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## EEOC v. Dias Landscaping Corp

Judge Donald M. Middlebrooks

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## EEOC v. Dias Landscaping Corp

### Keywords

EEOC, Dias Landscaping, Auguste Jean-Hilaire, Charles Moises, Odolphe Raymond, 06-80297-CIV-MIDDLEB, consent decree, disparate treatment, termination, assignment, national origin, race, black, service, employment law, title VII

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Civil Action No. 06-80297**

**Plaintiff,**

**and**

**AUGUSTE JEAN-HILAIRE, CHARLES MOISES  
and ODOLPHE RAYMOND,**

**Plaintiff-Intervenors**

**Judge Middlebrooks  
Magistrate Judge Johnson**

**v.**

**DIAS LANDSCAPES CORP.,**

**Defendant.**

\_\_\_\_\_ /

**CONSENT DECREE**

**I. THE LITIGATION**

This Consent Decree (“Decree”) is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (“Commission” or “EEOC”), Auguste Jean-Hilaire, Charles Moises, Odolphe Raymond (“Charging Parties” or “Plaintiff-Intervenors”) and Dias Landscapes Corp. (“Dias Landscape Corp” or “Defendant”). The Commission, Plaintiff-Intervenors and Defendant are collective referred to as the “Parties” throughout this Decree.

2. Plaintiff Equal Employment Opportunity Commission filed this action alleging Defendant, Dias Landscapes Corp., violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq., (“Title VII”) by discriminating against Charging Parties

Auguste Jean-Hilaire, Charles Moises, Oldophe Raymond, and a class of similarly situated individuals (“Claimants”) on the basis of their national origin, Haitian, and race, Black. The Charging Parties intervened on June 12, 2006. Specifically, EEOC alleged that Defendant violated Title VII by segregating the workforce by national origin and race and by terminating the Charging Parties and a class of similarly situated individuals because of their national origin, Haitian, and their race, Black. Plaintiff-Intervenors alleged that Defendant violated Title VII by segregating the workforce and by terminating their employment with Defendant because of their national origin, Haitian, and race, Black. Defendant does not admit the legal and factual allegations contained within the Complaints.

3. In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (“Decree”). This Decree fully and finally resolves any and all issues and claims arising out of the Complaints filed by EEOC and Plaintiff-Intervenors in this action arising from EEOC Charge Nos. 150-2005-01602, 150-2005-01482, and 150-2005-01605. The Parties further agree that this Decree does not resolve any Charges of Discrimination that may be pending with EEOC other than the Charges referred to in this paragraph.

## **II. FINDINGS**

4. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of EEOC and/or Plaintiff-Intervenors to bring an enforcement suit upon alleged breach of any term(s) of this Decree.

c. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the Charging Parties, Claimants, and the public interest are adequately protected by this Decree.

d. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of Plaintiff-Intervenors Jean-Hilaire, Moises, Raymond, the Claimants, Dias Landscapes, EEOC and the public.

e. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, and officers of Dias Landscapes.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

**III. GENERAL INJUNCTIVE PROVISIONS**

5. Defendant, its officers, managers, employees, agents, partners, successors, and assigns are enjoined from engaging in conduct that discriminates on the basis of national origin and/or race in violation of Title VII of the Civil Rights Act of 1964, as amended.

6. Defendant, its officers, agents, employees and all persons acting in concert with it are enjoined from engaging in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

**IV. ADOPTION AND DISTRIBUTION OF POLICY AGAINST NATIONAL ORIGIN  
AND RACE DISCRIMINATION**

7. Dias Landscapes shall create an anti-discrimination policy ("Policy") to be distributed to all current and future employees within thirty (30) calendar days after entry of this Consent Decree. The Policy shall clearly define prohibited conduct and specifically prohibit segregating employees by national origin and/or race and specifically prohibit terminating an employee because of his national origin and/or race. The Policy shall also specify that prohibited behavior will not be tolerated from its employees, customers, clients and any other persons present at any of its facilities. The Policy shall provide that complaints of national origin and/or race-based sex-based discrimination may be made to any person in the chain of command above an employee or directly to human resources personnel; employees who make complaints of national origin and/or race-based discrimination or provide information related to such complaints will be protected against retaliation; employees will not be required to complain of national origin and/or race-based discrimination to a person against whom they allege national origin and/or race-based discrimination; the employer will protect the confidentiality of national origin and/or race-based discrimination complaints to the extent possible; the employer will take immediate and appropriate corrective action if and when it determines that national origin and/or race-based discrimination has occurred; employees who violate the policy are subject to discipline up to and including discharge. The Policy shall also be translated in writing by a certified translator into Creole and Spanish within sixty (60) calendar days of entry of this Consent Decree.

8. A copy of the Policy and translations of the Policy shall be forwarded to EEOC within sixty (60) calendar days of entry of this Consent Decree. This and any other submissions, reports, certifications, notices, or other materials that are required to be submitted to EEOC shall



be mailed to: Dias Landscapes Settlement, c/o Trial Attorney Lauren Dreilinger, United States Equal Employment Opportunity Commission, 1 Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, Miami, Florida 33131.

9. The Policy and the translated versions of the Policy discussed in paragraph 7, above, shall be distributed to all of Defendant's employees and management staff within ninety (90) calendar days of entry of this Consent Decree and shall be included in any relevant policy or employee manuals kept by Defendant's business. The Policy and the translated versions of the Policy discussed in paragraph 7, above, shall also be kept and maintained in a conspicuous and accessible place for all employees at all of Dias Landscape's facilities and printed in a font that is easily legible (at least 11 point font).

10. A copy of the Policy and the translated versions of the Policy discussed in paragraph 7, above, shall be distributed to each new regular full-time, part-time, or temporary employee on the day the employee is processed on Defendant's payroll and/or within ten (10) business days of performing any work for Defendant. The manager responsible for distributing the Policy to each new employee shall review the Policy in depth with the employee. Dias Landscapes shall maintain records demonstrating that each new employee discussed the Policy with the responsible manager and illustrating the length of time spent discussing the Policy. If the new employee does not communicate in English, Defendant shall use an interpreter to ensure that the new employee receives and understands the Policy in his or her native language.

#### **V. TRAINING**

11. During each of the three (3) years covered by this Decree, Defendant shall provide training to all Dias Landscapes employees, including all management personnel, on equal employment opportunity laws (including national origin and race-based discrimination)

and the Policy. The training shall be conducted by an organization mutually agreed upon with EEOC. The first training shall take place within ninety (90) calendar days of entry of this Decree. The remainder of the training sessions shall take place annually and no later than August 30<sup>th</sup> of each year throughout the duration of the Decree. Defendant shall use interpreters at all trainings to ensure that non-English speaking employees understand the information discussed.

12. Within ten (10) business days of the completion of training, Dias Landscapes shall notify EEOC of the dates the training was conducted, the name and job title of the person(s) who conducted the training, the name and job title of the interpreter(s) used for the training and languages spoken at the training, and the name and job title of each person who received the training.

13. Dias Landscapes agrees to provide EEOC, upon request, with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

#### **VI. POSTING OF NOTICE**

14. Within ten (10) business days after entry of this Decree, Dias Landscapes shall post eleven (11) inches by fourteen (14) inches laminated copies of the Notice attached as Exhibit A to this Decree at all of its facilities in Florida in a conspicuous location easily accessible to and commonly frequented by employees of Dias Landscapes. The Notice shall be posted in English, Creole and Spanish. The Notices shall remain posted for three (3) years from the date of entry of this Decree. Dias Landscapes shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Dias Landscapes shall certify to EEOC in writing within fifteen (15) business days after entry of the Decree that the Notices have been properly posted.



## **VII. RECORD KEEPING**

15. For a period of three (3) years following entry of this Decree, Dias Landscapes shall maintain and make available for inspection and copying by EEOC records (including name, national origin, race, social security number, address, telephone number, complaint and resolution of the complaint) of each person complaining about discrimination on the basis of national origin and/or race.

16. Dias Landscapes shall make all documents or records referred to in Paragraphs 9, 10, 13, and 14 available for inspection and copying within ten (10) business days after EEOC so requests. In addition, Dias Landscapes shall provide the last known home address, home telephone number, and mobile telephone number for all persons within its employ during the term of the Decree whom EEOC requests and identifies for purposes of verifying compliance with this Decree within ten (10) business days of EEOC's request. Dias Landscapes shall permit employees whom EEOC requests to interview for the purposes of verifying compliance with this Decree to speak confidentially with EEOC. In the event that EEOC is unable to contact an employee for purposes of verifying compliance with this Decree, it shall notify Dias Landscapes and Dias Landscapes shall, within ten (10) business days, provide EEOC with the employee's scheduled hours of work over the next fourteen (14) day period so that EEOC can conduct these interviews at these employees' breaks, at the end of the day, or at some other time convenient to the employee and EEOC. Dias Landscapes agrees that it will not discourage employees from participating in these interviews.

17. Nothing contained in this Decree shall be construed to limit any obligation Dias Landscapes may otherwise have to maintain records under Title VII or any other law or regulation.

### **VIII. REPORTING**

18. Dias Landscapes shall furnish to EEOC the following written reports twice annually for a period of three (3) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. Each such report shall contain:

a. A description of each complaint of national origin and/or race-based discrimination, including the names of the complaining parties and witnesses and the resolution of such complaint, occurring within the six (6) month period preceding the report. Information identifying Dias Landscape employees produced pursuant to this Decree will only be used to facilitate compliance with this Decree.

b. A certification by Dias Landscapes that the Notices required to be posted in Paragraph 13, above, remained posted during the entire six (6) month period preceding the report.

### **IX. MONETARY RELIEF FOR COMPLAINANT**

19. Defendant shall pay an aggregate of \$ 150,000 to resolve this litigation to be distributed as follows and in installments as explained in attached Exhibit B:

a. **Charging Party Auguste Jean-Hilaire**

i. \$10,000 shall be representative of lost wages, less amounts required to be withheld for federal, state, and local income taxes. Defendant will issue an IRS Form W-2, and shall be responsible for paying the employer's share of any federal, state and local, income taxes, and social security withholdings.

ii. \$40,000 shall be representative of compensatory and punitive damages. Defendant shall issue an I.R.S. Form 1099 to Mr. Jean-Hilaire for this amount.

**b. Charging Party Oldophe Raymond**

- i. \$10,000 shall be representative of lost wages, less amounts required to be withheld for federal, state, and local income taxes. Defendant will issue an IRS Form W-2, and shall be responsible for paying the employer's share of any federal, state and local, income taxes, and social security withholdings.
- ii. \$40,000 shall be representative of compensatory and punitive damages.

Defendant shall issue an I.R.S. Form 1099 to Mr. Raymond for this amount.

**c. Charging Party Charles Moises**

- i. \$40,000 shall be representative of compensatory and punitive damages.

Defendant shall issue an I.R.S. Form 1099 to Mr. Moises for this amount.

**d. Claimant Exume Hilaire**

- i. \$ 5,000 shall be representative of compensatory and punitive damages.

Defendant shall issue an I.R.S. Form 1099 to Mr. Hilaire for this amount.

**e. Claimant Lefort Valcimond**

- i. \$ 5,000 shall be representative of compensatory and punitive damages. Defendant shall issue an I.R.S. Form 1099 to Mr. Valcimond for this amount.

20. All payments described in paragraph 19, above, shall issue according to the payment schedule established in Exhibit B. All payments for Charging Parties Jean-Hilaire,

Raymond, and Moises shall be mailed via certified mail to Boehringer Law Office, P.A., 1515 North Federal Highway, Suite 300, Boca Raton, Florida 33432. All payments for Claimants Hilaire and Valcimond shall be mailed via certified mail to the Claimants at addresses to be provided by EEOC. Copies of all payments and I.R.S. Forms for Charging Parties Jean-Hilaire, Raymond, Moises and Claimants Valcimond and Hilaire shall be forwarded to the attention of Lauren G. Dreilinger, Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131 within five (5) calendar days of issuance.

21. If Defendant fails to tender the payments described in paragraphs 19 and 20, above, then Defendants shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC and/or Plaintiff-Intervenors caused by the non-compliance or delay of the Defendant.

#### **X. DISPUTE RESOLUTION**

22. In the event that EEOC and/or Plaintiff-Intervenors believe that Defendant has failed to comply with any provision(s) of the Decree, EEOC and/or Plaintiff-Intervenors shall have the right to seek Court intervention. Additionally, no party shall contest the Court's jurisdiction to hear a dispute arising from the Decree nor challenge EEOC's and/or Plaintiff-Intervenors' ability to bring an action to enforce the terms of the Decree in this Court.

#### **XI. DURATION OF THE DECREE AND RETENTION OF JURISDICTION**

23. All provisions of this Decree shall be in effect for a period of three (3) years immediately following entry of the Decree.

24. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.



25. The terms of this Decree shall be binding upon the present and future directors, officers, managers, agents, successors and assigns of Defendant. Defendant will provide a copy of this Consent Decree to any organization or person which proposes to merge with Defendant or acquire a majority or all of the stock in, or substantially all the assets of, Defendant, prior to the effectiveness of any such merger or acquisition. This paragraph shall not be deemed to limit any remedies available in the event of any finding by the Court of contempt for violation of this Decree.

For the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

/s/ Nora E. Curtin  
NORA E. CURTIN  
Supervisory Trial Attorney  
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For Dias Landscapes Corp.:

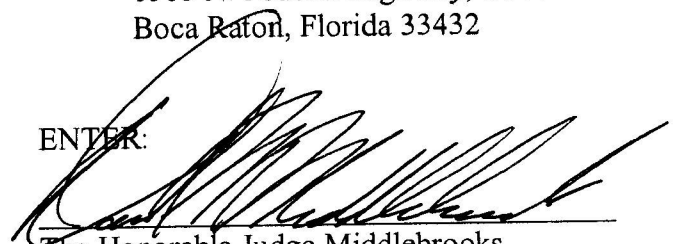
/s/ Michael McAuliffe<sup>1</sup>  
MICHAEL MCAULIFFE  
Rosenberg & McAuliffe  
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For Plaintiff-Intervenors:

/s/ M. Kate Boehringer<sup>2</sup>  
M. KATE BOEHRINGER  
Boehringer Law Office, P.A.  
Florida Bar No. 0041157.  
1515 N. Federal Highway, Suite 300  
Boca Raton, Florida 33432

DATE: 12/15/06

ENTER:

  
The Honorable Judge Middlebrooks  
United States District Court Judge

<sup>1</sup> Michael McAuliffe expressly permits EEOC to submit his electronic signature.  
<sup>2</sup> Ms. Boehringer expressly permits EEOC to submit her electronic signature.