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EEOC v. Guardsmark

Keywords

EEOC, Equal Employment Opportunity Commission, Guardsmark, 4:09-cv-03062, Other, Sex, Female, Disparate Treatment, Assignment, Subjective Decision Making

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	§	
COMMISSION,	§	
Plaintiff,	§	
ANEDA BIRKNER	§	
Plaintiff-Intervenor	§	CIVIL ACTION NO. 4:09-cv-03062
v.	§	
GUARDSMARK, LLC,	§	
Defendant.	§	<u>JURY TRIAL</u>

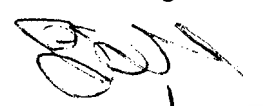
CONSENT DECREE

The Equal Employment Opportunity Commission (“Commission” or “EEOC”) alleges that Defendant Guardsmark, LLC (“Guardsmark”) discriminated against Aneda Birkner, Danielle Jones and other female security officers, in violation of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”). The Commission alleges that Defendant discriminated against these women on the basis of sex by bowing to client demands for male security officers, removing the women from client posts, and reassigning them to inconvenient, lesser paying posts. Defendant Guardsmark LLC has denied all of the EEOC’s allegations and it has asserted that the women were removed for job performance reasons.

The parties stipulate to the jurisdiction of the Court and waive a hearing and the entry of findings of fact and conclusions of law.

It is therefore ORDERED that:

1. This Consent Decree is entered in full and complete settlement of any and all claims arising out of or contained in EEOC’s Original Complaint in this lawsuit, Civil Action No. 4:09-cv-03062, and in EEOC Charge Nos. 460-2007-04956 and 460-2007-03536 [as well as any claims that could be construed to have been alleged against Guardsmark in EEOC Charge


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No. 460-2007-03549], except that Ms. Aneda Birkner's claims as stated in her Complaint in Intervention and any amendments thereto are expressly not resolved by this Consent Decree. Further, EEOC shall not use Charge Nos. 460-2007-03536, 460-2007-03549, or Charge No. 460-2007-04956 as the jurisdictional basis for any further claims against Guardsmark, and class members Danielle Jones, Dreama Chaney and Corisha Bass have hereby resolved any Title VII claims they have or may have had against Guardsmark through the date of entry of this Decree.

2. Defendant shall not engage in any employment practice at its "Greater Houston" branch which violates Title VII by unlawfully discriminating against any individual on the basis of sex.

3. Defendant at its "Greater Houston" branch shall not retaliate against any individual who opposes any practice made an unlawful employment practice by Title VII, or against any individual who has provided testimony or evidence related to this lawsuit or to the Charges of Discrimination upon which this lawsuit was based. Should classmember Jones, Chaney, or Bass re-apply with Guardsmark and not be hired, Guardsmark's not re-employing any of these women shall not, in the absence of other evidence of retaliatory motive, by itself establish a violation of this paragraph.

4. Within fifteen (15) calendar days after a final settlement, a non-discrimination notice will be posted at Defendant's "Greater Houston" branch office. The notice shall remain posted at this location for a period of two (2) years after the entry of this Consent Decree. A copy of this notice is attached hereto as Exhibit "A."

5. Using either an attorney or an independent, experienced training person or group, Defendant will provide annual training programs to its managerial and supervisory employees of Defendant's Greater Houston branch office on employment discrimination laws. The training

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shall include instruction on the investigation of employee complaints of any type of unlawful discrimination, including sex based discrimination. The training program shall be completed not later than six (6) months after the entry of the consent decree. At least thirty (30) calendar days prior to each training program, Defendant shall submit to the EEOC (a) the name of the program provider, (b) the curriculum outline indicating the information to be addressed during the program, and (c) copies of all agendas and materials to be distributed at the training. Within ten (10) calendar days after receiving this notification of the training and information about the training, the EEOC will notify Defendant of any objections and in the absence thereof, all objections to the training provider, curriculum, agenda and materials are waived. The person who shall administer the training will be either attorney(s) or independent, experienced training person(s) possessing at least five years of experience in labor and employment law. Within twenty (20) calendar days after completing the training sessions, Defendant shall provide the EEOC a sworn statement attesting to (a) the date on which the training was completed, (b) verification of attendance, (c) verification that all topics in the training presentation outline were covered, and (d) copies of forms -- signed by all attending managerial and supervisory employees at the conclusion of the training, acknowledging their responsibility to protect employees from discrimination.

6. The training described in the preceding paragraph will place emphasis on the fact that acceding to a client's preference for either sex, male or female, is a violation of Title VII as would be preferences based on race and/or national origin. The issue of impermissible client preference will be illustrated by scenarios that underscore the difference between unlawful customer preference and bona fide occupational qualifications. Moreover, the training and accompanying materials will underscore that any human resources staffer, supervisor or manager


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who participates in an effort to assist anyone, client or otherwise, in giving impermissible preference to either sex is subject to immediate discipline, which may include termination. At the training, the trainer will advise that a supervisor's or human resource manager's failure to report a reasonable suspicion that a customer or Guardsmark itself is giving preference to male Guardsmark workers over female counterparts may also warrant discipline.

7. No later than twenty (20) days after the entry of this Decree, Defendant shall distribute to all its employees at its "Greater Houston" branch, including all security officers, a copy of Exhibit "A" to this Decree.

8. Defendant will provide a job reference signed by the Houston Branch "Manager in Charge" to Danielle Jones, Dreama Chaney, and Corisha Bass. A copy of this reference is attached as Exhibit "B." Defendant shall send this letter to the women with their respective payment checks. Defendant also shall mail copies of the references to the EEOC.

9. By entering into this consent decree, Defendant shall not in any way be construed or interpreted as admitting liability or wrongdoing by Defendant, and any such liability or wrongdoing is expressly denied by Defendant.

10. A class settlement fund of FIFTY-TWO THOUSAND FIVE HUNDRED (\$52,500.00) DOLLARS will be established to compensate Danielle Jones, Dreama Chaney and Corisha Bass for having experienced alleged sex discrimination. EEOC will have the sole discretion to determine how to distribute the class settlement fund. Under no circumstances will any portion of that settlement fund revert to Defendant. Within five (5) calendar days of the entry of this Consent Decree, EEOC will provide to Defendant fully executed releases of Mses. Jones, Chaney and Bass, a list of the respective amounts to be received by each claimant and the respective mailing addresses to which the payments must be made (hereinafter the

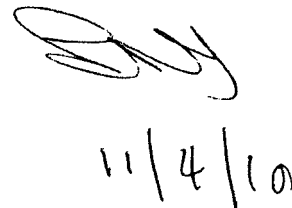
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“information”). Payments shall be made within fifteen (15) days of the date of the EEOC’s letter transmitting the information.

11. As a precondition to receiving payment, Ms. Jones, Ms. Bass and Ms. Chaney shall sign a release in the form of Exhibit “C.” Defendant shall send its payment checks directly to each class member, at addresses which the Commission will supply Defendant. Defendant shall mail the settlement checks via certified mail, return receipt requested. Defendant also shall mail a copy of the checks to the Commission at the following address: Equal Employment Opportunity Commission, attn: Timothy M. Bowne, 1919 Smith Street, 7th Floor, Houston, Texas 77002.

12. Every twelve (12) months, the designated Guardsmark manager shall provide the Commission with a report that sets forth all of its activities within the previous six months directed to the satisfaction of any of the provisions of this Decree. That compliance report shall also explain why any provisions have not been satisfied and what steps will be taken to assure compliance.

13. This Decree shall remain in effect for two (2) years from the date of entry, at which time it will automatically expire without further action by the parties, unless it has been previously extended by the Court. The Original Complaint only of the EEOC is hereby dismissed subject to the terms and conditions of this Consent Decree. During the period that this Decree shall remain in effect, the Court shall retain jurisdiction to assure compliance with this Decree and to permit entry of such further orders or modifications as may be appropriate. The EEOC will send written notice to Defendant of any alleged breach, and provide Defendant at least ten (10) calendar days for the opportunity to investigate and cure such breach. Should the parties be unable to resolve such a dispute after good faith attempts, and upon EEOC’s



Handwritten signature and date: 11/4/10

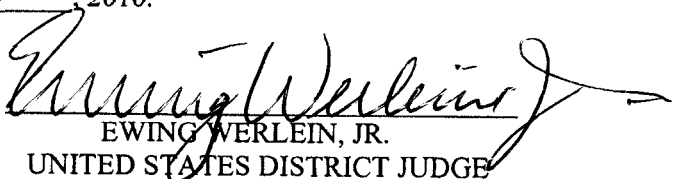
assessment that Defendant has not cured any alleged breach, the EEOC is specifically authorized to seek Court-ordered enforcement of this Decree in the event of a breach of any of the provisions herein. The agreements and requirements set forth under this Consent Decree shall end at the end of the term of the Consent Decree, unless the Consent Decree expressly provides the requirement ends at a different time.

14. EEOC and Guardsmark shall each bear its own costs and attorney's fees.

15. When this Consent Decree requires notice to the EEOC, such notice shall be sent by facsimile, email, or certified mail, return receipt requested to Equal Employment Opportunity Commission, attn: Claudia Molina-Antanaitis, 1919 Smith Street, 7th Floor, Houston, Texas 77002; Telephone: (713) 209-3040; Facsimile: (713) 209-3402. This address for notice may be changed in writing by providing written Notice of Change of Address to Defendant.

16. When this Consent Decree requires notice to Defendant, such notice shall be sent by facsimile or certified mail, return receipt requested to Guardsmark, LLC attn: General Counsel, 22 S. Second Street, Memphis, Tennessee 38103 Telephone: (901) 522-6000 Facsimile: (901) 522-7911 with a copy to Edward R. Young, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., First Tennessee Building, 165 Madison Avenue, Suite 2000, Memphis, Tennessee, 38103; Telephone: (901) 577-2341; Facsimile (901) 577-0879. This address for notice may be changed in writing by providing written Notice of Change of Address to the EEOC.

Signed this 5TH day of November, 2010.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE


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Exhibit "A"

NOTICE PURSUANT TO CONSENT DECREE

1. Federal law requires that there be no discrimination against any employee or applicant for employment because of the applicant's or employee's sex with respect to hiring, compensation, assignments, promotions, or other terms, conditions or privileges of employment. Federal law also requires that there be no retaliation against any individual for making a complaint of potential sex discrimination.
2. Guardsmark supports and will comply with such Federal law in all respects and will not retaliate against employees who have exercised their rights under the law by filing charges with the Equal Employment Opportunity Commission (EEOC), providing information to the EEOC, and/or actively participating with such charge or process.
3. Any applicant or employee who wishes to complain of illegal discrimination shall first report such complaint to the Manger-in-Charge and/or Guardsmark's Chief Diversity Officer, Stephen I. Kasloff, O. Franklin Lowie, Donna D. Smith, or Doris J. Whitson at 1-800 238-5878, a toll-free number available from 9:00 am to 5:00 pm Central Time, Monday through Friday. Also, employees who believe they have been subjected to illegal employment discrimination may also contact the Equal Employment Opportunity Commission ("EEOC") at 1919 Smith Street, Houston, TX 77002, (713) 209-3372.

SIGNED this _____ day of _____, 2010.

[name and job title]
on behalf of Guardsmark, LLC

This NOTICE shall be posted for thirty-six months from the date of signing.

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Exhibit "B"

[GUARDSMARK LETTERHEAD]

[DATE]

To Whom It May Concern:

I am pleased to confirm that Ms. _____ was employed as a Security Officer with Guardsmark, LLC from _____ to _____. Ms. _____ was a capable and competent employee and officer.

[Signed: Manager in Charge]
[Signature block]

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Exhibit "C"

Release

In consideration for \$ _____ gross [half of which amount shall be deemed compensation for alleged lost back pay, the other half for compensatory damages], less applicable withholding required by law, to be paid to me by Guardsmark, LLC, in connection with the resolution of EEOC v. Guardsmark, LLC, Civil Action No. 4:09cv03062, in the United States District Court for the Southern District of Texas, I waive my right to recover for, and fully and finally release, any claims of discrimination arising under Title VII of the Civil Rights Act of 1964, as amended, that I had against Guardsmark, L.L.C. in that lawsuit prior to the date of this release and that were included in the claims alleged in EEOC's complaint in EEOC v. Guardsmark, LLC, Civil Action No. 4:09-cv-03062.

Date: _____

Signature: _____

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