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EEOC v. Home Improvement Financial Services

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EEOC v. Home Improvement Financial Services

Keywords

EEOC, Home Improvement Financial Services, Northern District of Georgia, Georgia, 1:05-cv-01731-JFK, Financial Services, Race, African American, Hostile Work Environment, Retaliation, Constructive Discharge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

CIVIL ACTION FILE NO.
1:05-CV-1731-JFK

HOME IMPROVEMENT)
FINANCIAL SERVICES, INC.,)

Defendant.)

CONSENT DECREE

This action was instituted on June 30, 2005, by the Equal Employment Opportunity Commission (hereinafter the “Commission” or “EEOC”) against Home Improvement Financial Services, Inc., (hereinafter the “Defendant” or “Company”) pursuant to Title VII of the Civil Rights Act of 1991. On August 11, 2005, the EEOC filed an Amended Complaint. In both its original Complaint and the Amended Complaint, the EEOC alleged that Defendant harassed black employees because of their race, and discharged the Charging Party, Rod Freeman (hereinafter “Mr. Freeman”), because he complained about the racial harassment. In both its original complaint and the Amended Complaint, the EEOC sought make whole relief including, but not limited to, back pay, damages, prejudgment interest, as well as injunctive and other affirmative relief.

On August 29, 2005, Defendant filed its Answer to the EEOC's Amended Complaint denying that it had engaged in any illegal conduct in any manner against its black employees or had discharged Mr. Freeman in retaliation for his alleged complaints of racial harassment. It further denied that it owed any damages or other relief to the EEOC, Rod Freeman, or any other individuals.

The EEOC and Defendant desire to avoid the additional expenses, delay, and uncertainty which would result from the continuance of this litigation and further desire to formulate a plan to be embodied in an agreement which is hereinafter referred to as the "Consent Decree".

Now, therefore, the parties to this action agree as follows:

I. JURISDICTION AND VENUE

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized pursuant to Section 706(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The employment practices alleged to be unlawful in the original Complaint and the Amended Complaint filed herein occurred within the jurisdiction of the Northern District of Georgia.

II. DISCLAIMER OF VIOLATION

This Consent Decree, being entered with the consent of the Commission and Defendant, shall not constitute an adjudication or finding on the merits of this case

and shall not be construed as an admission of liability by Defendant or as a waiver by the Commission of any contentions of discrimination.

III. TITLE VII OBLIGATIONS

Defendant and its subsidiaries, officers, agents, servants, employees, successors in interest and all persons acting or claiming to act on their behalf and interest will continue their policy and practice of not engaging in employment practices that are in violation of Title VII, including racial harassment and retaliatory discharge.

IV. NON-RETALIATION PROVISION

Defendant shall not retaliate against any person because that person is a beneficiary of the Consent Decree, or has provided information, assistance, or participated in any other manner in any investigation or proceeding relating to this lawsuit, the underlying charge of discrimination, or the Consent Decree.

V. REFERENCES

Defendant agrees that if it receives inquiries from persons or prospective employers seeking a reference or other employment related information regarding Mr. Freeman, it shall provide no more than a neutral reference, citing the dates of his employment and the position(s) that he held with Defendant. Further, Defendant will make no mention to persons or prospective employers seeking a reference of the fact that Mr. Freeman filed a charge of discrimination, that the

instant lawsuit was filed, or that Mr. Freeman participated in the charge process, or was a claimant in the instant lawsuit.

**VI. DISCIPLINARY POLICY ON RACIAL HARASSMENT
AND RETALIATION**

Defendant agrees to continue to maintain a racial harassment policy and procedure applicable to all employees, particularly those who perform in a managerial, supervisory or lead capacity, and to require all employees, including management and lead employees to sign a stipulation acknowledging that each has read and understands the racial harassment policy and procedure.

Defendant agrees to continue to issue a document to all employees, including management officials, that clarifies how complaints regarding racial harassment should be made to Defendant, including the identity and/or job title of the official(s) to whose attention the complaint should be brought in the supervisory chain of command. Employees shall continue to be advised that such complaints will be promptly investigated and effectively resolved by Defendant. Defendant further agrees to advise employees that they will not be retaliated against for complaining about racial harassment. [See EEOC Compliance Manual, Section 615, Para 3116, (“EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors”) for guidance in this regard.]

Defendant agrees to continue its disciplinary policy with penalties up to and including discharge for employees who are found to have engaged in racial harassment or retaliation in violation of Defendant's policy. Defendant further agrees that employees who commit acts of racial harassment shall be admonished in writing and disciplined in accordance with the policy.

The above referenced racial harassment policy and procedure shall be revised and re-instituted within ninety (90) days of the entry of this Consent Decree. On or before that date, Defendant shall certify the implementation of said revised policy and procedure to EEOC's Regional Attorney in the EEOC Atlanta District Office whose address is 100 Alabama Street, Suite 4R30, Atlanta, Georgia 30303.

VII. CHARGING PARTY'S INDIVIDUAL RELIEF

The Defendant, in settlement of all claims brought in this lawsuit, shall provide Mr. Freeman a total of \$5,000.00 ("Five Thousand dollars and zero cents") within two weeks of the entry of this Consent Decree by the Court. This payment by Defendant to Mr. Freeman is made to avoid the additional expenses, delay, and uncertainty which would result from the continuation of this litigation. A copy of the above-referenced check will be mailed within five working days of issuance to

the EEOC's Attorney, S. Robert Royal, in the Atlanta District Office, whose address is 100 Alabama Street, Suite 4R30, Atlanta Georgia 30303.

VIII. COMPLIANCE OFFICIAL

The Defendant has designated John R. Crenshaw, Esq., 300 Galleria Parkway, N.W., Suite 1000, Atlanta, Georgia 30339 as the Defendant's Compliance Official who shall be assisting the Defendant in complying with the Consent Decree. The Compliance Official is to be responsible for coordinating and overseeing the Defendant's compliance with the specific terms of the Consent Decree.

IX. PROCEDURE FOR ENFORCING COMPLIANCE

The Commission will attempt to resolve any dispute regarding the enforcement of this Consent Decree by consultation with Defendant before seeking enforcement through the judicial process. The Commission will notify, by first class mail and facsimile, [Defendant's Compliance Official or other designee; mailing address] if it has any reason to believe that any action or omission by the Defendant is in violation of the Consent Decree.

The Defendant shall have thirty (30) days after the receipt of such notification to cure any such alleged deficiency, and to notify the Commission, by

written report addressed to the Regional Attorney of the EEOC's Atlanta District Office, of the measures taken to cure the alleged deficiencies. If upon receipt of the Defendant's report, the Commission concludes that the deficiency has not been satisfactorily cured by the Defendant, the Commission shall seek to resolve the alleged deficiency through good faith negotiations. If the alleged deficiency is not resolved within thirty (30) days after the initiation of further good faith negotiations, including a conference with the Magistrate Judge if necessary, then the Commission may seek enforcement of this Consent Decree through the judicial process.

Notwithstanding any of the foregoing, nothing in this agreement shall be deemed to prohibit any matter which occurred during the term of this Consent Decree, and which constitutes a dispute as contemplated by this Section VIII, from being fully and completely processed in the manner described in this Section VIII, even though the dispute is not resolved within thirty (30) days of the termination of this Consent Decree.

X. TERMS OF DECREE - PERIOD OF JURISDICTION

This Consent Decree shall continue to be effective and binding upon the parties to this action for a period of twelve (12) calendar months immediately

following the entry of the Consent Decree, provided that all remedial benefits required hereby have been received or offered prior to its expiration and certification are submitted at least thirty (30) days prior to the expiration date of the Consent Decree. If the remedial benefits are not received or offered as agreed in the Consent Decree, the Consent Decree will be automatically extended until these provisions are completed.

Upon the Court's execution and entry of this Consent Decree, this case shall be dismissed with prejudice. However, this Court shall retain jurisdiction over this action for the purposes of clarifying and enforcing this Consent Decree, and for any other appropriate or equitable purposes, for twelve (12) calendar months from the date of entry of this Consent Decree, unless the Court acts, or the Commission has, prior to the expiration of said twelve (12) month period, moved to enforce compliance with the Consent Decree. If this Court acts, or the Commission has moved to enforce compliance with this Consent Decree within this period, this Court shall retain jurisdiction of this action until all issues relating to all such motions which are made during the twelve (12) month period have been resolved.

XI. OTHER ACTIONS

The Commission shall not commence or prosecute against the Defendant any action or other proceeding based upon claims, demands, causes of action, obligations, damages or liabilities which arose out of Charging Party's claim that he, and other similarly situated black employees, were racially harassed by Defendant, or that he was discharged for engaging in protected activity in violation of Title VII, as embodied in EEOC Charge Number 110-2004-32739, which was filed with, and investigated by, the EEOC's Atlanta District Office. This Consent Decree in no way affects the Commission's right to process any pending or future charges that may be filed against the Defendant in accordance with standard Commission procedures, and to commence civil actions pursuant to pursuant to Section 706(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Nothing herein shall preclude the Commission from bringing an action to enforce the provisions of this Consent Decree.

XII. COSTS AND ATTORNEYS' FEES

Each party shall bear its own costs and attorneys' fees for this action. The parties hereto and the undersigned attorneys of record for the parties hereby

consent to the entry of the foregoing Consent Decree.

BY CONSENT:

For Plaintiff:

/s/ Gerald Kiel

Gerald Kiel

Georgia Bar No. 417300

Acting Regional Attorney

S. Robert Royal

Georgia Bar No. 61750

Attorney for Plaintiff

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ATLANTA DISTRICT OFFICE - LEGAL UNIT

100 Alabama Street, SW

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For Defendant:

/s/ John R. Crenshaw

John R. Crenshaw, Esq.

300 Galleria Parkway, N.W.

Suite 1000

Atlanta, Georgia 30339-5917

APPROVED, DONE, and SIGNED this 31st day of March, 2006.



JANET F. KING
UNITED STATES MAGISTRATE JUDGE