

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION- DETROIT**

In re:

CITY OF DETROIT, MICHIGAN

Debtor.

Chapter 9

Case No. 13-53846

Hon. Thomas J. Tucker

**REPLY TO KIM SPICER’S RESPONSE TO OBJECTION TO CLAIM
NUMBER 3657 FILED BY THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION ON BEHALF OF KIM SPICER AND
CLAIM NUMBER 3451 FILED BY KIM SPICER**

NOW COMES, the City of Detroit Water and Sewerage Department (“DWSD”), by and through counsel, Kilpatrick & Associates, P.C., and for this Reply to Kim Spicer’s Response to Objection to Claim Number 3451 Filed by the Equal Employment Opportunity Commission on Behalf of Kim Spicer and Claim Number 3451 Filed by Kim Spicer states as follows:

1. On February 21, 2014, Kim Spicer (“Spicer”) filed Claim Number 3451. Claim Number 3451 is in the amount of \$204,272.75 and the stated basis for the claim is “Discrimination Based on Race and Retaliation.”
2. On March 19, 2014, the U.S. Equal Employment Opportunity Commission filed Claim Number 3657 on behalf of Spicer. Claim Number 3657 is in the amount of \$204,272.75 and the stated basis for the claim is “Discrimination



Based on Race and Retaliation.” Claim Number 3657 also indicates that \$4,272.75 included in the claim is entitled to priority under 11 U.S.C. §507(a)(4).

3. Claim Number 3657 and Claim Number 3451 were referred to alternative dispute resolution in accordance with the Order, Pursuant to Sections 105 and 502 of the Bankruptcy Code, Approving Alternative Dispute Resolution Procedures to Promote the Liquidation of Certain Prepetition Claims dated December 24, 2013 (“Order”), but were ultimately not resolved.

4. On December 30, 2014, DWSD filed an Objection to Claim Number 3457 Filed by the Equal Employment Opportunity Commission on Behalf of Kim Spicer and Claim Number 3451 Filed by Kim Spicer (“Objection”) seeking disallowance of the claims as permitted by the Order.

5. On January 27, 2015, Spicer filed a Response to the Objection. The Response to the Objection provides no basis for the Court to allow Claim Number 3457 and Claim Number 3451; it simply indicates that Spicer wants a trial.

6. On January 28, 2014, the U.S. Equal Employment Opportunity Commission (“EEOC”) filed a Response to the Objection asserting that it was withdrawing Claim Number 3657 because the EEOC concluded its investigation of the claim without a cause finding and closed its file, which terminated any and all legal interests the EEOC has in Claim Number 3657.

7. Claim Number 3451 should be disallowed because it has no merit.

8. On June 23, 2014, the EEOC closed its file on the claim because it was “unable to conclude that the information obtained establishes violations of the statutes.” At that time, the EEOC sent Spicer a Notice of Right to Sue, which advised Spicer that any lawsuits based on the claim must be filed within 90 days of receiving the Notice of Right to Sue or the claim would be forever barred. A copy of the Notice of Right to Sue is attached as Exhibit 1.

9. Title VII of the Civil Rights Act requires that any civil action arising under the statute be filed within 90 days after the receipt of a right to sue notice. *See* 42 U.S.C. §2000e-5(f)(1). There is a presumption that the claimant receives a Notice of Right to Sue five days after it is mailed. *See* 20 C.F.R. §422.210(c). “The federal courts have strictly enforced Title VII’s ninety-day statutory limit.” *Graham-Humphreys v. Brooks Museum of Art, Inc.*, 209 F.3d 552, 557 (6th Cir. 2000). “[T]he Supreme Court [has] stated that “[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts.” *Id.* (quoting *Baldwin Cnty. Welcome Cntr. v. Brown*, 466 U.S. 147, 152, 104 S. Ct. 1723, 80 L. Ed. 2d 196 (1984)). Invariant compliance is necessary because “experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded

administration of the law.” *Id.* (quoting *Mohasco Corp. v. Silver*, 447 U.S. 807, 826, 100 S. Ct. 2486, 65 L. Ed. 2d 532 (1980)).

10. Spicer had the ability to file the Title VII action as an adversary proceeding against DWSD within the 90 days after receiving the Notice of Right to Sue. *See* Fed. R. Bankr. P. 7001(10). Spicer did not commence an adversary proceeding, initiate an action in another venue, or attempt to seek relief from the automatic stay to initiate an action in another venue within the 90 day period after receiving the Notice of Right to Sue; therefore, the claim is forever barred and, accordingly, should be disallowed.

WHEREFORE, the City of Detroit Water and Sewerage Department respectfully requests that this Honorable Court enter and order disallowing Claim Number 3451 and grant such other or further relief as this Court deems just and proper considering the facts and circumstances of this case.

Respectfully Submitted,

KILPATRICK & ASSOCIATES, P.C.

/s/ Richardo I. Kilpatrick

RICHARDO I. KILPATRICK (P35275)

SHANNA M. KAMINSKI (P74013)

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Dated: March 27, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2015, I electronically filed a Reply to the Response to Objection to Claim Number 3657 Filed by the U.S. Equal Employment Opportunity Commission on Behalf of Kim Spicer and Claim Number 3451 Filed by Kim Spicer, which sends notice by operation of the Court's electronic filing service to all ECF participants registered to receive notice in this case, and mailed a copy of the Reply to the Response to Objection to Claim Number 3657 Filed by the U.S. Equal Employment Opportunity Commission on Behalf of Kim Spicer and Claim Number 3451 Filed by Kim Spicer via first class mail to the following:

Kim Spicer
29357 Sandalwood
Roseville, Michigan 48066

/s/ Shanna M. Kaminski
Shanna M. Kaminski (P74013)

EXHIBIT 1

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RECEIVED JUN 25 2014

DISMISSAL AND NOTICE OF RIGHTS

To: Kim Spicer
29357 Sandalwood
Roseville, MI 48066

From: Indianapolis District Office
101 West Ohio St
Suite 1900
Indianapolis, IN 46204

☐

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

EEOC Charge No.

EEOC Representative

Telephone No.

471-2014-01687

Brien L. Shoemaker,
Enforcement Supervisor

(317) 226-6118

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

JUN 23 2014

Enclosures(s)

Webster N. Smith,
Director

(Date Mailed)

cc: Steven H. Schwartz
STEVEN H. SCHWARTZ & ASSOCIATES
31600 W Thirteen Mile Road, Suite 125
Farmington Hills, MI 48334