

CLOTHING STORE ARGUES THAT WOMAN'S AGE-DISCRIMINATION CLAIM BELONGS TO BANKRUPTCY TRUSTEE



A woman fired from a clothing store brought an age-discrimination lawsuit to the courts. But was the claim even hers, or did it belong to a bankruptcy trustee? The woman was 47 years of age when she began working at a Wet Seal store in Chattanooga, TN, in December 2008. Wet Seal Retail markets its clothing line to young women. The employee's supervisor, who was around half her age, reportedly expressed "displeasure" concerning the woman's age and manner of dress. Other workers in the store allegedly echoed this belief, remarking that she didn't look or dress appropriately for a store that catered to younger shoppers. Less than a year after the woman was hired, Wet Seal terminated her employment. She responded by sending a letter to the corporate office, complaining of alleged harassment and discrimination. She further stated that she would be seeking a lawyer and implied that legal action would follow. Four days after she was fired, the woman and her husband filed for Chapter 7 bankruptcy. In their declaration of assets, they did not include the former employee's age-discrimination claim, which was required by the U.S. Code. Shortly thereafter, her attorney wrote to her bankruptcy trustee regarding the claim. The trustee applied to the bankruptcy court for the authority to hire the woman's lawyer in February 2010, about a month after the bankruptcy court discharged the woman from her debts. The application was granted, and the woman sued five months later, seeking a half-million dollars in damages and reinstatement. The district court ruled in favor of Wet Seal, stating that, because the woman had not listed a potential claim on her bankruptcy petition, she was barred from bringing the claim to court. On appeal, judges noted that, when the woman filed for Chapter 7, her estate became the owner of all of her property, including any civil claims accrued prior to filing. This was the case with her age-discrimination claim, its essential point of origin being the day that she was fired. When the bankruptcy court approved the trustee's application, it authorized the attorney to act "as special counsel for the trustee." The trustee could have abandoned the claim and returned it to the plaintiff, but he would have been required to give notice, and a hearing in bankruptcy court would have ensued if anyone had objected. Wet Seal had actually made such an argument to federal judges – that the claim belonged to the trustee, not the woman. But the district court did not address it, since its decision to bar the plaintiff from the claim already rendered the issue moot. Appellate judges disagreed that the woman should be barred from her claim. They vacated the district court's judgment and remanded the case to the court so that the case could either be dismissed without prejudice or that the plaintiff could be allowed to amend her complaint and designate the trustee as plaintiff. In either instance, it means that the woman still has a chance of pursuing her age-discrimination lawsuit against Wet Seal.