

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

Robert D. Jacoby)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 3:23-cv-00447
)	
The International City Management Association)	JURY DEMANDED
Retirement Corporation d/b/a MissionSquare)	
Retirement)	
)	
<i>Defendant.</i>)	
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COMPLAINT

NOW COMES Robert D. Jacoby, by counsel, and for his complaint, states as follows:

The Parties

1. Robert D. Jacoby (hereafter “plaintiff” or “Mr. Jacoby”) is, and at all times relevant to this action, has been, a resident of Powhatan, Virginia.
2. The International City Management Association Retirement Corporation d/b/a MissionSquare Retirement (hereafter “defendant” or “MissionSquare”) is a large, nonstock retirement services corporation formed under Delaware law that manages the retirement accounts for many state and local government employees in Virginia and across the country. At all times relevant to this action, MissionSquare did and does maintain its headquarters in Washington, D.C., and did and does employ more than 500 employees.

3. At all times relevant to this action, MissionSquare is and was registered to conduct business in Virginia, it did and does business in Virginia, and it did and does maintain a registered agent in Richmond, Virginia.

4. In 2017, MissionSquare opened an office in Richmond, Virginia, and it has continued to maintain a Richmond office location since then.

5. At all times relevant to this action, MissionSquare serviced retirement accounts for many clients in Virginia, including the Virginia Retirement System and many state and local government entities within Virginia.

Jurisdiction and Venue

6. The Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question), 42 U.S.C. § 2000e-2 (Title VII discrimination based on religion), and 42 U.S.C. § 2000e-5(f) (civil action by aggrieved person), as more particularly set out herein.

7. The Court has personal jurisdiction over MissionSquare because it is a foreign corporation registered and actively doing business in Virginia and, through its registered agent for the service of process, is present within Virginia at the time this suit commenced.

8. The Court also has personal jurisdiction over MissionSquare because it regularly transacts business in Virginia and regularly employs Virginia citizens, committed the unlawful employment acts within Virginia giving rise to the causes of action in this case, and derives substantial revenue from the services it provides in Virginia. Thus, MissionSquare has established minimum specific contacts with Virginia, arising from the specific facts of this case, comporting with the requirements of fair play, substantial justice, and the Fourteenth Amendment of the Constitution of the United States.

9. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practice alleged herein was committed within this judicial district and, but for the unlawful employment practice, Mr. Jacoby would have been employed in this district.

10. Mr. Jacoby has exhausted his administrative remedies. Despite him making a timely and thorough request to MissionSquare for a religious accommodation on September 24, 2021, MissionSquare unlawfully placed him on unpaid administrative leave on October 5, 2021, and then terminated him on or before October 18, 2021, for not receiving the COVID-19 vaccine. On November 23, 2021, Mr. Jacoby filed a charge against MissionSquare with the Equal Employment Opportunity Commission (“EEOC”). The EEOC docketed his charge and investigated the matter but was unable to resolve the charge. On April 21, 2023, the EEOC issued a right-to-sue letter advising Mr. Jacoby that he could file a civil action against MissionSquare. Mr. Jacoby timely filed this suit within 90 days of receiving that notice.

Factual Background

11. This case arises under Title VII of the Civil Rights Act as amended.

12. Mr. Jacoby was an exemplary employee for MissionSquare, where he was employed for 16 and ½ years.

13. Mr. Jacoby was first employed by MissionSquare from September 1986 until September 1996, when he left MissionSquare on good terms. He left MissionSquare, at that time, because he had moved residences.

14. In April 2015, MissionSquare rehired Mr. Jacoby as its employee, and his initial position then was Operations Supervisor.

15. In 2017, MissionSquare promoted Mr. Jacoby to the position of National Relationship Manager, through which he served as part of MissionSquare’s Key Client Relations

team to provide specialized client care for some of MissionSquare's largest and most involved clients.

16. In October 2019, Mr. Jacoby was transferred from working at MissionSquare's headquarters in Washington, D.C., to its new office in Richmond, Virginia, and he continued under the title of National Relationship Manager. For his role in Richmond, a separate colleague of his was responsible for meeting with clients in person. In Richmond, Mr. Jacoby's role did not involve meeting with clients in person.

17. Because MissionSquare transferred his work location from Washington, D.C. to Richmond, Virginia, Mr. Jacoby moved from Charles County, Maryland, to his current residence in Powhatan, Virginia.

18. Because MissionSquare transferred Mr. Jacoby to Richmond, it no longer considered him an employee assigned to its Washington, D.C. office. Instead, it considered him a Richmond employee. As such, Mr. Jacoby no longer reported to MissionSquare's Washington, D.C. office.

19. In January 2020, MissionSquare assigned Mr. Jacoby to serve as National Relationship Manager with the Virginia Retirement System ("VRS"). In this capacity, he worked with the retirement account of MissionSquare's largest and most lucrative client. His role involved assisting with managing retirement plans for all Virginia state agencies, all Virginia county governments, many Virginia local school boards, some Virginia state universities, and many other Virginia local government entities. But in this role, Mr. Jacoby was not responsible to meet with clients in person.

20. In March 2020, due to the outbreak of COVID-19, MissionSquare instructed its employees, including Mr. Jacoby, to work remotely, away from its offices.

21. A little over a year thereafter, MissionSquare announced on July 26, 2021, that effective mid-September 2021, remote working for its Richmond-based employees would be made permanent. MissionSquare stated that it would be reconfiguring its office spaces to permit a “hoteling” format where a small number of Richmond-based employees could come to its Richmond office, on occasion, if using an office space would be useful for that employee. But MissionSquare made remote work for its Richmond-based employees the norm.

22. At this point, and going forward, using MissionSquare’s reconfigured “hoteling” office format was not needed for Mr. Jacoby, and he was not expected to use this option.

23. After MissionSquare switched to having its employees work remotely in March 2020, Mr. Jacoby did not re-enter any MissionSquare office since then, and he was not expected or asked to do so. Since March 2020, not once was Mr. Jacoby asked to travel to MissionSquare’s headquarters, to meet with clients in person, or to return to any Richmond-based office. The nature of his job did not necessitate this. He worked from home.

24. While working as a remote employee, MissionSquare informed Mr. Jacoby that if a meeting were to occur at the company’s headquarters that he was expected to attend, it would be fine for him to join the meeting remotely.

25. Mr. Jacoby worked entirely remotely and without difficulty, including working with VRS’s retirement account, performing his work at a satisfactory level from mid-March 2020 throughout the entire remainder of his employment at MissionSquare.

26. Before August 27, 2021, MissionSquare “strongly encourage[d]” its employees to receive a COVID-19 vaccine, but it did not mandate this.

27. However—suddenly—on August 27, 2021, MissionSquare changed its course. That day, MissionSquare declared that, from that date, it would require all of its employees to

provide proof of COVID-19 vaccination or to seek a religious or medical accommodation no later than October 4, 2021.

28. On September 16, 2021, MissionSquare published a statement acknowledging that it understood it had legal obligations to assess requests for religious accommodations to its COVID-19 vaccine mandate, stating that it would assess accommodation requests, in part, through its legal department.

29. On September 16, 2021, MissionSquare published a statement assuring employees that it would “engage in a flexible, interactive process to identify possible workplace accommodations” and that “[r]easonable accommodations will be granted” if it would not cause an undue hardship or “pose a direct threat to the health and safety of others in the workplace.”

30. In MissionSquare’s September 16, 2021, published statement, MissionSquare outlined factors it would consider in determining its ability to accommodate an employee, which included “the likelihood that the potential harm will occur” and “the imminence of the potential harm.” Moreover, MissionSquare assured its employees that, for employees needing an accommodation, “[i]f there is a direct threat that cannot be reduced to an acceptable level, [MissionSquare] will exclude the employee from physically entering the workplace and consider any other possible accommodation such as performing the current position remotely.”

31. On September 24, 2021, Mr. Jacoby dutifully submitted his request for a religious accommodation to MissionSquare.

32. In the request for a religious accommodation that Mr. Jacoby submitted to MissionSquare, Mr. Jacoby detailed how taking a COVID-19 vaccine would violate his sincere religious beliefs. Mr. Jacoby is a Christian, and he explained in writing to MissionSquare that, according to his religious faith, he believes “that there is a general moral duty to refuse the use of

medical products, including vaccines[,] that are researched, developed, or produced using human cell lines derived from abortions.” He also explained that he believes “that receiving any COVID-19 vaccine would violate the Bible’s command to honor God with [his] body because of the involvement of fetal stem cell lines in the COVID vaccines’ development” and testing. He further explained his belief that “the Bible commands Christians to honor God by caring responsibly for [their] bodies as temples of the Holy Spirit,” and that he does “not subject [himself] to any vaccines” based on his belief that they contain chemical toxins that are unhealthy to the body and cannot be received based on his faith.

33. In his request for a religious accommodation, Mr. Jacoby highlighted that MissionSquare had already made him a permanent work-from-home employee. So, the reasonable accommodation he proposed was that he continue to work remotely without taking the COVID-19 vaccine—which he had been doing without difficulty since March 2020.

34. Despite repeatedly asking MissionSquare’s Human Resources department if anything else was needed for his request, Mr. Jacoby heard nothing back from MissionSquare about needing any more information until October 5, 2021.

35. On October 5, 2021, a member of MissionSquare’s Human Resources department informed Mr. Jacoby that—even though MissionSquare had not yet made a determination about his request for a religious accommodation—it was placing Mr. Jacoby on unpaid administrative leave “until” he provided additional information regarding his religious accommodation request. Specifically, MissionSquare sought documentation providing Mr. Jacoby’s complete vaccine history or “documentation from [his] religious leader.” MissionSquare had never before requested this information, despite Mr. Jacoby’s efforts to ensure that MissionSquare had everything it needed in order to accommodate him.

36. The very next day, on October 6, 2021, Mr. Jacoby dutifully provided MissionSquare a summary of his vaccination history and a letter from his pastor further showing the sincerity of Mr. Jacoby's religious beliefs which conflicted with MissionSquare's COVID-19 vaccine requirement. But, despite this, MissionSquare did not restore Mr. Jacoby's work responsibilities. Instead, it left Mr. Jacoby on unpaid administrative leave and persisted in not answering whether it would grant his request for a religious accommodation.

37. After providing additional documentation in support of his request for a religious accommodation on October 6, 2021, Mr. Jacoby repeatedly inquired about when he would be permitted to resume his work responsibilities—which he would have continued to do from home like he had done before. He inquired about this when he submitted the requested supporting documentation on October 6, 2021, on October 8, 2021, and again on October 11, 2021. But MissionSquare provided no update on Mr. Jacoby's employment status until October 12, 2021.

38. On October 12, 2021, MissionSquare persisted in providing Mr. Jacoby no further information about his religious accommodation request. Instead, MissionSquare's human resources department simply informed Mr. Jacoby that it had disabled his access to its electronic computer systems and informed him that he would not be reinstated unless he received a COVID-19 vaccine, and that he might be terminated if he did not do so by October 15, 2021.

39. On October 14, 2021, because MissionSquare still had not responded to Mr. Jacoby regarding whether it would grant his request for a religious accommodation, Mr. Jacoby again asked MissionSquare whether it would accept his religious accommodation request. But it did not respond to this inquiry either.

40. Late into the afternoon of Friday, October 15, 2021, at 3:48 p.m., MissionSquare sent Mr. Jacoby correspondence informing him that he would be terminated the next business

day, Monday, October 18, 2021, if he did not provide proof of vaccination immediately, by the end of the day. But even with that correspondence, MissionSquare still did not inform Mr. Jacoby about whether it would accept his request for a religious accommodation, and it did not attempt to confer with Mr. Jacoby to identify a reasonable accommodation.

41. On October 15, 2021, at 4:30 p.m., Mr. Jacoby once again inquired about whether MissionSquare would accept his request for a religious accommodation. No answer came in response until 6:47 p.m. that day.

42. On October 15, 2021, at 6:47 p.m.—well after standard business hours—a member of MissionSquare’s Human Resources department informed Mr. Jacoby that it was denying Mr. Jacoby’s request for a religious accommodation. This was the first time Mr. Jacoby received this information.

43. On or before Monday, October 18, 2021, MissionSquare terminated Mr. Jacoby, for not following its orders to violate his own faith by taking the COVID-19 vaccine.

44. Prior to terminating Mr. Jacoby, MissionSquare never offered him any accommodation for his faith, it never conferred with him about his proposed accommodation, and it failed to properly undertake an individualized assessment specific to Mr. Jacoby and his work-from-home role and how that protected MissionSquare from facing any hardship if it had accommodated Mr. Jacoby’s faith. Instead, MissionSquare dismissed Mr. Jacoby’s request in a generalize fashion, claiming that it would incur an undue hardship if it accommodated him.

45. MissionSquare offered accommodations for employees not vaccinated due to medical conditions, such as use of face-shields, but it did not offer this or any other accommodation to Mr. Jacoby.

46. Prior to firing him, MissionSquare never indicated in any way that they doubted either the religious nature of Mr. Jacoby's beliefs or his sincerity in holding them.

47. By putting Mr. Jacoby through this dismissal process and eventually terminating him, MissionSquare, through its decision-makers, intentionally discriminated against him based on his religion, and refused to accommodate his religious practice despite his numerous requests for it to accept a reasonable accommodation.

48. After terminating Mr. Jacoby, MissionSquare eventually assigned a replacement employee to assume the work responsibilities Mr. Jacoby previously fulfilled who had less experience and background for the role than Mr. Jacoby had.

49. Since MissionSquare terminated Mr. Jacoby, it has continued with its policy of having its Richmond-based employees work completely remotely, and it has continued with its "hoteling" format. Even since then, very few employees enter MissionSquare's Richmond office, and essentially all of its Richmond-based employees continue to work from home.

CAUSE OF ACTION
Religious Discrimination/Failure to Accommodate

50. Mr. Jacoby hereby repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

51. Pursuant to Title VII of the Civil Rights Act as amended, an employer may not discriminate against any "individual with respect to . . . terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). "Religion" includes "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

52. Title VII makes it “an unlawful employment practice . . . for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees.” *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).

53. Mr. Jacoby is within a class protected under Title VII because he held a sincere, religious belief that prevented him from receiving the COVID-19 vaccine, which was mandated by MissionSquare. This raised a direct conflict between his faith and his employer’s policy.

54. Mr. Jacoby timely informed his employer, the defendant in this matter, of his religious beliefs and the manner in which its requirements conflicted with those beliefs.

55. Mr. Jacoby was a permanent work-from-home employee for MissionSquare, and MissionSquare had no expectation for him to return to its physical office or visit clients in person.

56. Mr. Jacoby timely requested a religious accommodation, asking MissionSquare to continue permitting him to work from home without requiring him to take the COVID-19 vaccine.

57. In light of the then-existing, permanent work-at-home arrangement, and other potential work arrangements that could have accommodated Mr. Jacoby, there would neither have been an undue hardship nor any hardship at all for MissionSquare to accommodate Mr. Jacoby’s faith.

58. Nevertheless, in an egregious disregard for its obligations under Title VII, MissionSquare failed to offer any reasonable accommodation for Mr. Jacoby’s religious faith, to accept Mr. Jacoby’s requested accommodation, or to engage in conferring on possible

accommodations. Instead, it placed him on unpaid leave and then terminated him for not taking the COVID-19 vaccine.

59. MissionSquare was obligated to extend to Mr. Jacoby any reasonable accommodation from its COVID-19 vaccination policy on account of his religious objection that it afforded to any other employee for any other reason. *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015) (“But Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment. . . . Title VII requires otherwise-neutral policies to give way to the need for an accommodation.”).

60. MissionSquare’s employees outside the protected class were not forced to choose between their jobs and their religious beliefs because they do not have religious beliefs preventing COVID-19 vaccination and their religious beliefs were not threatened by an employer mandate requiring them to forfeit their religious beliefs to maintain employment.

61. Despite having outlined on September 16, 2021, a policy of, among other things, providing a flexible, interactive approach toward assessing accommodation requests, considering factors such as the likelihood and imminence of potential harm, and using remote work as a possible accommodation, MissionSquare refused to engage in a good faith effort to accommodate Mr. Jacoby’s faith, and it refused to follow its own policy.

62. MissionSquare knew the obligations it owed to Mr. Jacoby under Title VII.

63. But despite knowing the obligations it owed to Mr. Jacoby, MissionSquare brazenly discriminated against Mr. Jacoby and failed to accommodate his faith, acting with malice and/or reckless indifference to his Title VII rights.

64. Notwithstanding his request for accommodation, Mr. Jacoby was placed on unpaid leave and then was terminated for not following the conflicting employment requirement.

65. As accentuated by the fact that Mr. Jacoby has disabled dependents at home, MissionSquare's discrimination and failure to accommodate his religion has caused him a significant level of financial and emotional harm.

66. Because of MissionSquare's religious discrimination, failure to accommodate, and wrongful termination, Mr. Jacoby suffered loss of the income and benefits he would have received from MissionSquare.

67. Because of Mission Square's religious discrimination, failure to accommodate, and wrongful termination, Mr. Jacoby suffered significant mental anguish and emotional distress.

68. Because of MissionSquare's religious discrimination, failure to accommodate, and wrongful termination, Mr. Jacoby suffered other compensatory and out-of-pocket damages.

69. Accordingly, MissionSquare owes Mr. Jacoby all damages arising from its discrimination and failure to accommodate his religious beliefs, practices, and/or observances, including Mr. Jacoby's lost back wages, lost future wages and benefits, compensatory damages, punitive damages, and reasonable attorneys' fees and costs incurred in the matter.

REQUEST FOR RELIEF

Wherefore, Mr. Jacoby requests the following relief:

- a. Compensatory damages for monetary and non-monetary loss, and lost employee benefits (including, but in no way limited to, paid sick leave accrued; merit pay increases; health, dental, and life insurance benefits; retirement benefits; bonuses, and other benefits);
- b. Backpay and lost future pay;
- c. Damages for emotional pain and suffering; and

- d. Punitive damages;
- e. Prejudgment interest;
- f. Attorneys' fees and costs;
- g. Such other relief as in law or equity may be appropriate.

JURY DEMANDED

Plaintiff hereby demands trial by jury on all issues triable by jury.

Dated: July 13, 2023.

ROBERT D. JACOBY

By Counsel:

/s/ Michael B. Sylvester

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