

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**JOSEPH DANIEL SAAVEDRA, JR.,**

Plaintiff,

vs.

**NODAK ENTERPRISES, LLC  
d/b/a SERVICE AUTO GLASS,**

Defendant.

CIVIL ACTION FILE NO:

1:04-CV-1424 – WBH

**FIRST AMENDED COMPLAINT**

Plaintiff Joseph Daniel Saavedra, Jr. files this Complaint against Defendant Nodak Enterprises, LLC d/b/a Service Auto Glass, and respectfully alleges the following:

PRELIMINARY STATEMENT

1. This is an action brought under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (hereinafter the “ADA”) for redress of unlawful discrimination on the basis of disability.

2. As more fully explained below, this action stems from Defendant’s

unwarranted and discriminatory termination of Mr. Saavedra's employment as a glass installer in April 2002 because Mr. Saavedra is infected with the human immunodeficiency virus (hereinafter "HIV"). Defendant's discharge of Mr. Saavedra was an unlawful employment practice within the meaning of the ADA.

3. Prior to obtaining employment with Defendant, Mr. Saavedra had been professionally employed as a glass installer for approximately 25 years. In January 2002, Mr. Saavedra obtained employment with Defendant. Although Mr. Saavedra satisfactorily performed the functions of his position for the entire period of employment, Defendant abruptly terminated Mr. Saavedra's employment in April 2002 because Mr. Saavedra was HIV-positive. On the date of the termination of Mr. Saavedra's employment, Defendant provided him with a written "Personnel Action Form" explaining that the reason for his termination was that he was HIV-positive.

4. By terminating Mr. Saavedra, Defendant gave credence to irrational fears concerning people living with HIV, ignored well-established scientific facts about transmission of HIV and flouted the mandates of federal law. People living with HIV, including Mr. Saavedra, face continuing discrimination and pervasive stigma due to public ignorance, fear and bias. Although it is long-established

scientific fact that HIV is not easily transmissible, ignorance and hostility toward people living with HIV infection remain prevalent. Due to widespread ignorance about HIV, a significant number of people are unjustifiably uncomfortable working with HIV-positive individuals.

5. HIV has been, and continues to be, the basis for the baseless refusal of basic medical care; denial or termination of employment; exclusion from certain federal jobs and programs; exclusion from public services and facilities; and restrictions on the ability to travel. Congress enacted the Americans with Disabilities Act to eliminate this type of irrational discrimination and stigma.

6. The stigma surrounding HIV arises in large part from erroneous assumptions about contagiousness of the virus. Reputable scientists are unanimous in the conclusion that HIV cannot be transmitted through casual contact with persons who are infected. There is no rational basis to fear transmission of the virus as a result of routine workplace interactions with HIV-positive individuals.

7. In September 2003, after investigating Mr. Saavedra's claim of unlawful discrimination, the United States Equal Employment Opportunity Commission (hereinafter "EEOC") issued a determination concluding that

Defendant terminated Mr. Saavedra's employment in violation of the ADA.

8. In this action, Mr. Saavedra seeks injunctive relief, lost wages, lost future wages, compensation for the severe distress and stigmatization to which he was subjected, punitive damages for Defendant's willful or reckless disregard of his federally protected rights, and costs and reasonable attorneys' fees associated with this action.

#### JURISDICTION AND VENUE

9. This Court has jurisdiction of the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1343. This action is authorized by section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference sections 706(f)(1) and 706(f)(3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

10. Venue is proper in this Court because Defendant resides in this district and division and the unlawful employment practices alleged herein occurred in this judicial district and division.

#### PARTIES

11. Plaintiff Joseph Daniel Saavedra, Jr. is a resident of this judicial

district. At all times relevant hereto, Mr. Saavedra has been a person living with HIV, which is a disability within the meaning of the ADA.

12. Defendant Nodak Enterprises, LLC is a foreign corporation doing business in this state as Service Auto Glass in this judicial district and is subject to the jurisdiction of this Court.

13. On information and belief, Defendant Nodak Enterprises owns and operates approximately 40 automobile glass installation facilities in seven states.

14. On information and belief, Defendant engages in an industry affecting commerce and has had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. Accordingly, on information and belief, Defendant is a “covered entity” prohibited from discriminating against individuals with disabilities within the meaning of the ADA.

#### FACTS

15. Mr. Saavedra realleges paragraphs 1 through 14 of this Complaint as if fully set forth herein.

16. Mr. Saavedra is infected with HIV, the virus that causes Acquired Immune Deficiency Syndrome. As a result of his HIV infection, Mr. Saavedra is a

person with a disability within the meaning of the ADA. Additionally, Defendant regards Mr. Saavedra as a person with a disability within the meaning of the ADA.

17. Mr. Saavedra worked as a glass installer for several different employers for approximately 25 years prior to his employment with Defendant.

18. In or about January 2002, Mr. Saavedra applied for employment as a glass installer working for Defendant. In mid-January 2002, Mr. Saavedra interviewed for that position with Defendant. During that interview, Mr. Saavedra informed Defendant's district manager that he was HIV-positive.

19. On or about January 28, 2002, Mr. Saavedra began a period of employment as a glass installer working for Defendant. Mr. Saavedra worked out of Defendant's office doing business at 2863 North Decatur Road, North Decatur, Georgia. On or about the day that Mr. Saavedra commenced his employment, Mr. Saavedra informed his supervisor that he was HIV-positive. Mr. Saavedra disclosed his HIV status to Defendant early in his employment in part because he wished to minimize any administrative hurdles to maintaining employer-sponsored health insurance coverage.

20. Mr. Saavedra consistently has been a diligent and skilled professional, and was a valued employee for Defendant until the day of his

termination on April 23, 2002. He performed the duties and responsibilities of his position in a satisfactory manner throughout the period of his employment with Defendant.

21. Approximately two to three months after the beginning of his employment with Defendant, Mr. Saavedra spoke by telephone with Ginny Zachary, an agent of Defendant who handled human resources matters in Defendant's Tennessee office. During that conversation, in response to questioning from Ms. Zachary, Mr. Saavedra informed Ms. Zachary that he was HIV-positive.

22. On April 23, 2002, Defendant terminated Mr. Saavedra's employment. On that day, Mr. Saavedra's supervisor personally informed him that Defendant had decided to terminate his employment. Mr. Saavedra's supervisor stated that he personally did not want to fire Mr. Saavedra, but that he was acting pursuant to orders from Defendant's corporate office. During that conversation, Mr. Saavedra's supervisor and his district manager informed Mr. Saavedra that Defendant had decided to terminate his employment because he was HIV-positive.

23. In a Personnel Action Form provided to Mr. Saavedra by Defendant at or about that time, Defendant stated that the reason for Mr. Saavedra's

termination was that “HIV status is a direct threat to the safety of others.” The form that Defendant provided to Mr. Saavedra further stated that “it is in the best interest of this Company to terminate employee at this time.”

24. Despite Defendant’s apparent assumptions to the contrary, HIV is not easily transmitted and its modes of transmission are extremely limited. The virus generally can be transmitted only in three ways: (1) by intimate sexual contact involving the exchange of infected semen or blood; (2) by significant exposure to infected blood, usually through injection with a hollow-bore needle containing infected blood or, less commonly, through transfusions of infected blood; and (3) from infected mother to infant before or during birth or during breastfeeding. There is no scientific evidence to suggest that HIV can be transmitted in any other manner. Indeed, the virus cannot be transmitted through casual contact, touching, hugging, or sharing utensils, tools, towels, bedding, swimming pools, telephones or toilet seats. HIV does not survive or reproduce in the environment outside the human body.

25. Despite the very limited modes of potential transmission, ignorance and unsupported fears about HIV remain prevalent in American society. For instance, many people continue erroneously to believe that people living with HIV



should not work and should be segregated and excluded from mainstream society. Defendant's termination of Mr. Saavedra's employment on April 23, 2002 stems from these irrational fears and prejudices toward people living with HIV and gives effect to such fears and prejudices.

26. On information and belief, prior to terminating his employment, Defendant did not conduct an individualized assessment of Mr. Saavedra's ability to safely perform the essential functions of the job of glass installer as required by the ADA. Additionally, Defendant's decision to terminate Mr. Saavedra was not based on a reasonable medical judgment relying on the most current medical knowledge and/or the best available objective evidence.

27. On information and belief, prior to terminating his employment, Defendant did not explore any accommodations which would reduce or eliminate the perceived threat that Defendant believed was posed by Mr. Saavedra.

28. On information and belief, Plaintiff verily believes Defendant hired another individual to replace Mr. Saavedra following Mr. Saavedra's termination.

29. As a result of his termination, Mr. Saavedra suffered severe emotional distress, loss of wages, loss of health insurance, and loss of other employee benefits.

30. On or about September 23, 2002, Mr. Saavedra filed a timely charge of discrimination with the EEOC alleging that Defendant's actions on the basis of his HIV status violated the anti-discrimination provisions of the ADA.

31. On or about September 25, 2003, the EEOC issued a Determination in connection with the charge. In that notice, the EEOC concluded "that the evidence obtained during the investigation establishes that [Mr. Saavedra] was discharged in violation of the ADA." Moreover, the EEOC noted that Mr. Saavedra "posed no threat of harm to others and a reasonable accommodation does exist which would have eliminated or reduced [Nodak Enterprises'] concerns regarding his impairment and the duties of his position."

32. On or about April 13, 2004, the EEOC issued to Mr. Saavedra a Notice of Right to Sue in connection with the charge.

33. Mr. Saavedra has exhausted the administrative remedies available to him under the ADA. All conditions precedent to the institution of this suit have been fulfilled.

#### COUNT I – ADA – DISABILITY DISCRIMINATION

34. Mr. Saavedra realleges paragraphs 1 through 33 of his Complaint as if fully set forth herein.

35. Title I of the ADA, 42 U.S.C. §§ 12111-12117, prohibits covered entities from discriminating against otherwise qualified people with disabilities in the terms, conditions or privileges of employment. This prohibition similarly protects people whom covered entities regard as disabled.

36. Due to his HIV status, Mr. Saavedra has a physical impairment that substantially limits one or more of his major life activities, such that he is a person with a disability within the meaning of the ADA.

37. Additionally, because of the fact that Mr. Saavedra is HIV-positive, Defendant regards Mr. Saavedra as having a physical impairment that substantially limits one or more of his major life activities, such that he is a person with a disability within the meaning of the ADA.

38. Additionally, due to his HIV status, Mr. Saavedra has a record of a physical impairment that substantially limits one or more of his major life activities, such that he is a person with a disability within the meaning of the ADA.

39. Given his job skills, his extensive experience and his physical condition, Mr. Saavedra is and was capable of safely performing all the essential functions of the position of glass installer for Defendant without accommodation.

Defendant therefore violated Title I of the ADA when they terminated Mr. Saavedra because of his HIV status.

40. In the alternative, given his job skills, his extensive experience and his physical condition, Mr. Saavedra is and was capable of safely performing all the essential functions of the position of glass installer for Defendant with reasonable accommodation. Defendant violated Title I of the ADA when it denied Mr. Saavedra such accommodation and discriminated against him on the basis of his HIV status. Defendant further violated the ADA when it failed to consider whether the perceived threat allegedly posed by Mr. Saavedra could be eliminated by reasonable accommodation.

41. At the time of his termination, Mr. Saavedra was meeting Defendant's legitimate expectations as an employee.

42. By terminating Mr. Saavedra's employment on the basis of his HIV status, Defendant violated Title I of the ADA. Additionally, by terminating Mr. Saavedra's employment because of their perception that Mr. Saavedra's HIV infection rendered him unqualified to perform his duties, Defendant violated Title I of the ADA.

43. Defendant acted with malice or with reckless indifference to Mr.

Saavedra's federally protected rights.

44. Mr. Saavedra was severely damaged as a result of Defendant's action, losing wages and benefits and suffering the stigma and loss of professional standing associated with Defendant's discriminatory treatment of him. He is entitled to compensation for mental anguish, lost benefits and lost wages and the other relief hereinafter requested.

#### JURY DEMAND

45. Mr. Saavedra requests trial by jury of all matters to which he is entitled by law.

**WHEREFORE**, Mr. Saavedra requests the following relief:

- a) a trial by jury;
- b) that Defendant be ordered to pay to Mr. Saavedra lost wages, lost future wages, lost benefits, compensatory damages and punitive damages as authorized by the ADA;
- c) that the Court order Defendant to reinstate Mr. Saavedra to his former position as a glass installer with all terms, privileges and benefits of employment dating back to his original date of employment, as if he had never been terminated;

- d) that Defendant be ordered to pay the costs and reasonable attorneys' fees incurred as a result of Mr. Saavedra's bringing of this action; and
- e) for such other and further relief as this Court deems just.

Respectfully submitted, this 12<sup>th</sup> day of November, 2004,

\_\_\_\_\_/s/\_\_\_\_\_  
GREGORY NEVINS, Georgia Bar No. 539529  
JONATHAN GIVNER [admitted *pro hac vice*]  
LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC.  
1447 Peachtree Street NE, Suite 1004  
Atlanta, Georgia 30309-3027  
Phone: (404) 897-1880  
Fax: (404) 897-1884

C. MICHAEL BOZEMAN, Georgia Bar No. 073545  
275 14th Street NW, Suite 200  
Atlanta, Georgia 30318-9100  
Phone: (404) 876-9073  
Fax: (404) 873-5165

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the FIRST AMENDED COMPLAINT upon opposing parties in this matter on this 12<sup>th</sup> day of November, 2004, by first class mail, postage prepaid, addressed to: **Craig A. Brookes and Michelle LeGault**, Finley & Buckley, P.C., 2931 North Druid Hills Road, Suite C, Atlanta, GA 30329.

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GREGORY NEVINS, Georgia Bar No. 539529  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND INC.  
1447 Peachtree Street NE, Suite 1004  
Atlanta, Georgia 30309-3027

Phone: (404) 897-1880