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Equal Employment Opportunity Commission, Plaintiff, and Suzanne Yorgensen, Plaintiff Intervenor v. Hollywood Entertainment Corporation, Defendant.

Judge B. Lynn Winmill

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Equal Employment Opportunity Commission, Plaintiff, and Suzanne Yorgensen, Plaintiff Intervenor v. Hollywood Entertainment Corporation, Defendant.

Keywords

Equal Employment Opportunity Commission, Suzanne Yorgensen, Hollywood Entertainment Corporation, CV-04-478-E-BLW, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Promotion, Termination, Training / Advancement, Service, Employment Law, ADA

1 WILLIAM R. TAMAYO, REGIONAL ATTORNEY
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2 SAN FRANCISCO DISTRICT OFFICE
350 THE EMBARCADERO, SUITE 500
3 SAN FRANCISCO, CA 94105-1260
TEL: (415) 625-5600
4

KATHRYN OLSON, SUPERVISORY TRIAL ATTORNEY
5 CARMEN FLORES, SENIOR TRIAL ATTORNEY
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
6 909 FIRST AVENUE, SUITE 400
SEATTLE, WASHINGTON 98104
7 TELEPHONE: (206) 220-6920
8

9
10 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
11

12 EQUAL EMPLOYMENT OPPORTUNITY)
13 COMMISSION,) Case No. CV-04-478-E-BLW
14)
15) **CONSENT DECREE AND**
and Plaintiff,) **ORDER OF DISMISSAL**
16)
17 SUZANNE YORGENSEN,)
18)
19 Plaintiff Intervenor)
20)
21 v.)
22)
23 HOLLYWOOD ENTERTAINMENT)
CORPORATION,)
24)
25 Defendant.)

26 I. INTRODUCTION

27 1. This action originated with a charge of discrimination filed by Suzanne Yorgensen
28 with the Idaho Human Rights Commission (“IHRC”), alleging violations of Title I of the
29

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Seattle Field Office
909 First Avenue, Suite 400
Seattle, Washington 98104-1061
Telephone: (206) 220-6883
Facsimile: (206) 220-6911
TDD: (206) 220-6882

1 Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 (“ADA”).

2 2. The charge was initially investigated by IHRC and then transferred to the Equal
3 Employment Opportunity Commission (“EEOC”) which issued a Determination finding
4 reasonable cause to believe that Hollywood Entertainment Corporation (“Hollywood
5 Entertainment” or “Defendant”) discriminated against Suzanne Yorgensen, a qualified individual
6 with a disability, when it failed to provide a reasonable accommodation to her, failed to promote
7 her and then constructively discharged her because of her disability.

8 3. The EEOC filed this lawsuit in the United States District Court for the District of
9 Idaho on September 21, 2004. EEOC alleges that Hollywood Entertainment violated the ADA
10 by subjecting Ms. Yorgensen to unlawful discriminatory practices.

11 4. The Commission and Hollywood Entertainment want to fully and finally conclude all
12 claims arising out of the above charge without the expenditure of further resources and expenses
13 in contested litigation. They agree that entry of this Consent Decree will be in the interest of the
14 parties and will further the objectives of the anti-discrimination provisions under the ADA.

15 II. JURISDICTION AND VENUE

16 5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343
17 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans
18 with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12117(a), which incorporates by reference
19 Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1)
20 and (3) (“Title VII”), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §
21 1981a. The employment practices alleged to be unlawful were committed within the jurisdiction
22 of the United States District Court for the District of Idaho.

23 III. NON-ADMISSION OF LIABILITY

24 6. This Consent Decree is not an adjudication or finding on the merits of this case, shall
25 not be admissible in any other action except one to enforce the provisions of this Consent Decree

1 and shall not be construed as an admission by Hollywood Entertainment of a violation of the
2 ADA.

3 IV. PURPOSE OF THE AGREEMENT

4 7. The parties have entered into this Consent Decree in order to achieve the following
5 purposes:

- 6 a. To assure the implementation of policies and procedures which prohibit
7 Hollywood Entertainment from discriminating and retaliating against employees
8 because of their disability.
- 9 b. To assure that Hollywood Entertainment implements and promotes an anti-
10 discrimination policy and complaint procedure to effectively prevent
11 discrimination and to address and correct such alleged discrimination.
- 12 c. To assure that Suzanne Yorgensen is compensated for alleged losses suffered
13 in connection with her employment by Hollywood Entertainment.
- 14 d. To avoid time, expense and uncertainty of further litigation.

15 V. GENERAL PROVISIONS

16 8. This Consent Decree is intended to and does effectuate the full, final, and complete
17 resolution of all allegations of unlawful employment practices and discrimination encompassed
18 by the original discrimination charge, and the EEOC Complaint filed in *EEOC v. Hollywood*
19 *Entertainment Corp.*, Civil No. 04-478-E-BLW.

20 9. This Consent Decree constitutes the complete understanding between the EEOC and
21 Hollywood Entertainment with respect to matters herein. It is expressly agreed that if EEOC
22 concludes that Hollywood Entertainment has failed to comply with this Consent Decree, the
23 Commission may bring an action in the United States District Court for the District of Idaho to
24 enforce the Consent Decree as provided in paragraph 21 below.
25

1 VI. MONETARY RELIEF

2 10. Hollywood Entertainment agrees to pay Suzanne Yorgensen \$70,000.00,
3 representing all monetary damages, attorney's fees, expenses and costs sought through the
4 EEOC's Complaint and Ms. Yorgensen's state court Complaint. Payment of the settlement
5 amount will be handled between Ms. Yorgensen's private counsel and counsel for Hollywood
6 entertainment.

7 VII. INJUNCTIVE RELIEF

8 A. Compliance with the ADA

9 11. Hollywood Entertainment reaffirms its commitment to comply with the ADA and
10 other federal anti-discrimination statutes. In furtherance of the commitment, Hollywood
11 Entertainment will comply with the affirmative obligations of this Consent Decree. Hollywood
12 Entertainment agrees that it will not discriminate against any employee because of disability in
13 any employment decision.

14 12. Hollywood Entertainment will not retaliate against any employee for making a
15 charge of discrimination or for testifying, assisting, or participating in any investigation,
16 proceeding, or hearing associated with this lawsuit.

17 13. In recognition of its obligations under the ADA, Hollywood Entertainment will
18 institute the policies and practices set forth below.

19 B. Policy Against Discrimination

20 14. Hollywood Entertainment shall continue to maintain its current anti-discrimination
21 policies, procedures, and training for employees, supervisors, and management personnel and
22 will provide equal employment opportunities for all employees. Hollywood Entertainment will
23 work with its District Managers responsible for the Ammon, Idaho store and the Store Directors
24 at the Ammon, Idaho store in order to prevent discrimination in employment under the ADA and
25 so they understand the employer's obligation to engage in the interactive process, and to ensure

1 that they understand its Equal Employment Opportunity policies and how those policies define
2 and identify what constitutes discrimination. A written copy of Hollywood Entertainment's EEO
3 policy, including any policy prohibiting disability based discrimination, will be distributed to all
4 its employees employed at the Ammon, Idaho store. This policy will include information on the
5 alternative steps employees can take to request disability accommodation.

6 C. Training

7 15. Hollywood Entertainment will develop and present to the District Manager
8 responsible for the Ammon, Idaho Store and the Store Director at the Ammon, Idaho store ADA
9 training each year during the duration of this Consent Decree. The cost of the training shall be
10 borne by the company.

11 16. The training will focus on conducting individualized assessments of employees with
12 disabilities and handling requests for reasonable accommodation. The first training shall take
13 place within in ninety (90) days after entry of this Consent Decree.

14 17. Hollywood Entertainment will retain a record of the training programs, including
15 dates held and persons who attend.

16 D. Reporting

17 18. One year following the entry of this decree and every year thereafter for the duration
18 of the Decree, Hollywood Entertainment will report to the EEOC Seattle District Office. The
19 report will contain the following information:

20 a. Certification of the completion of the training (referenced in ¶ 16) each year, with a
21 list of attendees;

22 b. Certification that its EEO policy has been distributed to all Ammon, Idaho store
23 employees;

24 c. A list of any changes, modifications, revocations or revisions to its EEO policies and
25 procedures which concern or affect the subjects of discrimination based on disability and

1 reasonable accommodation; and

2 d. A summary of all complaints of disability based employment discrimination, if any,
3 which have been lodged by any applicant or current or former employee at the Ammon, Idaho
4 store internally, through a grievance system, or with any governmental agency, and the
5 resolution of each complaint.

6 E. Records

7 19. Hollywood Entertainment will remove any information related to Suzanne
8 Yorgensen's resignation, discrimination charge or lawsuit in her personnel file and will not add
9 any information or references regarding any charge of discrimination or this lawsuit to Ms.
10 Yorgensen's personnel File.

11 F. Posting of Notice

12 20. Within sixty (60) days after entry of this Consent Decree, Hollywood Entertainment
13 will post a copy of the Notice of Settlement (Attachment 1) at the Ammon, Idaho store in all
14 areas at this location where the Defendant posts information on employment policies and other
15 pertinent employee information, and will maintain this posting for the life of the Consent Decree.

16 VIII. ENFORCEMENT

17 21. If the EEOC concludes that Hollywood Entertainment has breached this agreement,
18 it may bring an action in the United States District Court for the District of Idaho to enforce this
19 Consent Decree. Before bringing an action for breach of the decree, the EEOC shall first give
20 Hollywood Entertainment ten (10) days notice of the perceived breach. The EEOC and
21 Hollywood Entertainment shall use that 10-day period for good faith efforts to resolve the
22 matter.

23 IX. RETENTION OF JURISDICTION

24 22. The United States District Court for the District of Idaho shall retain jurisdiction
25 over this matter for the duration of the Consent Decree.

1 X. DURATION AND TERMINATION

2 23. This decree shall be in effect (2) two years, commencing with the date the decree is
3 filed. If the EEOC petitions the Court for breach of agreement, and the Court finds Hollywood
4 Entertainment to be in violation of the terms of the Consent Decree, the Court may extend this
5 Consent Decree for a reasonable period of time.

6 XI. CONCLUSION

7 24. The provisions of this Consent Decree are not binding on the parties until an
8 authorized representative of each party signs and the Court enters the Consent Decree.

9 The forgoing terms and conditions are agreed upon and stipulated to the 17th day of
10 February, 2006. (Docket No. 30).

11
12 Respectfully submitted,

13 WILLIAM A. TAMAYO
14 Regional Attorney
15 U.S. EQUAL EMPLOYMENT
16 OPPORTUNITY COMMISSION
17 SAN FRANCISCO DISTRICT OFFICE
18 350 THE EMBARCADERO, SUITE 500
19 SAN FRANCISCO, CA 94105-1260
20 TEL: (415) 625-5600

JAMES L. LEE
Deputy General Counsel

17 KATHRYN OLSON
18 Supervisory Trial Attorney

GWENDOLYN YOUNG REAMS
Associate General Counsel

19 CARMEN FLORES
20 Senior Trial Attorney

21 BY: /s/ William A. Tamayo
22 EQUAL EMPLOYMENT OPPORTUNITY
23 COMMISSION
24 Seattle Field Office
25 909 First Avenue, Suite 400
Seattle, Washington 98104
Telephone (206) 220-6920

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of the General Counsel
1801 "L" Street NW
Washington, D.C. 20507

Attorneys for Plaintiff EEOC

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25

BY: /s/ Jeff A. Lee
JEFF A. LEE
MAYNARD COOPER & GALE, P.C.
2400 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, Alabama 35203
(205) 254-1000

Attorneys for Defendant

1
2
3
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ORDER APPROVING CONSENT DECREE AND DISMISSING ACTION

The Court having considered the foregoing stipulated agreement of the parties, HEREBY ORDERS THAT the foregoing settlement agreement is approved as the final decree of this Court in full settlement action. This lawsuit is hereby dismissed with prejudice and without cost or attorneys' fees to any party. The Court retains jurisdiction of this matter solely for purposes of enforcing the Consent Decree approved herein.

DATED: **March 10, 2006**



B. Lynn Winmill
B. LYNN WINMILL
Chief Judge
United States District Court