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U.S. Equal Employment Opportunity Commission, Plaintiff, v. Transportation Solutions Group, L.L.C., Defendant.

Judge Blanch M. Manning

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U.S. Equal Employment Opportunity Commission, Plaintiff, v. Transportation Solutions Group, L.L.C., Defendant.

Keywords

U.S. Equal Employment Opportunity Commission, Transportation Solutions Group L.L.C., 05 C 5043, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Hiring, Deafness, Hearing, Transportation, Employment Law, ADA

AE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
TRANSPORTATION SOLUTIONS GROUP, L.L.C.,)
)
Defendant.)

Civil Action No. 05 C 5043

Judge Manning

Magistrate Judge Schenkier

CONSENT DECREE

THE LITIGATION

1. Plaintiff United States Equal Employment Opportunity Commission ("EEOC") filed this action alleging that the Defendant Transportation Solutions Group, L.L.C. ("TSG"), violated Sections 102(a) and 102(b)(5) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12112(a), (b)(5), when it failed to interview and hire a job applicant, Roger L. Brandt, Jr. ("Charging Party"), because of Charging Party's disability, deafness, and because of the need to make reasonable accommodations to that disability.

2. 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").

3. This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC. Neither party admits any of the claims or defenses raised by the other party in this action.

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. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the EEOC, TSG, the Charging Party and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties, the Charging Party, and the public.

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

INJUNCTION AGAINST DISABILITY DISCRIMINATION

5. TSG and its officers, agents, management (including supervisory employees), successors, and assigns are hereby enjoined from violating Title I of the ADA, 42 U.S.C. § 12111 et seq.

NON-RETALIATION

6. TSG, its officers, agents, employees, successors, assigns and all persons acting in concert with it shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under the ADA, filed a charge of discrimination under the ADA, testified or participated in any manner in any investigation, proceeding, or hearing under the ADA, or asserted any rights under this Decree. TSG shall not engage in any other

form of retaliation or coercion prohibited by the ADA, 42 U.S.C. § 12203.

MONETARY RELIEF

7. Subject to the terms and conditions of this Decree, TSG shall pay \$40,000 ("Payment") to the Charging Party, with appropriate deductions made to the portion of the Payment designated as backpay. Of this Payment, \$20,000 shall be designated as backpay, which will be subject to required tax withholdings and deductions and for which TSG will issue an IRS Form W-2 to the Charging Party, and \$20,000 shall be designated as damages, for which TSG will issue an IRS Form 1099 to the Charging Party. TSG may not deduct the employer's portion of applicable payroll taxes from the Payment.

8. No later than ten (10) business days after the approval and entry of this Decree, TSG shall issue and mail to the Charging Party, by certified mail, a check for damages in the gross amount of \$20,000, and a check for backpay in the amount of \$20,000 less required tax withholdings and deductions. Contemporaneously, TSG shall submit copies of both checks to the EEOC.

POSTING OF NOTICE

9. No later than ten (10) business days after approval and entry of this Decree, TSG shall post copies of the Notice attached as Exhibit B to this Decree at each of its facilities on the bulletin boards usually used by TSG for posting notices directed to employees. The Notice shall remain posted for two (2) years from the date of entry of this Decree. TSG shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. TSG shall certify to the EEOC in writing no later than ten (10) business days after entry of the Decree that the Notice has been properly posted. TSG shall permit a representative of the EEOC to enter TSG's premises for purposes of verifying compliance with this Paragraph

at any time during normal business hours without prior notice.

RECORD KEEPING

10. During the period in which this Decree is effective, TSG shall maintain and make available for inspection and copying by the EEOC written records of every complaint or report by an employee or applicant of disability discrimination, and records of every request by an employee or applicant for accommodation of a disability. For each such complaint, report, or request, such records shall include: (i) the name of the complaining, reporting, and/or requesting person (including social security number, address, and telephone number); (ii) the date of the complaint, report, or request; (iii) a written description of what was alleged or requested; (iv) the names of any witnesses; (v) with respect to a complaint or report of disability discrimination, a written description of the resolution or outcome of the complaint or report, including a description of what actions, if any, TSG took; (vi) with respect to requests for reasonable accommodation, whether the requested accommodations were granted, granted with modification, or denied, reason(s) for denial if accommodations were denied, and the status of the employee or applicant who made the request; and (vii) if the complaint, report, or request was made in written form, a copy thereof.

11. TSG shall make available personnel within its employ whom the EEOC requests for purposes of verifying compliance with this Decree to cooperate reasonably with the EEOC and to be interviewed, provided that TSG may have a representative present during interviews of management personnel.

ADOPTION AND DISTRIBUTION OF POLICY AGAINST DISABILITY DISCRIMINATION

12. TSG shall affirm in writing its policy against disability discrimination within thirty (30) calendar days after the approval and entry of this Decree and shall maintain such

policy for the duration of this Decree. Commencing no later than sixty (60) calendar days after the approval and entry of this Decree, TSG shall distribute a copy of said Policy to each employee of TSG. Additionally:

(a) The policy shall, at a minimum, specifically prohibit all discrimination on the basis of disability against employees or applicants who are qualified individuals with disabilities.

(b) The policy will also, at a minimum, inform employees and applicants who are disabled that they are entitled to a reasonable accommodation of their disability.

(c) The policy will also, at a minimum, inform employees and applicants that TSG will take reasonable steps to reasonably accommodate individuals with disabilities, in accordance with the ADA.

(d) The policy shall, at a minimum, inform employees that complaints of disability discrimination will be investigated thoroughly and promptly and shall provide that employees who violate the policy are subject to discipline up to and including discharge.

(e) Copies of the policy against disability discrimination will be provided to employees prior to the time that they start work for TSG. If a job applicant is interviewed for a position at TSG, TSG will provide that applicant notice of and access to the policy against disability discrimination prior to the day of the interview, if practicable.

TSG shall forward a copy of the policy to the EEOC within thirty (30) calendar days after the approval and entry of this Decree. The inclusion of this Paragraph in the Decree does not represent the EEOC's or the Court's approval of TSG's anti-discrimination or accommodation policy.

TRAINING

13. During each of the next two years, all of TSG's employees, including all supervisors and managers, shall participate in a training session or sessions, conducted by a trainer paid for by TSG and approved by the EEOC, regarding the law pertaining to disability discrimination and the duty of reasonable accommodation of disabled employees and applicants. A registry of attendance shall be maintained for each training session. The first such training shall occur no later than ninety (90) calendar days after the entry of this Decree. The second such training shall occur within thirty (30) calendar days of the date eighteen (18) months after the entry of this Decree.

14. TSG shall obtain the EEOC's approval of its proposed trainer prior to the commencement of the training sessions described in Paragraph 13. The EEOC shall not unreasonably withhold its approval. TSG shall submit the name, address, telephone number, resume and training proposal of the proposed trainer to the EEOC at least fifteen (15) business days prior to the proposed date of each training. The EEOC shall have ten (10) business days from the date of receipt of the information described above to accept or reject the proposed trainer. In the event the EEOC does not approve TSG's designated trainer, TSG shall have ten (10) business days to identify an alternate trainer. The EEOC shall have ten (10) business days from the date of receipt of the information described above to accept or reject the alternate trainer. If the parties cannot through this process agree on a trainer, then they may seek the Court's assistance under Paragraph 17.

15. TSG shall certify to the EEOC in writing no later than five (5) business days after each training session described in Paragraph 13 that the training required by this Decree has taken place and that the required personnel have attended. Every certification of training

described in this Paragraph shall include: (i) the date, location and duration of the training; (ii) a copy of the registry of attendance, which shall include the name and position of each person trained; and (iii) copies of any and all pamphlets, brochures, outlines or other written materials provided to the personnel attending the training session(s).

REPORTING

16. TSG shall furnish to the EEOC the following written reports semi-annually ("Semi-Annual Report") for a period of two (2) years following the approval and entry of this Decree. The first Semi-Annual Report shall be due six (6) months after entry of the Decree. The final Semi-Annual Report shall be due one month prior to the expiration of the Decree. Each such Semi-Annual Report shall contain:

(a) copies of all records described in Paragraph 10 for each complaint or report of disability discrimination and each request for accommodation of a disability that was received by TSG during the six (6) month period preceding the Semi-Annual Report, or a certification by TSG that no such complaints, reports, or requests were received during that period; and

(b) a certification by TSG that the Notice required to be posted in Paragraph 9, above, remained posted during the entire six (6) month period preceding the Semi-Annual Report.

DISPUTE RESOLUTION

17. If during the term of this Decree either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten

(10) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

18. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following the approval and entry of the Decree, provided, however, that if, at the end of the two (2) year period, any disputes under Paragraph 17, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

19. Each party to this Decree shall bear its own expenses, attorney's fees, and costs.

20. The terms of this Decree are and shall be binding on the present and future directors, officers, managers, agents, successors, and assigns of TSG. During the term of this Decree, TSG shall provide prior written notice to any potential purchaser of TSG's business, or a potential purchaser of all or a substantial portion of TSG's assets, and to any other potential successor, of: (i) this action by the EEOC against TSG; (ii) the allegations raised in the Complaint filed in this action; and (iii) the existence and contents of this Decree.

21. When this Decree requires the submission by TSG of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: Transportation Solutions Group Consent Decree Compliance, Justin Mulaire, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661. When this Decree requires submission by the EEOC of materials to TSG, they shall be mailed to: Victoria L. Donati, Neal, Gerber & Eisenberg LLP, 2 North LaSalle Street, Suite 2200, Chicago, Illinois 60602.

ENTERED AND APPROVED FOR:

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| <p>For the UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION</p> <p>JAMES LEE Deputy General Counsel</p> <p>GWENDOLYN YOUNG REAMS Associate General Counsel</p> <p>UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 500 West Madison Street, Suite 2800 Chicago, Illinois 60661 312-353-7722</p> <p><u>s/ John C. Hendrickson</u> JOHN C. HENDRICKSON Regional Attorney</p> <p><u>s/ Diane I. Smason</u> DIANE I. SMASON Supervisory Trial Attorney</p> <p><u>s/ Justin Mulaire</u> JUSTIN MULAIRE Trial Attorney</p> <p><u>s/ Jeanne B. Szromba</u> JEANNE B. SZROMBA Trial Attorney</p> <p>DATE: <u>April 13, 2006</u></p> | <p>For TRANSPORTATION SOLUTIONS GROUP, L.L.C.,</p> <p><u>s/ Cary E. Donham</u> CARY E. DONHAM Shelsky & Froelich Ltd. 111 East Wacker Drive, Suite 2800 Chicago, Illinois 60601 312-527-4000</p> <p>DATE: <u>April 13, 2006</u></p> |
|---|---|

DATE: 4/25/06

Blanche M. Manning

ENTER:
The Honorable Blanch M. Manning
United States District Judge

EXHIBIT A

RELEASE AGREEMENT

In consideration of \$40,000 to be paid to me by Transportation Solutions Group, L.L.P., in connection with the resolution of EEOC v. Transportation Solutions Group, L.L.P. No. 05 C 5043 (N.D.Ill.), I waive my right to recover for any claims of employment discrimination arising under Title I of the Americans with Disabilities Act that I had against Transportation Solutions Group, L.L.P., prior to the date of this release and that were included in the claims in EEOC's complaint in EEOC v. Transportation Solutions Group, L.L.P.

Signature: _____
 Roger L. Brandt, Jr.

Date: _____

EXHIBIT B

NOTICE TO TRANSPORTATION SOLUTIONS GROUP EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in the Northern District of Illinois in EEOC v. Transportation Solutions Group, L.L.P., No. 05 C 5043, resolving a lawsuit filed by the United States Equal Employment Opportunity Commission ("EEOC") against Transportation Solutions Group ("TSG").

In its suit, the EEOC alleged that TSG violated the Americans with Disabilities Act ("ADA") by discriminating against a qualified applicant by refusing to interview and hire him on the basis of his disability and by failing to accommodate his disability. In its answer to the suit, TSG denied these allegations. Neither party admitted any of the claims or defenses raised by the other party in this action.

To resolve the case, TSG and the EEOC have entered into a Consent Decree which provides, among other things, that:

- 1) TSG will make a monetary payment to the individual who filed the charge involved in this lawsuit.
- 2) TSG will not discriminate against any qualified employee or applicant on the basis of disability and will provide reasonable accommodations to qualified disabled employees and applicants.
- 3) TSG will not retaliate against any person because he or she makes or files a complaint of disability discrimination or requests accommodation of a disability, opposes any practice prohibited by the ADA, participates in any ADA proceeding, or asserts any rights under the Consent Decree;
- 4) TSG will maintain and distribute to all employees a policy prohibiting disability discrimination and will train all of its employees, including managers and supervisors, regarding disability discrimination and its policy;

The EEOC is the federal agency that enforces the nation's laws prohibiting discrimination in employment based on race, color, sex (including sexual harassment and pregnancy), religion, national origin, age, disability, and retaliation. Further information about the EEOC and these laws is available on the EEOC's web site at www.eeoc.gov. If you believe you have been subjected to unlawful discrimination, you may contact the EEOC by phone at 312-353-8195, or by TTY at 312-353-2421. The EEOC charges no fees.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for two years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: Transportation Solutions Group Consent Decree, EEOC, 500 West Madison Street, Suite 2800, Chicago, IL 60661.

Date

Judge Blanche M. Manning
United States District Court