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U.S. Equal Employment Opportunity Commission, Plaintiff v. Leson Chevrolet Company, Inc., Defendant.

Judge Ivan L. R. Lemelle

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U.S. Equal Employment Opportunity Commission, Plaintiff v. Leson Chevrolet Company, Inc., Defendant.

Keywords

U.S. Equal Employment Opportunity Commission, Leson Chevrolet Company Inc., 05-0844, Consent decree / Settlement, Disparate Treatment, Hiring, Other physical impairment disability, Seeing, Automotive, Employment Law, ADA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2006 JUN -1 PM 1:03

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
Plaintiff)
)
)
v.)
)
LESON CHEVROLET COMPANY, INC.,)
Defendant)

LORETTA G. WHYTE
CLERK
CIVIL ACTION NO. m
05-0844
SECTION B
MAG. 4

CONSENT DECREE

On March 17, 2005, the Equal Employment Opportunity Commission ("the Commission" or the "EEOC") instituted Civil Action Number 05-0844 in the United States District Court for the Eastern District of Louisiana, charging Defendant Leson Chevrolet Company, Inc. ("the Defendant") with violation of Section 102 of Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12112 (a) and (d), and alleging that the Defendant engaged in unlawful employment practices by not hiring Intervenor Robert H. White because of his disability, monocular vision. On April 20, 2005, Intervenor Robert H. White filed a Complaint in Intervention also alleging that the Defendant violated the ADA by not hiring him.

The Commission, Intervenor and the Defendant now wish to resolve all claims and controversies encompassed by this lawsuit without the burden, expense or delay of further litigation, subject, however, to the approval of this Court.

Fee _____
Process _____
X Dktd _____
CiRmDep _____
Doc. No _____

**THEREFORE, IT IS HEREBY AGREED AMONG THE COMMISSION,
INTERVENOR AND THE DEFENDANT, AND ORDERED, ADJUDGED, AND
DECREED that:**

JURISDICTION AND PROCEDURAL MATTERS

1. This Court has jurisdiction over the subject matter of this lawsuit and over the parties to this lawsuit.
2. The purposes of the ADA will be furthered by the entry of this Decree, the terms of which constitute a fair and equitable settlement.
3. The negotiation, execution and entry of this Decree will resolve any and all claims of the ADA violation brought by the Commission against the Defendant arising out of Commission Charge Number 270-2004-00456 and this lawsuit, Civil Action Number 05-0844.
4. This Decree relates only to the alleged ADA violations raised or which could have been raised against the Defendant in EEOC Charge Number 270-2004-00456 and this lawsuit. It is expressly acknowledged and agreed by the parties that this Decree does not relate to any other Commission charges.
5. It is further acknowledged by the parties that this Decree resulted from the Commission's determination in EEOC Charge Number 270-2004-00456 that the Defendant discriminated against Robert H. White in violation of the ADA and the Commission's filing of the instant suit alleging that the Defendant violated the ADA as a result of it not hiring Robert H. White.
6. Neither the negotiation, execution nor entry of this Decree shall constitute an admission by the Defendant that its officers, agents or employees have violated or have not been

in compliance with the ADA or with any other applicable law, regulation or order.

INDIVIDUAL RELIEF

7. Within thirty (30) days after the entry of this Decree the Defendant shall pay the sum of \$ 15,000.00 (“ THOUSAND DOLLARS”) as damages to Robert H. White for claims that were raised in Commission Charge Number 270-2004-00456 and this lawsuit. The Defendant shall provide contemporaneously to the EEOC’s Regional Attorney for the Houston District Office and the New Orleans Field Office with a copy of the damage check for Robert White.

INJUNCTIVE RELIEF

A. ADA COMPLIANCE REQUIREMENTS

8. The Defendant agrees to comply with all requirements of the ADA. The Defendant agrees not to discriminate on the basis of disability in all phases of employment, including recruitment, application, hiring, testing, job assignment, promotion, training, discharge and all terms, conditions or privileges of employment. In accordance with these ADA compliance obligations, the Defendant agrees (i) never to present to an applicant or otherwise use the employment application form “physical record” section language that was presented to, and used by Robert H. White and others when they sought employment with the Defendant; and (ii) ensure that the individual who made the decision not to hire Robert H. White receives and acknowledges the ADA training and ADA policy(ies) that are required by paragraphs 10 and 12 of this Decree. The Defendant further agrees not to discriminate or retaliate against any person

because of opposition to any practice declared unlawful under the ADA; or because of the filing of a charge, giving of testimony or assistance; or because of participation in any manner in any investigation, proceeding, or hearing under the ADA.

B. REPORTING REQUIREMENTS

9. For the duration of this Decree the Defendant agrees to submit through Scott D. Schneider of the Fisher & Phillips LLP law firm, or alternatively, through his successor in that firm annual written reports to the EEOC's Regional Attorney for the Houston District Office and New Orleans Field Office. The initial report must be submitted within six (6) months after the entry of this Consent Decree or not later than October 15, 2006. Subsequent annual reports must be submitted on the following dates: September 30, 2007 and September 30, 2008. These reports shall certify the Defendant's compliance with this Decree in accordance with paragraphs 8 and 10 through 12 of this Decree and further provide per annual reporting period as follows: (i) the identity by name, social security number, last known address and last known telephone numbers of any applicant(s) for any employment with the Defendant who are/were known or regarded as having a disability or a record of a disability under the ADA, (ii) a statement as to whether the applicant(s) was/were conditionally hired, and (iii) a statement as to whether the applicant(s) was/were denied employment after the results of a physical examination.

C. ADA TRAINING REQUIREMENTS

10. The Defendant agrees to conduct, for the duration of this decree, an annual two-hour training program about the ADA for its supervisors and managers, which training program and trainer shall be reported to the Commission's Houston District Office and New Orleans Field Office Regional Attorney (hereafter "Regional Attorney") in accordance with the reporting

requirements of this paragraph. Each training program shall include the topics of unlawful discrimination against applicants for employment in violation of the ADA, including accommodating individuals during the application process through their employment, and compliance with the ADA in employment decisions and an acknowledgement that the EEOC sued the Defendant for refusing to hire a disabled applicant in violation of the ADA, 42 U.S.C. § 12112(a) and (d), and advising all of Defendant's supervisors and managers about the potential adverse disciplinary consequences, including discharge, for violating the ADA. In providing training about managerial disciplinary actions, the trainer(s) shall explicitly indicate the types of conduct that would warrant termination. Any supervisor or manager who failed to attend any ADA training program, as mandated by this Decree, shall be required to attend a make-up training program or view a videotape of the entire original training program within two months of the missed program. The initial training program shall be conducted within six (6) months after the entry of this Consent Decree. The Defendant's initial and annual reports to the EEOC's Regional Attorney shall provide the identity(ties) of the ADA trainer(s); all date(s) ADA training occurred; the names and positions of the managers and supervisors who attended the training and make-up training or videotape programs; the signatures of all these same individuals acknowledging their presence at such training programs; and the topics covered during all such programs or a copy of the ADA program outlines, materials or videotapes that were utilized during the training.

D. POSTING REQUIREMENTS

11. In accordance with federal anti-discrimination laws that are enforced by the Commission, the Defendant agrees to post conspicuously the Commission's poster entitled:

“Equal Employment Opportunity Is The Law” in prominent and accessible places in its buildings in Harvey, Louisiana where its employees work and where said poster can be readily observed by the Defendant’s employees and applicants for employment.

E. ADA POLICY REQUIREMENTS

12. The Defendant agrees to send to the Commission a copy of its policy(ies) prohibiting discrimination in violation of the ADA. In the event that the Defendant does not yet have such a policy, then it will create, implement and send a copy of such policy(ies) to the EEOC’s Regional Attorney within sixty (60) days after the entry of this Decree. Additionally, the Defendant shall disseminate such policy(ies) to all of its employees; and for the duration of this Decree, it shall certify in its initial and annual reports to the Regional Attorney that it has disseminated such policy(ies) to all of its employees.

DURATION

13. This Consent Decree shall remain in force for two and one-half (2 ½) years after the date of entry of this Decree.

VALIDITY, ENFORCEMENT AND MISCELLANEOUS PROVISIONS

14. Should any provision of this Decree be declared or be determined by any Court to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Decree.

15. In consideration of the terms of this Decree and the Defendant’s obligations hereunder, the Commission and Intervenor agree to file contemporaneously with this Decree a motion to dismiss this suit with prejudice, providing for all parties to bear their own respective

attorneys' fees and costs incurred in connection with the litigation of this lawsuit.

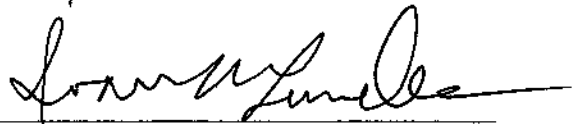
16. This Court shall retain jurisdiction over this action for the purpose of enforcing this Decree, if necessary; and any party is empowered to enforce this Decree through the applicable judicial enforcement procedures.

17. This Decree sets forth the entire agreement between the Commission and the Defendant which resolves Commission Charge Number 270-2004-00456 and this lawsuit. This Decree fully supersedes any and all prior agreements or understandings between the Commission and the Defendant pertaining to Commission Charge Number 270-2004-00456 and this lawsuit. This Decree cannot be altered by oral agreement between the Commission and the Defendant, but only by written Court-ordered modification.

Parties' Joint Motion to Dismiss is GRANTED with prejudice. The above captioned matter is hereby closed.

IT IS SO ORDERED.

New Orleans, Louisiana, this 31st day of May, 2006.

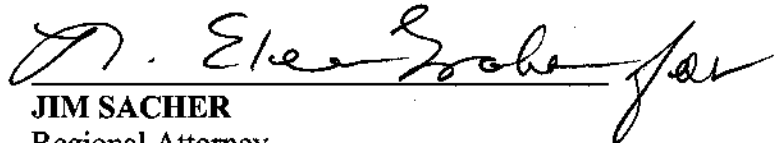


UNITED STATES DISTRICT JUDGE

SUBMITTED AND APPROVED BY:

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel



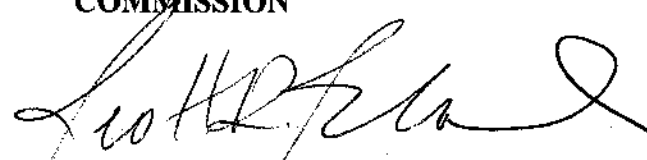
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