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## Misidentification of Employer in Discrimination Charge Not Enough for Dismissal

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The U.S. Court of Appeals for the Seventh Circuit recently gave an employee a pass in his age discrimination suit against his former employer, where he inaccurately identified his former employer in the charging document. Significantly, the Seventh Circuit forgave the technical defect in the plaintiff's charge, where the plaintiff had acted diligently and the failure to provide notice to the employer rested almost entirely with the Equal Employment Opportunity Commission (EEOC).

Reversing the district court's dismissal of the complaint for the plaintiff's "minor error in stating the name of the employer," the Seventh Circuit explained that "it is particularly inappropriate to undermine the effectiveness of [the Age Discrimination in Employment Act (ADEA)] by dismissing claims merely because the victim of the alleged discrimination failed to comply with the intricate technicalities of the statute."

In [\*Trujillo v. Rockledge Furniture LLC, d/b/a Ashley Furniture Homestore\*](#), the Seventh Circuit overturned a decision by the U.S. District Court for the Northern District of Illinois granting the defendant employer's motion to dismiss. The plaintiff filed a charge of discrimination in May 2016, asserting age discrimination and retaliation. The plaintiff supplied the EEOC with the correct address and telephone number of his work location, but misidentified his employer as "Ashley Furniture Homestore." His employer's trade name was actually "Ashley Furniture HomeStore - Rockledge."

Inexplicably, the EEOC did not contact the employer at the address or telephone number provided, but instead forwarded the charge to a Texas entity that operated Ashley Furniture stores in that state. When the EEOC informed the plaintiff's counsel that the Texas entity had no record of his employment, the plaintiff's counsel sent the EEOC a paystub listing the entity name and address for the defendant. However, the EEOC still did not contact the defendant. Instead it issued a right to sue letter, and the plaintiff brought suit in April 2017.

Given the plaintiff's failure to precisely identify the defendant in his charge, the defendant moved to dismiss, arguing a failure to properly exhaust his administrative remedies. The district court granted the motion.

On appeal, the Seventh Circuit reversed for two reasons. First, it found that the plaintiff's trivial naming error, akin to a misspelling, should not defeat his ability to pursue his claim. Second, and most significantly, the Seventh Circuit explained that, given the information provided to the EEOC, the plaintiff should not have been barred from pursuing his claims as a result of the EEOC's failure to locate the correct employer.

Notably, the EEOC filed an amicus brief in support of plaintiff's appeal, admitting its error and arguing that the focus should be on the information provided to the EEOC, not what the EEOC did with that information. The court agreed, stating that the information provided by the plaintiff should have been sufficient for the EEOC to investigate the plaintiff's allegations and to attempt to eliminate the alleged unlawful practices - which is the purpose of the charge-filing requirement. According to the Seventh Circuit, penalizing the charging party plaintiff for the EEOC's mistake would frustrate the purpose of charge filing.

The practical effect of this decision is that it narrows the grounds on which employers may obtain dismissal of discrimination suits based upon the plaintiff's failure to exhaust administrative remedies. While the employer had no notice of the charge, and thus had no opportunity to attempt pre-litigation conciliation, the court gave plaintiff



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the benefit of the doubt - likely due in no small part to the EEOC admitting it dropped the ball.

Nevertheless, as we highlighted in our blog last week, where appropriate, employers facing discrimination litigation would still be wise [to raise the exhaustion defense](#) at the pleading stage, so as not to waive it. Facts may come to light that would permit an exhaustion defense later in the case.

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