

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

U.S. EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	<u>COMPLAINT</u>
HATZEL & BUEHLER, INC.,)	<u>AND JURY TRIAL DEMAND</u>
)	
Defendant.)	
_____)	

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act of 1967, as amended (“ADEA”) to correct unlawful employment practices and to provide appropriate relief to Charging Party Dean Weintraub and a class of applicants/candidates/potential candidates who were adversely affected by such practices. As alleged with greater particularity below, the U.S. Equal Employment Opportunity Commission alleges that Defendant Hatzel & Buehler, Inc. subjected Mr. Weintraub and a class of applicants/candidates/potential candidates for Defendant’s estimator and project manager positions at its New Jersey branch to discriminatory hiring and recruitment practices because of age (40 years and older) in violation of the ADEA. Defendant also failed to maintain job applicant and hiring-related records in violation of the ADEA and 29 C.F.R. § 1627.3 and Title VII of the Civil Rights Act, as amended (“Title VII”) and 29 C.F.R. § 1602.14.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this civil action under 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b), 29 U.S.C. § 626(b), which incorporates by reference Sections 16(c) and Section 17 of the Fair Labor Standards Act of

1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217. This action is further authorized and instituted pursuant to Section 7(a) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(a), and Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42. U.S.C. § 2000e-8(c).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the U.S. District Court for the District of New Jersey.

PARTIES

3. Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) is the agency of the United States of America charged with the administration, interpretation, and enforcement of the ADEA and Title VII, and is expressly authorized to bring this action under Section 7(b) of ADEA, 29 U.S.C. 29 U.S.C. § 626(b) and Section 709(c) of Title VII, 42. U.S.C. § 2000e-8(c).

4. At all relevant times, Defendant Hatzel & Buehler, Inc., a New York corporation (hereinafter “Defendant”), has continuously been doing business in the State of New Jersey and County of Mercer, as well as other jurisdictions, and has continuously employed at least twenty (20) employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 11(b), (g), and (h) of the ADEA, 29 U.S.C. § 630(b), (g), and (h).

6. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII, 42 U.S.C. § 2000e(b), (g), and (h).

ADMINISTRATIVE PROCESS

7. On August 9, 2022, EEOC issued to Defendant a Determination finding reasonable cause to believe that Defendant violated the ADEA and failed to maintain job applicant and hiring-related records in violation of the ADEA and 29 C.F.R. § 1627.3 and Title VII and 29 C.F.R. § 1602.14 and inviting Defendant to join with EEOC in informal methods of conciliation to endeavor to eliminate the discriminatory employment practices and provide appropriate relief.

8. EEOC engaged in communication with Defendant to provide it with the opportunity to remedy the discriminatory practices described in the Determination.

9. EEOC was unable to secure from Defendant a conciliation agreement that was acceptable to the Commission.

10. On September 16, 2022, EEOC issued to Defendant a Notice of Failure of Conciliation.

11. All conditions precedent to the institution of this lawsuit have been fulfilled.

GENERAL FACTUAL ALLEGATIONS

12. In November 2020, Wes Howell became Vice President of Defendant's New Jersey branch, which oversees Defendant's operations in Hamilton, NJ and Mount Laurel, NJ.

13. As Vice President, Howell participates in every hiring decision and is responsible for all hiring and recruitment for Defendant's New Jersey branch.

14. Although Howell participates in every job interview for estimator and project manager positions at Defendant's New Jersey branch, he does not retain his notes from job interviews regardless of whether the candidates are hired.

15. Since at least November 2020 and continuing to the present, Defendant has refused to hire older applicants/candidates/potential candidates for project manager and estimator positions

at Defendant's New Jersey branch because of their ages (40 years and older).

16. Since at least November 2020 and continuing to the present, Defendant has subjected older applicants/candidates/potential candidates for Project Manager and Estimator positions at Defendant's New Jersey branch to discriminatory recruitment practices because of their ages (40 years and older).

17. Since at least November 2020 and continuing to the present, Defendant has relied upon its use of third-party recruiting companies and word-of-mouth recruitment for its Project Manager and Estimator positions.

18. In or around May 2021, Howell contacted a third-party recruiting company about two positions that Defendant was hiring for at its New Jersey branch: electrical estimator and project manager.

19. Howell told the recruiter that Defendant would not consider candidates with over 25 years of experience for either position.

20. On or about September 16, 2021, the third-party recruiting company contacted Dean Weintraub to see if he was interested in Defendant's estimator or project manager positions. At the time, Weintraub was 65 years old and had over 32 years of experience as an electrical estimator project manager.

21. Weintraub expressed interest, and the recruiter forwarded his résumé to Defendant on or around September 17, 2021.

22. A few days later, on September 22, 2021, Howell spoke with the third-party recruiting company and stated words to the effect that Weintraub was too old to be hired for the position because he was older than Defendant's ideal age range for the position, which was 30-45 years old.

23. That same day, the recruiter followed up with Weintraub and stated words to the effect that Defendant thought Weintraub was over the age range for the position.

24. Defendant, acting through Howell, has interviewed and later hired or rejected multiple candidates in the one-year period proceeding Weintraub's Charge of Discrimination and since the filing of that Charge.

25. Since November 2020, Defendant has refused to hire multiple candidates age 40 years and older for the estimator and project manager positions at Defendant's New Jersey branch because of their ages.

26. For instance, Defendant rejected Thomas Silvera, who applied for Defendant's estimator position in August 2021.

27. At the time of his application, Silvera was 58 years old and had over 12 years of electrical estimating experience.

28. On August 31, 2021, Howell forwarded Silvera's résumé to Defendant's Chief Estimator, Ken Durrue, with the note: "FYI. Seems to have started working around 1981. Would put him around 60 years old is my guess."

29. Howell and Durrue interviewed Silvera a week or so later. During the interview, they asked how long Silvera planned to work until he retired. Silvera told them he planned to work until he was 67, so he had about eight years left before retirement. Silvera never heard back from Defendant after the interview.

30. Howell told the recruiter that he did not hire Silvera because his clothing was not "presentable."

31. Howell offered a different explanation for his decision not to hire Silvera to EEOC. Howell told EEOC that Defendant did not hire Silvera because his experience working for the

Army Corps of Engineers and in solar energy was not the type of work that Defendant did.

32. Defendant previously made a job offer to Silvera for a position at Respondent's New Jersey Branch when that Branch was under the supervision of former Vice President, Scott Ayers.

33. Since November 2020, Defendant, acting through Howell, has hired at least four and potentially more persons for estimator and project manager positions at Defendant's New Jersey branch. All of the persons hired for those positions were younger than 40 years old.

CAUSES OF ACTION

COUNT I: Denial of Hiring Because of Age

34. The Commission incorporates by reference the factual allegations set forth in Paragraphs 1-33, above.

35. Since at least November 2020, Defendant has subjected Weintraub and a class of presently identified and unidentified project manager and estimator applicants/candidates/potential candidates for its New Jersey branch to ongoing denial of hiring because of their ages, 40 years and older, in violation of the ADEA.

36. The effect of the unlawful employment practices described in Paragraphs 34-35, above, has been to deprive Weintraub and a class of presently identified and unidentified project manager and estimator applicants/candidates/potential candidates for its New Jersey branch of equal employment opportunities and otherwise adversely affect their status as job applicants/candidates/potential candidates and employees because of their ages, 40 years and older.

37. The unlawful employment practices complained of in Paragraphs 34-36, above, were and are willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

COUNT II: Discriminatory Recruitment Practices Because of Age

38. The Commission incorporates by reference the factual allegations set forth in Paragraphs 1-33, above.

39. Since at least November 2020, Defendant has subjected Weintraub and a class of presently identified and unidentified project manager and estimator applicants/candidates/potential candidates for its New Jersey branch to ongoing discriminatory recruitment practices because of their ages, 40 years and older, in violation of the ADEA.

40. The effect of the unlawful employment practices described in Paragraphs 38-39, above, has been to deprive Weintraub and a class of project manager and estimator applicants/candidates/potential candidates for its New Jersey branch of equal employment opportunities and otherwise adversely affect their status as job applicants/candidates/potential candidates and employees because of their ages, 40 years and older.

41. The unlawful employment practices complained of in Paragraphs 38-40, above, were and are willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

COUNT III: Recordkeeping Violation - ADEA

42. The Commission incorporates by reference the factual allegations set forth in Paragraphs 1-33, above.

43. Since at least November 2020, Defendant has failed to retain and preserve personnel and employment records regarding New Jersey branch positions, including but not necessarily limited to notes of interviews for candidates for estimator and project manager positions, for a period of one year from the date of the personnel action to which they relate and until final disposition of an ADEA proceeding to which they are relevant in violation of Section 7(a) of the ADEA, 29 U.S.C. § 626(a), and 29 C.F.R. § 1627.3(b)(1) and (3).

44. These records are necessary and appropriate for the administration of the ADEA.

COUNT IV: Recordkeeping Violation – Title VII

45. The Commission incorporates by reference the factual allegations set forth in Paragraphs 1-33, above.

46. Since at least November 2020, Defendant has failed to retain and preserve personnel and employment records regarding New Jersey branch positions, including but not necessarily limited to notes of interviews for candidates for estimator and project manager positions, for a period of one year from the date of their making or the personnel action to which they relate, whichever is later, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and 29 C.F.R. § 1602.14.

PRAYER FOR RELIEF

Wherefore, EEOC respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, successors, assigns, and all persons in active concert or participation with Defendant, from engaging in age discrimination, including age discriminatory hiring and recruitment, and any other employment practice that constitutes discrimination because of age.

B. Grant a permanent injunction enjoining Defendant, its officers, agents, successors, assigns, and all persons in active concert or participation with Defendant, from future violations of the Commission's ADEA and Title VII recordkeeping regulations.

C. Order Defendant to institute and carry out policies, practices, and programs that provide equal employment opportunities that eradicate the effects of its past and present unlawful employment practices.

D. Order Defendant to take such action to remedy the effects of its age discriminatory

recruitment practices and recordkeeping violations, including but not limited to undertaking paid advertising at its own expense in order to identify persons who would have been candidates for employment but-for Defendant's age-discriminatory practices and/or whose job applicant or hiring-related records were destroyed or discarded by Defendant since at least November 2020.

E. Order Defendant to make whole Dean Weintraub by providing appropriate back pay with prejudgment interest and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including reinstatement and front pay in lieu thereof.

F. Order Defendant to make whole a class of persons ages 40 years and older who were/are project manager and estimator applicants/candidates/potential candidates for its New Jersey branch by providing appropriate back pay with prejudgment interest and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including reinstatement and front pay in lieu thereof.

G. Order Defendant to pay liquidated damages to Dean Weintraub for its willful violations described in Paragraphs 12-41, above.

H. Order Defendant to pay liquidated damages to a class of persons ages 40 years and older who were/are project manager and estimator applicants/candidates/potential candidates for its New Jersey branch for its willful violations described in Paragraphs 12-41, above.

I. Grant such other relief as the Court believes is necessary and proper in the public interest.

JURY TRIAL DEMAND

EEOC requests a jury trial on all questions of fact raised by its Complaint.

Respectfully submitted,

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

<p>I. (a) PLAINTIFFS U.S. Equal Employment Opportunity Commission</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) See attachment.</p>	<p>DEFENDANTS Hatzel & Buehler, Inc.</p> <p>County of Residence of First Listed Defendant <u>County of Mercer</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <p>Attorneys (If Known) Ronda K. O'Donnell, Marshall Dennehey, 2000 Market Street, Suite 2300, Philadelphia, PA 19103</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p style="text-align: center;">SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
 Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. Section 621 et seq.)

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions)* JUDGE _____ DOCKET NUMBER _____

DATE 06-06-23 SIGNATURE OF ATTORNEY OF RECORD Megan M Block

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

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