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## United States Equal Employment Opportunity Commission, Plaintiff, v. Lausell, Inc., Defendant.

Judge Jose A. Fuste

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**United States Equal Employment Opportunity Commission, Plaintiff, v. Lausell, Inc., Defendant.**

**Keywords**

United States Equal Employment Opportunity Commission, Lausell Inc., 3:06-cv-01977-JAF, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Termination, Diabetes, Manufacturing, Employment Law, ADA

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

LAUSELL, INC.,

Defendant.

CIVIL NO.: 3:06-cv-01977-JAF

CLERK'S OFFICE  
FEDERAL DISTRICT COURT  
DISTRICT OF PUERTO RICO  
2009 FEB 22 PM 3:44  
RECEIVED

**CONSENT DECREE**

1. This Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the United States Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC"), and Defendant, Lausell, Inc. (hereinafter referred to as the "Company" or "Defendant"). The Commission and Defendant are collectively referred to herein as "the Parties."

2. On September 29, 2006, EEOC initiated this action by filing its Complaint in the United States District Court for the District of Puerto Rico based upon a charge filed by Michael Sepulveda ("Mr. Sepulveda"). EEOC's Complaint alleges that Defendant violated Title I of the Americans with Disabilities Act and Title I of the Civil Rights Act of 1991 ("the ADA") by failing to provide Mr. Sepulveda, an alleged qualified individual with a disability, with a reasonable accommodation and then discharging him because of his disability. Specifically, EEOC alleges that Mr. Sepulveda, requested a reasonable accommodation, to ingest food or take insulin as needed for his condition, but Defendant's management refused. It is the EEOC's position that, as a result, Mr. Sepulveda's condition worsened and he was ultimately terminated due to his disability.

3. Defendant denies the EEOC's allegations and, thus, nothing contained in this Consent Decree shall be interpreted as an admission of liability by Defendant or that it discriminated against Mr. Sepúlveda due to his alleged disability or that it failed to provide him with a reasonable accommodation.

4. In the interest of resolving this matter, to avoid further costs of litigation, 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 Decree. This Decree is final and binding upon the Parties, their successors and assigns.

5. The Parties agree that this Decree resolves all claims alleged against the Defendant in EEOC Charge Number No.162-2004-00372, and the Complaint filed in this action, and constitutes a complete resolution of all claims under the ADA and the termination of Mr. Sepulveda's employment that were made by the Commission in this action. The Parties further agree that this Decree does not resolve any future EEOC charges of discrimination other than the charges referred to in this paragraph.

6. NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Decree, and based on the pleadings filed by the parties, it is ORDERED, ADJUDGED AND DECREED THAT:

#### **JURISDICTION**

7. This Court has jurisdiction of the subject matter of this action and over the Parties for the purposes of entering and enforcing this Decree.

8. No party shall contest jurisdiction of this federal court to enforce this Decree and its terms or the right of the EEOC to seek enforcement in the event Defendant breaches any of the terms of this Decree.

## GENERAL PROVISIONS

9. Defendant, its officers, and employees, agree to refrain from engaging in conduct which violates Title I of the ADA and Title I of the Civil Rights Act of 1991, by adversely affecting the terms and conditions of any individual's employment because of the individual's disability.

10. Defendant, its officers, and employees, agree not to discriminate against any employee who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

## DISCRIMINATION POLICY AND TRAINING

11. Defendant has a written policy against disability discrimination and retaliation contained in its Employee Manual. Defendant agrees that all of its employees and managers at its Minillas Millwork Plant will be provided a complete copy of its policy against discrimination and retaliation within thirty (30) days of the entry of this Decree. Defendant also agrees that all new employees shall be given a copy of its Employee Manual containing said policy within their first week of employment with the Defendant.

12. The EEOC acknowledges that Defendant has provided training as to disability discrimination and labor laws to employees, but in order to further ensure the effective implementation of Defendant's antidiscrimination policy, Defendant will conduct a two (2) hour training session on the ADA for all of its employees, managers and supervisory personnel. The training shall have a specific emphasis on reasonable accommodation under the ADA; on the proper procedure to be followed by managerial personnel if they become aware that an employee has a disability which may require an accommodation; and on the proper retention of documents


related to requests for accommodation and discrimination complaints. Defendant agrees to provide the EEOC, at least two weeks notice before it conducts its training session(s), with the date(s) and location(s) of the training, the identification of the training materials to be used at the training session, and a listing of the names and job titles of the employees who will be in attendance at the training. The training will be conducted by counsel of choice of Defendant. Additionally, Defendant agrees that the EEOC may, at the EEOC's discretion, be in attendance at each training session.

13. Defendant agrees that the training described in paragraph 12 shall be conducted within sixty (60) days of the entry of this Decree, and should thereafter take annually for the duration of this Decree. Defendant further agrees that the discrimination policy and training materials utilized for the training described in paragraph 9 shall be presented and explained to all new managers and supervisors within fifteen (15) days of being placed in a management or supervisory position.

#### **POSTING**

14. Defendant will post a laminated 11 x 14 copy of the Notice, attached as Exhibit A, no later than fifteen (15) days from the Court's execution of this Decree. Said notice shall be posted at its Minillas Plant for the duration of this Decree in a conspicuous location accessible to all employees such as an employee bulletin board and/or break/lunch room.

#### **MONITORING**


 15. Defendant will continue to retain all employment and/or investigative records relating in anyway to any complaint or allegation of disability discrimination by any employee for the duration of this Decree and as required under federal law.

16. Defendant will certify to the EEOC annually throughout the duration of this Decree that it is in compliance with all aspects of this Decree. The first such certification will be due no later than thirty (30) days from the first training set forth in paragraph 12. With each certification Defendant will provide the EEOC with the name, address, and phone number of any person who alleges they have been discriminated against on the basis of their disability while working for Defendant during the preceding six month period. Defendant will also state the actions taken in response to each such allegation and provide any and all documentation associated with such complaint. The certifications required to be submitted to the EEOC pursuant to this Consent Decree shall be mailed with the notation LAUSELL MONITORING to: United States Equal Employment Opportunity Commission, Attention: Office of the Regional Attorney, 1 Biscayne Tower, Suite 2700, 2 South Biscayne Boulevard, Miami, Fl 33131.

#### **MONETARY RELIEF**

17. Defendant agrees to pay a total amount of \$74,500.00 to resolve this litigation. The payments referenced herein shall issue within fifteen (15) calendar days from the Court's execution of this Decree. The monies shall be distributed as set forth below in exchange for a fully-executed release. Michael Sepulveda Giusti will retain counsel of his choice to review and provide legal advice to him regarding this release.

(A) Defendant will pay Michael Sepulveda Giusti \$74,500.00, less applicable Commonwealth of Puerto Rico and federal withholdings. Defendant will issue the corresponding forms itemizing same.

 (B) The payment to Michael Sepulveda Giusti shall be made by check and mailed via certified mail return receipt requested within fifteen (15) calendar days from the Court's execution of this Decree to an address provided by EEOC.

(C) Simultaneous with the issuance of the check referenced above, copy of the payment check shall be forwarded to the attention of Carla J. Von Greiff, Senior Trial Attorney, U.S. Equal Employment Opportunity Commission, 501 East Polk Street, Suite 1000, Tampa, Fl, 33602.

18. If Defendant fails to tender the above-mentioned payment as set forth in paragraph 17 above, then Defendant shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 662 1(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.

#### ENFORCEMENT OF DECREE

19. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.

20. The Court will take whatever measures necessary to effectuate the terms of this Decree.

#### COSTS

21. Each Party shall bear its own costs associated with this litigation.

#### DURATION OF CONSENT DECREE

22. The duration of this Decree shall be three (3) years from the date of entry of the Decree.

*Amend* SO ORDERED, ADJUDGED AND DECREED, this *21st* day of February,

2008.

  
JOSE A. FUSTE  
UNITED STATES DISTRICT JUDGE




**AGREED TO:  
FOR THE PLAINTIFF,  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

by: s/Nora E. Curtin Date: February 4, 2008  
Nora E. Curtin  
Regional Attorney  
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Miami District Office  
One Biscayne Tower, Suite 2700  
2 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 530-6001  
Facsimile: (305) 536-4494

**AGREED TO:  
FOR THE DEFENDANT,  
LAUSELL, INC.**

by: s/Jorge I. Peirats Date: February 4, 2008  
Jorge I. Peirats  
USDC-P.R. 201409  
Pietrantonio Méndez & Alvarez  
209 Muñoz Rivera Ave.  
Suite 1901  
San Juan, PR 00918  
787-274-4904  
Fax: 787-274-1470  
Attorney for Defendant

**AGREED TO:  
FOR THE DEFENDANT,**

by:   
Alberto Recio, President Lausell, Inc.

Date: 2/5/08

*Recio*

**EXHIBIT A: NOTICE**

**NOTICE TO ALL EMPLOYEES  
POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
AND LAUSELL, INC.**

This notice is being posted pursuant to a Consent Decree entered by the United States District Court for the District of Puerto Rico, in United States Equal Employment Opportunity Commission v. Lausell, Inc. Lausell, Inc. assures its employees that it supports the Americans With Disabilities Act and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC. Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

This notice shall remain posted for three (3) years from the date signed. Employees or applicants for employment who have questions about their rights under the Americans With Disabilities Act or any other federal anti-discrimination law may telephone the San Juan Local Office of the Equal Employment Opportunity Commission at 1-800-669-4000.

Signed this 5 day of Feb, 2008.

  
\_\_\_\_\_  
President, Lausell, Inc.