

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

STEPHEN ACHEAMPONG,

Plaintiff,

v.

JJM GROUP LLC d/b/a VARSITY
TAVERN; EQ RENTAL SERVICES
CORP.; and JJM CAPITAL LLC,

Defendants.

Civil Action No. 4:20-cv-252

**COMPLAINT
JURY TRIAL DEMANDED**

NATURE OF ACTION

1. Plaintiff Stephen Acheampong is a 26-year-old African-American man who lives in Philadelphia, Pennsylvania. Mr. Acheampong brings this action to seek redress for injuries he suffered because of the racially discriminatory conduct against him by Defendants JJM Group LLC, d/b/a Varsity Tavern; EQ Rental Services Corp.; and JJM Capital LLC.

2. In March 2018, Mr. Acheampong, a pre-medical school student, travelled to Fort Worth with a group of classmates for spring break. While in Fort Worth, he went with his friend Sam Sayed to Varsity Tavern, a popular bar, where they had planned to meet up with a group of friends. Mr. Acheampong and Mr. Sayed were wearing similar “jogger”-style pants. When they arrived at Varsity Tavern, Mr. Sayed was admitted into the bar, but Mr. Acheampong was told he could not come in because of his pants. Mr. Acheampong and Mr. Sayed were wearing the same pants, but unlike Mr. Sayed, Mr. Acheampong appears African-American. Mr. Sayed pointed out to the bouncer that the two were wearing the same pants, but the bouncer refused to allow Mr. Acheampong to come in.

3. Mr. Acheampong and Mr. Sayed wanted to meet their friends, so they went around to a side door where they were able to gain entrance by paying another bouncer \$20 (there is generally no cover charge to get into Varsity Tavern).

4. Mr. Acheampong returned to Varsity Tavern a few days later with a group of friends. Mr. Acheampong was the only African-American in the group. When they arrived at Varsity Tavern, everyone else was admitted, but the bouncer stopped Mr. Acheampong. The bouncer told him he could not come in because he was wearing Air Jordan sneakers. Mr. Acheampong and his friends left and went to a bar across the street. There, they decided to test whether the dress code was applied equally to whites and African-Americans. Mr. Acheampong and a white member of their group, Sean Gallagher, switched shoes – Mr. Gallagher put on the Air Jordan sneakers, and Mr. Acheampong put on Mr. Gallagher’s Sperry Topsiders. They returned to the bar and Mr. Gallagher was admitted without issue, although he was wearing the exact shoes that the bouncer had used as a basis for turning Mr. Acheampong away.

5. Mr. Acheampong, now wearing the Sperrys, was also admitted. When the friends were in the bar, they switched shoes back. After Mr. Acheampong put on the Air Jordan sneakers, a bouncer immediately and loudly told him he had to leave, saying that Mr. Acheampong could not be in the bar while wearing Air Jordan sneakers. Mr. Acheampong was stunned and embarrassed.

PARTIES

6. Plaintiff Stephen Acheampong is a 26-year-old African-American man who currently resides in Philadelphia, Pennsylvania.

7. Defendant JJM Group LLC is a limited liability corporation organized under the laws of the State of Texas and doing business as “The Varsity Tavern” or “Varsity Tavern” with

an address of 1005 Norwood Street, Fort Worth, Texas, the location of the Varsity Tavern bar. Its registered agent is JJM Capital LLC, listed on JJM Group LLC's registration as having an address at 2820 McKinnon Street, Suite 3070, Dallas, Texas.

8. Defendant JJM Capital LLC is a limited liability corporation organized under the laws of the State of Texas, and according to its registration, is located at 5500 State Highway 121 2112, Lewisville, Texas, 75056. Its registered agent is listed as James E. Hoffman, Jr., located at 2820 McKinnon Street, Suite 3070, Dallas, Texas 75201.

9. Defendant EQ Rental Services Corporation is the principal and manager of Defendant JJM Group LLC, and is located at 5500 State Highway 121 2112, Lewisville, Texas, 75056.

10. Varsity Tavern is a bar and restaurant located at 1005 Norwood Street, Fort Worth, Texas. Varsity Tavern serves food for lunch and dinner, both through a cafeteria-style line and a table-service menu that includes hamburgers, salads, and chicken wings. Many of the ingredients for the food Varsity Tavern serves have moved in interstate commerce as described in 42 U.S.C. § 2000a(c). Varsity Tavern is a restaurant within the meaning of 42 U.S.C. § 2000a(b)(2).

11. Varsity Tavern also provides entertainment for patrons in the form of music, large-scale Jenga games, corn hole, beer pong, Connect Four, ladder golf, a stage for concerts and a DJ booth, and a Jumbotron television display in the center of the space. Varsity Tavern markets itself as a place of entertainment, with images on its website of people playing lawn games and dancing. Varsity Tavern is a place of entertainment within the meaning of 42 U.S.C. § 2000a(b)(2). The televisions, games, musicians, and musical equipment move in interstate commerce, and so Varsity Tavern "customarily presents . . . sources of entertainment which

move in commerce” within the meaning of 42 U.S.C. § 2000a(c).

12. Varsity Tavern is a place of public accommodation barred from discriminating on the basis of race by Title II of the Civil Rights Act of 1964.

13. The acts and omissions of the employees and agents of the corporate defendants are those of the corporate defendants themselves, as the corporate defendants are responsible for the acts and omissions of their employees and agents.

JURISDICTION AND VENUE

14. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States. The Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a) because those claims arise out of the same transactions as Plaintiff’s federal claims such that they are part of the same case or controversy. This Court also has jurisdiction pursuant to 42 U.S.C. § 2000a-3. Mr. Acheampong notified the Fort Worth Human Relations Commission of the acts and practices described herein by filing a Charge of Discrimination with that office on February 7, 2019.

15. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred within this District.

FACTUAL BACKGROUND

16. Mr. Acheampong was in a pre-medical-school post-baccalaureate program at Drexel University in 2018, studying cardiovascular disease. He and his friends from school, including Sam Sayed, went to Mr. Sayed’s hometown of Fort Worth for their spring break vacation in March that year.

17. On Saturday, March 24, 2018, Mr. Acheampong and Mr. Sayed went to Varsity Tavern in Fort Worth. Mr. Sayed is of Egyptian descent and does not appear African-American.

That Saturday night, Mr. Acheampong and Mr. Sayed were both wearing “jogger”-style pants, slim-fitting, structured cotton pants. The pants the two men were wearing were exactly the same except for the color – Mr. Sayed’s pants were khaki-colored, and Mr. Acheampong’s pants were black.

18. When they approached the entrance to Varsity Tavern, the bouncer allowed Mr. Sayed to enter but immediately after refused to admit Mr. Acheampong. When Mr. Acheampong asked why he was not being allowed in, the bouncer told him that the bar did not allow “jogger pants.” Mr. Acheampong and Mr. Sayed pointed out that they were wearing the same pants, but the bouncer still refused to let Mr. Acheampong enter.

19. Mr. Sayed and Mr. Acheampong had planned to meet a group of friends inside Varsity Tavern, so they didn’t want to abandon the plan to go in. Mr. Sayed had heard that Varsity Tavern had a side door entrance where bouncers would take payments and let in people who had been turned away at the front door. Mr. Sayed and Mr. Acheampong went to the side door and were able to get in the bar by paying \$20 to the bouncer. There was no cover charge at the front door.

20. Mr. Acheampong and Mr. Sayed returned to Varsity Tavern a few days later, on March 28, 2018, with a group of friends. Mr. Acheampong was the only African-American member of the group.

21. Mr. Acheampong made a particular effort to dress nicely wearing new, fitted light-colored jeans, a jacket, and a new pair of Air Jordan sneakers. When the friends approached the door to Varsity Tavern, several of them were admitted. When Mr. Acheampong, again the only African-American member of the group, got to the door, the bouncer stopped him and told him he couldn’t enter because of his “Jordans.” There was no sign posted listing any sort of dress

code at the front door.

22. The group left Varsity Tavern and went to a bar across the street. Mr. Acheampong and Mr. Sayed talked about Mr. Acheampong's experience of having been turned away earlier in the week. The group decided to test whether the dress code policy was applied equally to African-Americans and whites by having Sean Gallagher, a white member of their group, try to go into Varsity Tavern wearing Mr. Acheampong's Air Jordan sneakers.

23. Mr. Gallagher switched shoes with Mr. Acheampong. Mr. Gallagher was now wearing Air Jordan sneakers, and Mr. Acheampong was wearing Mr. Gallagher's Sperry Topsiders, or "boat shoes."

24. The group returned to Varsity Tavern and Mr. Gallagher was admitted with the Air Jordan sneakers without any comment from the bouncer. The bouncer also admitted Mr. Acheampong, now wearing boat shoes. Mr. Gallagher went inside, wearing Air Jordans in full view of the staff. No one approached Mr. Gallagher about the shoes or expressed any concern with his wearing them.

25. After entering Varsity Tavern, Mr. Acheampong and Mr. Gallagher traded shoes back so that each could wear his own shoes. Within minutes of putting his Air Jordan sneakers back on, Mr. Acheampong was approached by a Varsity Tavern employee. The employee loudly told Mr. Acheampong that he was not permitted to be in the bar wearing "Jordans."

26. Mr. Gallagher had been allowed to wear the same shoes, in the same bar, in front of the same bouncers, but when Mr. Acheampong put them on, he was immediately and rudely made to leave. Mr. Acheampong had no choice but to leave Varsity Tavern.

27. In one week, Mr. Acheampong had been turned away from Varsity Tavern twice for alleged dress code violations while people wearing the same clothing had been admitted.

Both times, bouncers told Mr. Acheampong they were denying him entry because of dress code violations even as they admitted people wearing identical clothing who were not African-American. The only differences between Mr. Acheampong and Mr. Gallagher and between Mr. Acheampong and Mr. Sayed were their races.

28. Mr. Acheampong and Mr. Sayed filed Charges of Discrimination with the Fort Worth Human Relations Commission (“HRC”). Mr. Acheampong and Mr. Sayed’s complaints to the HRC were combined with complaints of three other people who had separately alleged that Varsity Tavern had denied them admission based on race.

29. For example, another complainant was an African-American man who was turned away from Varsity Tavern in November of 2017 for wearing Air Jordan sneakers, while a white person next to him in line, who was wearing the same shoes, was allowed in.

30. Another African-American man, Christopher Smith, tried to go to Varsity Tavern with his wife and cousins in or around 2017, and bouncers told him he could not come in because of his tan ankle boots. His cousin, who is also African-American, was turned away for wearing ripped jeans, although they could see white people inside Varsity Tavern wearing ripped jeans. About a year ago, Mr. Smith returned with the same group, and they were again turned away – the bouncer simply looked at them, saw that they were African-American, and told them to go.

31. Public online reviews of Varsity Tavern provide further accounts of racial discrimination in admissions. “I feel like I took a trip back in time,” one reviewer wrote, “because this is what it must’ve been like to live in America before the civil rights movement... I have never seen a business as blatantly racist as Varsity.” An October 2019 review noted that Varsity Tavern “won’t let certain people on [*sic*] based on race or what they’re wearing.” Other

reviewers refer to the admissions policies as “incredibly racist,” and warn, “if you are any shade of olive-black don’t bother.”

32. Former staff members also recall expressions of racial animus by management. Aaron Austin, a former chef at Varsity Tavern who is white, recalls being told by a manager that he could sit at the bar and order a drink when he was on a break but that African-American and Latino kitchen workers could not. If African-American or Latino employees wanted to buy drinks, the manager required that they take them back to the kitchen and drink them there.

33. Mr. Austin also witnessed dress code enforcement being used in a racially discriminatory way, including seeing whites wear Air Jordan sneakers inside Varsity Tavern while African-Americans were turned away for wearing the same shoes.

34. Varsity Tavern’s discriminatory dress code policy and enforcement has no legitimate, non-discriminatory basis. While Varsity Tavern has attempted to defended dress code policies as necessary to prevent gang activity, Officer Rick Harn from the Fort Worth Police Department (FWPD) Gang Unit has disputed any link between gangs and particular types of clothing. Officer Harn told the HRC during its investigation that it is “impossible to say, ‘gangs wear this.’” As a result, the FWPD “looks at behavior, not clothing.” Officer Harn specifically noted, “[e]veryone wears Jordans, so you can’t say they are associated with gangs.”

INJURY TO PLAINTIFF

35. As a result of Defendants’ unlawful actions described above, Mr. Acheampong has suffered, continues to suffer, and will in the future suffer irreparable loss and injury, including but not limited to fear, humiliation, embarrassment, emotional distress, and unlawful deprivation of his federally protected rights to use and enjoy public accommodations without regard for his race, color, ancestry, and national origin.

36. Mr. Acheampong had been looking forward to enjoying his time off from school with his friends. When they went out on Saturday, he dressed as he and his friends usually did to go out. Then, when he returned to Varsity Tavern, he made a particular effort to dress nicely, wearing new clothes and new shoes. In spite of this effort, Mr. Acheampong was turned away from and then asked to leave Varsity Tavern. When Mr. Acheampong was told loudly, in front of everyone, that he could not be in Varsity Tavern while wearing Air Jordan sneakers, knowing that his white friend had been allowed to wear the exact same shoes with no problem, he felt humiliated.

37. The treatment he received made Mr. Acheampong feel inferior, like he didn't deserve to enjoy the bar in the same way as everyone around him.

38. These experiences of racial discrimination caused Mr. Acheampong stress and embarrassment.

CAUSES OF ACTION

Count I - Violation of Title II of the Civil Rights Act of 1964

42 U.S.C. § 2000a *et seq.*

39. Mr. Acheampong repeats and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth herein.

40. 42 U.S.C. § 2000a guarantees the right to full and equal enjoyment of accommodations in restaurants and places of entertainment.

41. Varsity Tavern is a restaurant and place of entertainment within the meaning of 42 U.S.C. § 2000a.

42. Varsity Tavern is a bar and restaurant in Fort Worth, Texas, which is both a restaurant and a place of entertainment. On March 28, 2018, Defendants denied Mr.

Acheamong the use and enjoyment of the benefits, privileges, terms, and conditions that they extend to similarly situated white patrons because he is African-American, and on March 24, 2018, Defendants denied Mr. Acheamong the full and equal use of those benefits because of his race.

43. Defendants have discriminated against Plaintiff intentionally by directing, managing, supervising, applying, and/or condoning the implementation of the dress code policy.

44. The policy is intended and applied in order to deny accommodations to people of color, including African Americans.

45. Defendants violated 42 U.S.C. § 2000a by withholding from and denying Plaintiff his right to full and equal enjoyment of restaurants and places of entertainment as established in 42 U.S.C. § 2000a(b) because of Plaintiff's race and color.

Count II - Violation of 42 U.S.C. § 1981

46. Mr. Acheamong repeats and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth herein.

47. On March 24, 2018, Mr. Acheamong attempted to enter into a contract with Varsity Tavern to purchase food and alcohol and enjoy the entertainment at the venue. Defendants violated 42 U.S.C. § 1981 by refusing to enter into a contract with Plaintiff on equal terms and conditions as its contracts with white patrons.

48. On March 28, 2018, Mr. Acheamong attempted to enter into a contract with Varsity Tavern to purchase food and alcohol and enjoy the entertainment at the venue, and Defendants violated 42 U.S.C. § 1981 both by refusing to enter into a contract with him at all when it turned him away, and then by refusing to enter into a contract with him on the same terms as its contracts with white patrons.

49. To the extent Defendants provided services to Mr. Acheampong, they did so in a markedly hostile manner that a reasonable person would find objectively discriminatory.

50. Defendants violated 42 U.S.C. §1981 by refusing to enter into a contract with Plaintiff involving the sale of food and alcoholic beverages at Varsity Tavern while entering into such contracts with white citizens, because of Plaintiff's race and color.

51. Defendants' unlawful denial of Mr. Acheampong's ability to contract on equal terms with white people was, and is, intentional and willful, and/or has been and is being implemented with callous and reckless disregard for Plaintiff's statutorily protected rights.

Count III - Negligent Hiring, Supervision, Training, and Retention

52. Mr. Acheampong repeats and incorporates by reference all allegations contained in paragraphs 1 through 38 as if fully set forth herein.

53. Defendants were negligent in hiring, training, supervising, and retaining their employees in that they failed to hire, train, and supervise them in a manner that prohibited them from discriminating on the basis of race.

54. The bouncers who turned Mr. Acheampong away were working in the course of their employment for Defendants.

55. The volume of accounts of people who have been turned away on the basis of race under the pretext of dress code violations shows that employees regularly turn people away from Varsity Tavern on the basis of race.

56. Defendants owe a legal duty to Mr. Acheampong and to all members of the public to hire, train, supervise, and retain employees who do not discriminate on the basis of race in dealing with patrons of Varsity Tavern.

57. Defendants breached this duty, failing to hire employees who would not

discriminate on the basis of race, to train employees not to discriminate on that basis, to adequately supervise them to ensure that they were not so discriminating, and/or fire them upon learning that they were so discriminating. This failure fell below the standard of conduct of a reasonably prudent employer.

58. As a result of this breach, Varsity Tavern employees twice refused to admit Mr. Acheampong on the basis of alleged dress code violations while admitting non-African-American people who were wearing the same clothing as Mr. Acheampong.

59. Defendants' failure to hire, train, supervise, and retain employees who would not discriminate on the basis of race in admissions foreseeably caused Mr. Acheampong's injury.

60. Being refused entry and being ejected caused injury to Mr. Acheampong.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant him the following relief:

- (1) Enter a declaratory judgment that the foregoing acts violated Plaintiff's rights under 42 U.S.C. § 2000a;
- (2) Permanently enjoin Defendants from denying entry to Varsity Tavern on the basis of race;
- (3) Enter a declaratory judgment that the foregoing acts violated Plaintiff's rights under 42 U.S.C. § 1981;
- (4) Award compensatory damages to Plaintiff in an amount to be determined by the jury that would fully compensate Plaintiff for his injuries caused by the conduct of Defendants alleged herein;

(5) Award punitive damages to Plaintiff in an amount to be determined by the jury that would punish Defendants for their willful, wanton, and reckless conduct alleged herein and that would effectively deter Defendants from engaging in similar conduct in the future;

(6) Award any and all costs and/or fees incurred in this action that are available under law; and

(7) Order such relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues triable as of right.

Dated: March 18, 2020

/s/ Mark Whitburn

Mark Whitburn

Sean Pevsner

Whitburn & Pevsner, PLLC

2000 E. Lamar Blvd., Suite 600

Arlington, TX 76006

T: (817) 653-4547

F: (817) 653-4477

mwhitburn@whitburnpevsner.com

spevsner@whitburnpevsner.com

Reed Colfax*

Rebecca Livengood*

RELMAN COLFAX PLLC

1225 19th St. NW, Suite 600

Washington, D.C. 20036

T: (202) 728-1888

F: (202) 728-0848

rcolfax@relmanlaw.com

rlivengood@relmanlaw.com

Attorneys for Plaintiff

**Pro Hac Vice Applications to Be Submitted*