

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Horace Cunningham,
Plaintiff,

Court File No. 16-1904

vs.

Cold Spring Brewing Co.,
a domestic corporation.

**COMPLAINT
JURY TRIAL DEMANDED**

Defendant.

Plaintiff, by his attorneys, Fabian May & Anderson, PLLP, brings this action for damages and other legal and equitable relief resulting from Defendant's violations of law.

Plaintiff states the following as his claims against Defendant:

JURISDICTION AND VENUE

1. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* as amended, and 42 U.S.C. § 1981. Jurisdiction for these claims is conferred upon this Court by 28 U.S.C. § 1331.

2. Plaintiff also asserts claims under Minnesota state law. Jurisdiction for the state law claims is conferred upon this Court by 28 U.S.C. § 1367.

3. The unlawful practices described hereinafter were committed in the District of Minnesota and Defendant does business within Minnesota.

PARTIES

4. Plaintiff, Horace Cunningham ("Plaintiff" or "Cunningham"), is an individual who

resides in the State of Tennessee.

5. Defendant, Cold Spring Brewing Company (“Defendant” or “CSB”), is a domestic corporation with a registered business office at 219 Red River Avenue North, PO Box 476, Cold Spring, MN 56320.

FACTUAL ALLEGATIONS

6. Defendant has operated as a brewery for over 100 years. Upon information and belief, Defendant is owned by Jaime Lenore. Mr. Lenore, upon information and belief, lives in California. Defendant develops and markets beer, in part, through a division and label called “Third Street Brewhouse.”

7. Plaintiff is a 63-year-old African American man of Jamaican decent. He speaks English with an accent. For the last 26 years, Plaintiff has worked and made a career as a brewmaster. He has earned a good reputation and has been well respected in the industry during his entire career.

8. Plaintiff was hired by Defendant on or about September 26, 2011, and remained employed until his termination on September 22, 2015. He was hired by Defendant to develop and brew new craft beers, as well as oversee the brewing of other beers both for Defendant and for third parties. During his employment, Plaintiff routinely received positive feedback for his performance, accolades for the beer he brewed, and support and praise from Defendant’s management.

9. During the vast majority of Plaintiff’s employment with Defendant, he reported to Doug DeGeest, who was Defendant’s Vice President and General Manager.

DeGeest and Plaintiff got along very well and DeGeest often praised Plaintiff's performance.

10. During much of his employment, Plaintiff worked with assistant brewmaster Steve Gittens. Gittens is a 52-year-old African-American man who is originally from Barbados. Plaintiff and Mr. Gittens had a very positive, cordial and productive working relationship. Mr. Gittens was a strong performer while employed by Defendant.

11. While employed by Defendant, Plaintiff developed a beer called Minnesota Gold Lager ("Minnesota Gold"), among others. Minnesota Gold became the centerpiece of Defendant's growth plan. In a number of media outlets, Defendant stated that Minnesota Gold was the focus of new production and distribution.

12. In 2014, Defendant brought in a consultant, Charles "Chuck" Otterman. Mr. Otterman would occasionally visit Defendant and provide operational guidance and suggestions to Defendant. He would also collect information via Skype from management and report back to Jaime Lenore. Mr. Otterman made his disrespect for Jaime Lenore well known. Specifically, during a meeting, someone suggested that perhaps Jaime Lenore should be consulted on a particular issue. Mr. Otterman responded "Don't involve Jaime. He's an idiot and doesn't know anything."

13. While working for Defendant, Mr. Otterman made a number of comments to Mr. Cunningham and others demonstrating a significant discriminatory bias against older employees, people of color and employees of other nationalities. For example, during a meeting at Jamie Lenore's house, Mr. Otterman was introduced to Plaintiff. After exchanging greetings and hearing Plaintiff's accent, Otterman stated to Plaintiff in a very

condescending and patronizing tone, “Who are you? Where do you come from?” Mr. DeGeest, who worked closely with Mr. Otterman and who was privy to Otterman’s thoughts and suggestions for the business, repeatedly told Plaintiff that Mr. Otterman was a racist, that he was making racist comments, that he had racist attitudes towards Plaintiff and Mr. Gittens, and that there were discriminatory decisions being discussed at Defendant. Mr. DeGeest also stated that Mr. Otterman was seeking to get rid of some of the older employees. For obvious reasons, this was very concerning to Plaintiff and Mr. DeGeest.

14. Shortly thereafter, in August 2015, Mr. DeGeest was terminated. Scott Bender was hired to replace Mr. DeGeest as Defendant’s general manager. Shortly after Bender was hired, he began repeatedly asking Plaintiff about when he was going to retire and other comments meant to suggest Plaintiff’s future with Defendant was to be short lived due to his age. Plaintiff repeatedly told Bender that he was not interested in leaving any time soon and that he enjoyed his work.

15. On September 22, 2015, both Plaintiff and Mr. Gittens were terminated upon the advice and recommendation of Mr. Otterman. Plaintiff was told he was being terminated because the company was allegedly cutting costs and that the brewery had allegedly produced fewer barrels than anticipated. Plaintiff knew that these statements were untrue. While the number of barrels being produced of Defendant’s beer had fallen slightly, the number of overall barrels produced for Defendant and other third parties had not decreased. Moreover, Plaintiff had just finished developing Defendant’s signature brew – “Minnesota Gold” – which was about to be heavily marketed by Defendant and was considered the pillar upon which the future of the company was to be built. Plaintiff was not offered the opportunity to accept a pay cut and remain employed. Plaintiff was almost immediately replaced by a Caucasian man in his thirties who was born in the United States. Gittens was also replaced by a Caucasian man in his thirties who was born in the United States.

CAUSES OF ACTION

COUNT I

RACE DISCRIMINATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e *et seq.*

16. By reference hereto, Plaintiff incorporates paragraphs 1–15 of his Complaint.

17. At all times material hereto, Plaintiff and Defendant were “employee and “employer,” respectively, for purposes of the definitions set forth in 42 U.S.C. § 2000e.

18. 42 U.S.C. § 2000e-2(a)(1) makes it unlawful for an employer to discharge or otherwise discriminate against any individual with respect to that individual’s race, color, or national origin.

19. Defendant’s conduct constitutes a violation of 42 U.S.C. § 2000e-2(a)(1).

20. As a direct and proximate result of Defendant’s violation, Plaintiff has suffered and continues to suffer loss of income and employment benefits, mental anguish, emotional distress humiliation, and other damages in an amount in excess of \$75,000.

COUNT II

VIOLATION OF 42 U.S.C. § 1981

21. By reference hereto, Plaintiff incorporates paragraphs 1–20 of his Complaint.

22. 42 U.S.C. § 1981(a) provides that all persons within the jurisdiction of the United States shall have the same right in every State to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.

23. Defendant’s conduct constitutes a violation of 42 U.S.C. § 1981.

24. As a direct and proximate result of Defendant's violation, Plaintiff has suffered and continues to suffer loss of income and employment benefits, mental anguish, emotional distress, humiliation, and other damages in an amount in excess of \$75,000.

COUNT III

DISCRIMINATION IN VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT, MINN. STAT. § 363A.08.

25. By reference hereto, Plaintiff incorporates paragraphs 1–25 of his Complaint.

26. At all times material hereto, Plaintiff and Defendant were “employee” and “employer,” respectively, for purposes of the definitions set forth in Minn. Stat. § 363A.03.

27. Minn. Stat. § 363A.08 provides that it is an unfair employment practice to discharge or discriminate against an employee on the basis of race, color, age or national origin.

28. Defendant's conduct constitutes a violation of Minn. Stat. § 363A.08.

29. As a direct and proximate result of Defendant's violation, Plaintiff has suffered and continues to suffer loss of income and employment benefits, mental anguish, emotional distress, humiliation, and other damages in an amount in excess of \$75,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Horace Cunningham, prays for judgment against Defendant Cold Spring Brewery as follows:

1. For all damages available for Defendant's violations of Title VII of the Civil Rights Act of 1964, as amended, including, but not limited to, damages for lost wages and benefits, interest on those amounts, punitive and compensatory damages for emotional distress and mental anguish and attorneys' fees and costs;

2. For all damages available for Defendant's violations of the Minnesota Human Rights Act, including, but not limited to, damages for lost wages and benefits, interest on those amounts, treble damages, compensatory and punitive damages for mental anguish and emotional distress, and reasonable attorneys' fees;
3. For all damages available for Defendant's violation of 42 U.S.C. § 1981;
4. For all Plaintiff's attorneys' fees, costs and disbursements; and
5. For such further and other relief as the Court deems just.

Dated: June 8, 2016

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