

VERDICTS & SETTLEMENTS

FRIDAY, NOVEMBER 5, 2021

— VERDICT: \$3,967,135.00 —

EMPLOYMENT LAW

DISABILITY DISCRIMINATION Failure to Accommodate

VERDICT: **\$3,967,135**

CASE/NUMBER: Rosa Jensen v. The Home Depot USA Inc. / RIC1512850

COURT/DATE: Riverside Superior / Sep. 29, 2021

JUDGE: Chad W. Firetag

ATTORNEYS:

Plaintiff – Maryann P. Gallagher
(Law Offices of Maryann P. Gallagher);
Michael H. Kim (Michael H. Kim PC)

Defendants – Irma R. Moisa, Amber M. Solano
(Atkinson, Andelson, Loya, Ruud & Romo)

EXPERTS:

Plaintiff – Patricia J. Howze (Human resources);
James Mills M.A. (Economics)

Defendants – Robert Sniderman
(Human resources); David T. Fractor Ph.D.
(Economics)

FACTS:

Plaintiff Rosa Jensen worked at Home Depot for 26 years at various jobs. She worked at the Home Depot in Hemet, California. During Jensen's employment, she had three workplace injuries, but continued to work every day until she eventually had to have carpal tunnel surgery. Once she had the surgery, Home Depot refused to return her to work and kept her on a leave of absence. Jensen had a shoulder surgery months later, and Home Depot still refused to return her to work. Home Depot then claimed they eliminated her position and there was no job for her that she could work at. Home Depot then terminated her. They

refused to provide anything in writing as to why they terminated her. Jensen was 55 years old at the time of termination.

PLAINTIFF'S CONTENTIONS:

Plaintiff contended that Home Depot wrongfully terminated her employment because of her disability, failed to engage in the interactive process, and failed to provide reasonable accommodation despite the improvement of her condition and numerous requests to return to various positions. Specifically, Plaintiff contended the company ignored the fact that her restrictions improved and refused to engage in a good faith interactive process with her to determine if she could return to work. Plaintiff further contended that Home Depot then claimed they eliminated her position and could not return her to any position without ever engaging in the interactive process. Plaintiff contended that Home Depot violated the law by failing to engage in the interactive process and failing to accommodate her for the 14 months while she recovered from her surgeries. Instead they kept her on an unpaid leave, hoping she would quit. When she didn't, they claimed they eliminated her position and terminated her because of her injuries. Plaintiff claimed the offer of a job in 2019 was not in good faith and was made just to try and stop her loss of earnings claim.

DEFENDANT'S CONTENTIONS:

Defendant contended that it held several interactive process meetings with plaintiff to discuss plaintiff's work restrictions and provided reasonable accommodation consisting of assigning plaintiff to the Phone Center Sales Associate position, which was a sedentary position, and providing extended leaves of

absence. Home Depot ultimately eliminated the Phone Center Sales Associate position. After engaging in the interactive process and considering the information plaintiff provided during the interactive process, Home Depot determined plaintiff was unable to perform the essential functions of any position in its retail store given the totality of plaintiff's permanent work restrictions. Home Depot therefore terminated plaintiff's employment, but informed her that she remained eligible for rehire should her condition change in the future.

DAMAGES:

Plaintiff sought recovery of past and future lost wages, past and future emotional distress and punitive damages. She alleged she had difficulty finding new employment and was only able to find work for a limited time which paid her less than what she earned at The Home Depot. At trial, Plaintiff requested that the jury award her \$437,875 in loss of earnings; \$205,511 in loss of retirement; \$84,687 in incremental income tax; \$4,725,000 for her past mental suffering and emotional distress; and \$1,312,520 for her future mental suffering and emotional distress.

RESULT:

The jury found for Jensen on her claims for Disability Discrimination, Perceived Disability Discrimination, Failure to Engage in the Interactive Process, Failure to Provide Reasonable Accommodation, and Wrongful Termination, and awarded her \$3,967,135 in economic and emotional distress damages. The jury did not award punitive damages. The jury found for Home Depot on the Retaliation cause of action.

FILING DATE: Jan. 19, 2016