN : CIVIL ACTION
: :
v. : :
: :
MARKETING COMMUNICATION SYSTEMS, : :
INC. : NO. 00-3812

MEMORANDUM AND ORDER

Fullam, Sr. J. November , 2001

Defendant Marketing Communication Systems, Inc. runs a "leads center," which answers customers' 800-number calls and fulfills requests made in those calls, and a "telemarketing" center which initiates marketing calls for customers. Plaintiff James T. Killen was the manager of the "leads center," a job which he had filled with great success over a period in excess of nine years. But, in 1998 and 1999, the defendant suffered some financial reverses, principally due to the loss of a major customer of the Telemarketing Division. It was decided that the company did not need both a manager of the Leads Division and a manager of the Telemarketing Division. Plaintiff was terminated. His assistant, a 30-year old female, continued thereafter to handle the day-to-day operations of the leads center, with some additional responsibilities for billing; and the overall supervision of the leads center in a management capacity was taken over by the manager of the telemarketing center, a

gentleman named Shriver. Mr. Shriver was 49 years of age.

The defendant's top management treated this episode as a consolidation of the two managerial positions, eliminating Mr. Killen's position as a cost-reduction measure. It was decided that one person could manage both the leads center and the telemarketing center, and that Mr. Shriver was better qualified than Mr. Killen.

It is undisputed that Mr. Killen had had no direct involvement with managing a telemarketing operation, whereas Mr. Shriver did; and that the telemarketing center was more important to the company's future than the leads center, and required more management.

Thus, plaintiff has shown that he was within the protected age group, that his position was eliminated in favor of assigning those responsibilities to a person who, while also within the protected age group, was some ten years younger than he. But the defendant has undoubtedly produced a non-discriminatory justification for the choice it made - both candidates had excellent records with the company, but Mr. Shriver was much better qualified to run the telemarketing operation, and the leads center did not require much management, because plaintiff had skillfully trained his assistant.

The summary judgment record does not contain any evidence giving rise to a substantial dispute of fact as to the

non-pretextual nature of the defendant's explanations. Plaintiff's argument that he had quickly learned the responsibilities of the lead center, and could readily have gained the necessary familiarity with telemarketing operations, may well be correct, but the defendant could reasonably believe otherwise. It is not the function of this Court to second-guess managerial decisions concerning the relative qualifications of competing applicants.

In short, I conclude that the defendant is entitled to summary judgment on plaintiff's age discrimination claim. Plaintiff has expressly withdrawn his ERISA claim, and the state law claim falls with the ADEA claim. Accordingly, the defendant's motion for summary judgment will be granted in its entirety.

An Order follows.

