

Plaintiff Fiona McKinney (“Ms. McKinney”), by and through her undersigned counsel Josh Bernstein P.C., alleges as precedes and follows. In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial of this action.

Nature of the Suit and Jurisdiction

1. Plaintiff brings suit under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 et. seq.
2. This Court possesses subject matter jurisdiction pursuant to 42 U.S.C. § 12101 et. seq., 28 U.S.C. § 1331.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1-2).
4. Plaintiff received a right-to-sue letter from the EEOC dated January 10, 2023, on January 21, 2023.

The Parties

5. Plaintiff Fiona McKinney is an adult U.S. citizen residing in New York, NY. Ms. McKinney suffers from End State Renal Disease.
6. Achilles International, Inc. (“Achilles”) is a domestic not-for-profit corporation incorporated, operating, and headquartered in New York, NY.
7. During the relevant time-period, Defendant employed 15 or more employees.

Ms. McKinney Joins Achilles and Thrives Under its Founder

8. Achilles was founded by Dr. Richard Traum (“Dr. Traum”), the first person to complete the New York City Marathon with a prosthetic leg. Dr. Traum founded Achilles for the purpose of enabling disabled individuals to participate in athletic events, and served as CEO of the organization for 37 years.

9. Ms. McKinney became a member of Achilles in 2011. She became an employee of Achilles in 2013.

10. Throughout her employment with Defendant, Ms. McKinney had a desk job that involved working on a computer and on the telephone where her physical presence had nothing to do with the essential duties of the position.

11. Ms. McKinney had a great relationship with Dr. Traum, who of course accommodated her disability by allowing her to work from home on the days following her kidney dialysis. Kidney dialysis causes tremendous fatigue the following day, among other effects.

12. Ms. McKinney excelled in her role as Manager, TCS New York City Marathon Charity Entry Program. One of her primary duties was to sell guaranteed entries to the New York City Marathon. Her predecessor sold approximately ten entries the year before Ms. McKinney took over the position. In her last year prior to the pandemic, Ms. McKinney was selling eighty-five entries per year, generating close to \$300,000 for Defendant. *See* Exhibit 1, Letter of Achilles Founder Richard Traum in Support of Fiona McKinney.

**Dr. Traum is Forced out of His Own Organization
and Replaced with a Corporate CEO**

13. In August 2019, Dr. Traum was removed from the organization he founded, physically forced out of his office under the watch of an armed guard.

14. Dr. Traum was replaced as CEO by Emily Glasser (“Glasser”), a serial entrepreneur and executive from the corporate world.

**The New CEO Immediately Rescinds Ms. McKinney's Accommodation
And Fires Eight Employees, All Disabled**

15. When Glasser took over, she immediately rescinded Ms. McKinney's disability accommodation of working from home twice a week on the days following nighttime kidney dialysis.

16. Despite Ms. McKinney's explanation of the side-effects of kidney dialysis and the risks this would impose upon Ms. McKinney, Glasser was dismissive, uninterested, and simply refused to continue Ms. McKinney's accommodation.

17. At the same time, Glasser allowed one of Ms. McKinney's non-disabled colleagues to work remotely because that employee's husband liked to travel frequently. The husband in question is a member of the board of Defendant.

18. Shortly thereafter, Glasser fired eight employees, all of whom suffer from disabilities.

**Ms. McKinney Drags Herself Into the Office
While Glasser Purges More Disabled Employees**

19. Ms. McKinney believes in Defendant's mission, and could not afford to lose her job. Accordingly, she forced herself into the office the days following her kidney dialysis, which was a major physical and psychological strain.

20. The emotional distress Ms. McKinney suffered from the rescission of her disability accommodation and other mistreatment by Glasser took a tremendous toll, resulting in Ms. McKinney seeking treatment for the same and taking a one-week leave of absence in late December 2019.

21. In March 2020, as the COVID-19 pandemic ensued, Defendant went fully remote like every other workplace. Ms. McKinney and her colleagues continued discharging the duties of their positions fully remote, without incident.

22. When the shutdown commenced in March 2020, Glasser “furloughed” two disabled employees and applied for PPP funds. Once the PPP funds were received, she immediately fired these employees.

Glasser “Furloughs” Ms. McKinney

23. By August 2020, Ms. McKinney was incredibly worn down both physically and emotionally. The stress of her underlying condition, having come down with long Covid in the interim, and Defendant’s mistreatment came to a head.

24. As a result, Ms. McKinney sought treatment from one of her longstanding treating physicians, who recommended that she take FMLA leave.

25. Before Ms. McKinney could request that leave, Glasser “furloughed” Ms. McKinney in early September 2020.

26. What Glasser presented as a “furlough” actually amounted to termination.

27. Glasser presented Ms. McKinney with a “furlough” agreement that made clear Defendant would no longer pay Ms. McKinney, her PTO would no longer accrue, and she would not be entitled to any benefits. She was also directed to return the company laptop and all office keys.

28. Ms. McKinney was asked to sign this “furlough” agreement, which included a universal release of all claims against Defendant and their employees and officers, in exchange for Defendant paying for Ms. McKinney’s health insurance premiums up to \$800 dollars for the duration of the “furlough”, which Defendant could end at any time.

29. In other words, Defendant tried to trick Ms. McKinney into signing a release of her legal claims for illusory consideration. Ms. McKinney did not sign this agreement.

30. Glasser justified Ms. McKinney's "furlough" with the claim that most of the major marathons would probably not take place in 2021. Most of the major marathons did take place in 2021, and when Ms. McKinney was "furloughed", she had already raised two-thirds of the funds projected, with another \$100,000 committed by the end of the year.

**Defendant Formally Fires Ms. McKinney
and Replaces Her with a Non-Disabled Individual**

30. Ms. McKinney was then told that she was being fired in March 2021, with the explanation that her position was being permanently eliminated.

31. In reality, in the immediate aftermath, Ms. McKinney's job was given to two non-disabled employees, one of which held the exact same title as Ms. McKinney's prior position. A few months later, several new staff members were hired, none of which are disabled, and one of which ultimately became a full-time employee taking on Ms. McKinney's former responsibilities.

32. Indeed, by January of 2021, the New York City Marathon announced the race would be held later that year, and Defendant had already applied for entries for resale prior to Ms. McKinney's termination, establishing that Defendant had no intention of actually abolishing the function Ms. McKinney performed.

**First Cause of Action:
Disability Discrimination (Failure to Accommodate)**

33. Plaintiff repeats and realleges the allegations contained in paragraphs 1-32 inclusive as if they were fully set forth herein.

34. The aforesaid actions of the Defendant constitute a violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq..

35. As a result of Defendant's violation of the ADA, plaintiff has suffered and continues to suffer economic losses, emotional distress, and other damages. Plaintiff is also entitled to and demands an award of attorney's fees, costs, interest and statutory damages.

Second Cause of Action:
Disability Discrimination ("Furlough"/Termination)

36. Plaintiff repeats and realleges the allegations contained in paragraphs 1-32 inclusive as if they were fully set forth herein.

37. The aforesaid actions of the Defendant constitute a violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq..

38. As a result of Defendant's violation of the ADA, plaintiff has suffered and continues to suffer economic losses, emotional distress, and other damages. Plaintiff is also entitled to and demands an award of attorney's fees, costs, interest and statutory damages.

Punitive Damages

39. Because Defendants' actions were willful, unlawful, malicious and intentional, and/or negligent or reckless as to Plaintiff's rights, Plaintiff hereby demands punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fiona McKinney prays for the following relief:

Reinstatement; judgment against Defendant awarding damages in an amount to be determined at trial including economic damages; compensatory damages; lost wages; treble and/or liquidated damages; penalties; civil penalties; punitive damages; costs;

DR. RICHARD TRAUM

1025 Fifth Avenue

Penthouse

New York NY 10028

Tel: 917 301 8150 · Email: dicktraum@aol.com

October 21st, 2021

To Whom It May Concern:

As founder of Achilles International and former CEO, I am writing in support of Fiona McKinney who was a member and employee since 2011.

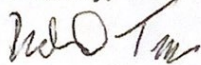
Ms. McKinney is a person with a disability who became a member in 2011. In early 2013, I asked Ms. McKinney to join our staff on a part-time basis. Due to the debilitating nature of being on dialysis, and in alignment with the ADA, she was given "reasonable accommodation" to work from home the day after her dialysis treatment.

Ms. McKinney was an exceptional employee who excelled in her work whether it was working from home or the office. She was one of the company's best fundraisers and media coordinators. What a wonderful, delightful, kind person and exceptional communicator and fundraiser. Shortly after joining, Fiona's job responsibilities included selling guaranteed entries to the New York City Marathon at minimum \$3,000 fundraising per entry. We purchased each entry for \$500. She took over the task from someone else, working full-time, selling approximately ten entries a year. In her last year, Fiona was selling 85 entries and could have sold more except we could not purchase them. Working part-time, she was by far our best fundraiser. She was securing close to \$300,000 per year. Under Fiona's guidance, the program had the potential to become a million-dollar fundraising program.

How did she do it? A number of procedures, but most important, Fiona understood the value of relationships. Her donors became friends and delighted in helping her. She has great leadership skills and motivates and inspires others to do well. She developed a team of supporters. After I left Achilles, she was laid off.

As you can see, I think she is one of the finest employees ever and wish her the best of luck. I am retired but, if desired, you may reach me at Dicktraum@aol.com or call me at 917 301 8150.

Sincerely,



Dr. Richard Traum