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Equal Employment Opportunity Commission, Plaintiff, v. Rmax Services, LLC, Defendant.

Judge Catherine C. Blake

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**Equal Employment Opportunity Commission, Plaintiff, v. Rmax Services, LLC,
Defendant.**

Keywords

Equal Employment Opportunity Commission, Rmax Services LLC, 03CV02649, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Retaliation, Termination, Other physical impairment disability, Transportation, Employment Law, ADA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO. 03CV02649
)	
v.)	JUDGE CATHERINE C. BLAKE
)	
RMAX SERVICES, LLC,)	
)	
_____ Defendant. _____)	
_____)	

CONSENT DECREE

This action was instituted under Title I of the Americans with Disabilities Act of 1990, and Title I of the Civil Rights Act of 1991. The Equal Employment Opportunity Commission (the "Commission" or "EEOC") alleged in its Complaint that Defendant, RMAX Services, LLC ("RMAX") discharged Pamela Johnson in retaliation for requesting an accommodation for her disability, reactive airways disease and bronchial asthma.

Both the Commission and RMAX desire to resolve the Commission's action and issues raised by the Commission's Complaint without the time and expense of contested litigation, through a formulated plan to be embodied in a Decree which will promote and effectuate the purposes of the Americans with Disabilities Act of 1990.

This Consent Decree is not and shall not be construed as or deemed to be an admission or concession by RMAX with respect to the merits of the Commission's claims in the lawsuit, liability for which is expressly denied. Further, this Consent Decree shall not constitute or be construed as an admission by the Commission of the absence of any discriminatory or unlawful practices by RMAX

as to liability for the Commission's determination that RMAX discriminatorily and unlawfully retaliated against its employee because she sought an accommodation for a disability protected under Title I of the Americans with Disabilities Act of 1990.

The Court has examined this Decree and finds that it is reasonable and just and in accordance with the Federal Rules of Civil Procedure, the ADA and Title I of the Civil Rights Act of 1991. Therefore, upon due consideration of the record herein and being fully advised in the premises, it is ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all claims, demands, and lawsuits that were brought, or could have been brought against RMAX by the EEOC with respect to its Determination and the allegations of discrimination contained in Charge of Discrimination No 120-2002-10628C against RMAX by Pamela Johnson dated December 11, 2002.

2. RMAX, its subsidiaries, officers, agents, servants, employees and all persons acting or claiming to act on its behalf and in its interest (collectively referred to as "RMAX Group") shall be enjoined and restrained from retaliating in any way against employees for seeking an accommodation for a disability protected under Title I of Americans with Disabilities Act of 1990 ("ADA"). Nothing in this paragraph 2 or this Consent Decree shall be construed to obligate The RMAX Group to adhere to requirements and/or standards of conduct that are not required by the ADA.

3. RMAX made an unconditional offer to reinstate Pamela Johnson to her former position as a driver/courier in which she would be accommodated with an air-conditioned delivery vehicle. Ms. Johnson rejected said offer by letter dated September 10, 2004. RMAX shall expunge from its records any and all performance reviews and any and all references to Ms. Johnson's filing of charge number 120-2002-10628C or the EEOC's investigations and determinations thereof.

Upon request from either Pamela Johnson or a third party, RMAX shall give a neutral recommendation to or with respect to Ms. Johnson, which recommendation shall identify only her dates of employment and her job description and duties.

4. RMAX will pay damages to Pamela Johnson in the total amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) in full settlement of this case in accordance with the provisions set forth below:

A. Within ten (10) days of RMAX's receipt of the Court's approval of this Agreement, Defendant will pay to Pamela Johnson damages in the amount of Four Thousand Dollars and Zero Cents (\$4,000.00). Thereafter, for the subsequent three (3) consecutive months, on the first and fourteenth of each month, RMAX shall pay Pamela Johnson a sum of One Thousand Dollars and Zero Cents (\$1,000.00). Defendant will issue a Form 1099 to Pamela Johnson reflecting these payments totaling Ten Thousand Dollars and Zero Cents (\$10,000.00).

B. Defendant agrees that these amounts shall be paid by check to the order of Pamela Johnson and shall be forwarded to Pamela Johnson at her address (to be supplied by the Commission) by first class mail, postage prepaid, return receipt requested.

C. If requested, within five (5) days of such the receipt of such request RMAX shall send to the Commission's attorney of record a copy of the check along with a copy of the return receipt. The Commission shall send a copy of any such request to the attorney for RMAX.

D. Failure to make any payment on the dates set for payment in subparagraph 2A above, shall constitute a material breach of the parties' agreement and noncompliance with this Decree for which RMAX shall pay liquidated damages and sanctions to Pamela Johnson in the amount of one hundred dollars (\$100) per day for each day RMAX is late in making payments as set forth in

subparagraph 4A. For the purposes of this subparagraph 4D, payment shall be deemed to have been made on the earlier of the date that the payment was mailed in accordance with the terms of subparagraph 4B or the date received by Pamela Johnson.

5. Upon approval of this Decree, RMAX will post immediately in conspicuous places in and about its facilities where its employees work, including but not limited to all places where notices to employees are customarily posted, the Notice attached hereto as Exhibit "A" and made a part hereof. Said Notice attached hereto as Exhibit "A" shall be posted and maintained for a period of at least one year from the date of posting and shall be signed by RMAX's Member/Manager with the date of actual posting shown thereon. Should the Notice become defaced, marred, or otherwise made unreadable, RMAX will ensure that new readable copies of the Notice are posted in the same manner as heretofore specified. Within thirty (30) days of approval of this Decree, RMAX shall forward to the attorney of record at the Baltimore District Office a copy of the signed Notice attached hereto as Exhibit "A" and written certification that the Notice referenced herein has been posted and a statement of the location(s) and date of posting.

6. RMAX agrees to provide EEO training to its Managers and all persons who have authority to hire and fire employees. The training will focus on a definition of what constitutes a disability, a reasonable accommodation for a disability, and the interactive process in making a reasonable accommodation. The training will also focus on a definition of what constitutes retaliation. RMAX agrees to provide a clear statement of what actions and behavior are prohibited by law and by RMAX, and a description of the avenues available to employees to raise EEO complaints, concerns, or questions to the federal government. This training will take place within sixty days of approval of this Consent Decree. All current RMAX Managers and other employees

ATTACHMENT "A"

NOTICE TO EMPLOYEES

1. This Notice to employees of RMAX, LLC. is being posted pursuant to agreement with the Equal Employment Opportunity Commission.
2. This purpose of this notice is to inform you of your rights guaranteed by federal law under the Americans With Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, which prohibits discrimination against any qualified employee on the basis of a disability with regard to any term or condition of employment including hiring, layoff, recall, promotion, discharge, pay and fringe benefits or in retaliation for the opposition to unlawful employment practices.
3. All employers must make reasonable accommodations (modifications to a job or the work environment which will enable an employee to perform essential job functions) in order to ensure that all qualified employees have the same rights regardless of disabilities. Failure to make provide a reasonable accommodation violates the Americans With Disabilities Act of 1990.
4. WE WILL NOT engage in any of the above unlawful practices.
5. WE WILL NOT discriminate or retaliate in any manner against any person because of his or her opposition to any practice declared unlawful under The Americans With Disabilities Act of 1990 or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding, or hearing under The Americans With Disabilities Act of 1990.
6. WE WILL maintain a work environment free of disability discrimination.

Date Signed

RMAX, LLC

Date Posting Expires