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EEOC v. Eden Park Health Services, Inc.

Judge Gary L. Sharpe

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EEOC v. Eden Park Health Services, Inc.

Keywords

EEOC, Eden Park Health Services, Consent Decree, 05-CV-1234 GLS/DRH, Disparate Treatment, Hostile Work Environment, Retaliation, Sexual Harassment, Sex, Female, Healthcare, Employment Law, Title VII

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
----- X
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Civil Action No.
05-CV-1234 GLS/DRH

- v -

EDEN PARK HEALTH SERVICES, INC.

Defendant.

----- X

CONSENT DECREE

This cause of action was initiated on or about September 29, 2005 by Plaintiff Equal Employment Opportunity Commission (EEOC), an agency of the United States Government. EEOC filed this action against Defendant, Eden Park Health Care Services, Inc. (Defendant), under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Charging Party Kathleen M. Verna (Charging Party) and a class of similarly situated female employees who were adversely affected by such unlawful practices. EEOC's Complaint alleged that Defendant unlawfully created and failed to remedy a hostile work environment by subjecting Charging Parties and a class of other similarly situated female employees to sexual harassment and unlawfully retaliated against them for opposing discriminatory employment practices. Defendant denies those allegations.

The parties agree that it is in their mutual interest to fully resolve this matter without further litigation.

The parties stipulate and consent to the entry of this Consent Decree as final and binding between the parties and their successors or assigns.

The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court.

The parties stipulate that Appendix L to this Decree will be sealed.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWED:

General Provisions

1. This Decree resolves all of the issues raised by EEOC Charge No. 165-2005-00790 and the complaint filed by EEOC in this action. This Decree in no way affects EEOC's right to process any other pending or future charges that may be filed against Defendant and to commence civil actions on any such charges as EEOC sees fit.
2. The Court has jurisdiction of the subject matter of this action and over the parties, venue is proper, and all administrative prerequisites have been met.
3. No party shall contest the validity of this Decree.
4. No party shall contest the jurisdiction of the United States District Court to enforce this Decree and its terms, or the right of EEOC to bring an enforcement suit upon the breach of any of the terms of this Decree by Defendant.
5. Breach of any term of this Decree should be deemed a substantive breach. EEOC is authorized to seek compliance with the Decree in the United States District Court.
6. Defendant and its managers, officers, agents, successors and assigns are enjoined from discriminating against any individual because of the individual's sex, and are enjoined from harassing any individual because of the individual's sex.

7. Defendant and its managers, officers, agents, successors and assigns are enjoined from retaliating against any individual for asserting her or his rights under Title VII, are enjoined from retaliating against any individual who files or has filed a charge, gives or has given testimony or given assistance with the investigation or litigation of these charges or action, or asserts or has asserted her rights under Title VII. Defendant and its managers, officers, agents, successors and assigns are enjoined from retaliating against any individual who engages in or has engaged in protected activity under Title VII, and are enjoined from retaliating against Charging Parties and Claimants.

Written Policies and Procedures

8. Within 15 days of the entry of this Decree, Defendant will implement and maintain the written policies and procedures prohibiting employment discrimination, including sex discrimination, sexual harassment and retaliation, attached as Appendix A.

9. Within 15 days of the entry of this Decree, Defendant will implement and maintain the complaint procedure for employees who believe that they have been discriminated against, harassed, or retaliated against, attached as Appendix B.

10. Within 15 days of the entry of this Decree, Defendant will establish and maintain a functioning, toll-free telephone number for reporting incidents of discrimination, harassment or retaliation. The telephone will be answered by human resources personnel who are trained to investigate claims of discrimination, harassment and retaliation. The telephone will be answered personally by trained human resources personnel from 8:00 a.m. to 4:00 p.m., Monday through Friday. During other hours, this telephone line will have an outgoing recorded message containing information about the complaint recording procedure and a listing of staffed hours, and will accept recorded messages and complaint.

11. Within 15 days of the entry of this Decree, Defendant will implement and maintain procedures for the investigation and handling of reported allegations of or suspected incidents of discrimination, harassment or retaliation, together with a disciplinary policy for employees who engage in discriminatory, harassing or retaliatory behavior, annexed as Appendix C. Defendant may combine the nondiscrimination policy described in paragraph 8, the complaint procedure described in paragraph 9, and the disciplinary policy described in paragraph 11 above in one document.

12. Defendant will distribute a copy of the written policies and procedures described in paragraphs 8 and 9, and the disciplinary policy described in paragraph 11 above to all of its employees within 15 days of the entry of this Decree, and shall distribute a copy of the written policies and procedures to all employees hired thereafter within five days of the commencement of their employment.

Notice and Posting

13. Within 15 days of the entry of this Decree, Defendant will display and maintain the EEOC poster in each of its facilities in a place visually accessible to applicants and employees of the Defendant.

14. Within 15 days of the entry of this Decree, Defendant will display and maintain in each of its facilities, in a place visually accessible to applicants and employees of the Defendant, a copy of the non-discrimination policy described in paragraph 8, the complaint procedure described in paragraph 9, the disciplinary policy for employees who engage in discriminatory, harassing or retaliatory behavior described in paragraph 11.

15. Within 15 days of the entry of this Decree, Defendant will display and maintain in each of its facilities, in a place visually accessible to applicants and employees of the Defendant,

a poster containing the toll-free number for reporting incidents of discrimination, harassment, or retaliation and describing how employees may use the number, attached as Appendix D.

16. Within 15 days of the entry of this Decree, Defendant will display and maintain in each of its facilities, in a place visually accessible to applicants and employees of the Defendant, a remedial Notice pursuant to this Decree, a copy of which is attached as Appendix E, printed on EEOC letterhead.

17. Within 15 days of execution of this decree, Defendant's Chief Executive Officer will send a memorandum to all employees emphasizing Defendant's commitment to abide by all federal laws prohibiting employment discrimination, including laws prohibiting sex discrimination and harassment, and retaliation, a copy of which is annexed as Appendix F.

Anti-Discrimination Training

18. Within two months from the entry of this Decree, and every twelve months thereafter for the duration of this Decree, Defendant will provide all of its employees at its Cobleskill facility with no fewer than two hours of training in federal laws prohibiting discrimination in employment.

a. The anti-discrimination training will be conducted under the direction of Charles J. Myers, Defendant's Human Resources Manager.

b. The content of the anti-discrimination training is set forth in Appendix G.

c. Defendant will maintain attendance records identifying the name and job title of the attendees at each session. Within five days of the training, Defendant will forward to EEOC a copy of the attendance records from the training session.

19. Within two months of the entry of this Decree, Defendant will provide all of its new employees at its Cobleskill facility with training in federal laws prohibiting discrimination in employment.

a. The anti-discrimination training will be conducted within five days of the commencement of employment by a new employee.

b. The anti-discrimination training content is set forth in Appendix H.

c. Defendant will maintain records identifying the name and job title of the employees receiving such training, the date of commencement of employment, and date of training. Every six months, for the duration of this Decree, Defendant will forward to EEOC a copy of the records regarding such training.

20. Within two months from the entry of this Decree, Defendant will provide no fewer than two additional hours of training in federal laws prohibiting discrimination for all management and supervisory employees of Defendant at its Cobleskill facility, and one additional hour of such training every twelve months thereafter for the duration of this Decree.

a. The content of the anti-discrimination training is set forth in Appendix I.

b. Defendant will maintain attendance records identifying the name and job title of the attendees at each session. Within five days of the training, Defendant will forward to EEOC a copy of the attendance records from the training session.

21. Within two months from the entry of this Decree, Defendant will provide all of its new managers and supervisory personnel at its Cobleskill facility, within five days of the date such personnel are placed in a managerial or supervisory position, with anti-discrimination training.

a. The content of the anti-discrimination training is set forth in Appendix J.

b. Defendant will maintain records identifying the name and job title of the employees receiving such training, the date of commencement of each such employee's managerial or supervisory position, and date of training. Every six months, for the duration of this Decree, Defendant will forward to EEOC a copy of the records regarding such training.

22. Defendant will make a permanent change to its regular employee and managerial training curriculum, to include notification of the content of federal anti-discrimination laws and Defendant's non-discrimination policy, complaint reporting procedure, disciplinary policy regarding discriminatory behavior, harassment, and retaliation, and the memorandum from Defendant's CEO described in paragraph 17.

Monetary Damages

23. Defendant shall pay a total of \$250,000.00 damages to Charging Party and claimants as follows:

a. Defendant shall pay Charging Party, Kathleen M. Verna the total sum of \$175,000.00 to be disbursed to the Charging Party upon execution of a separate agreement. The terms of the separate agreement shall be mutually agreed upon by Charging Party and Defendant before payment of the settlement sum.

b. Defendant shall establish an interest bearing account for a Claims Fund and shall deposit \$75,000.00 into the account for the benefit of additional Claimants qualified for monetary relief. Any interest on the account shall become part of the Claims Fund. Defendant shall appoint a Fund Administrator, a Defendant employee, who shall administer the fund and make payments from the fund in accordance with the terms of this Consent Decree and at the instructions of EEOC. Appendix L.

24. Upon five days notice, EEOC may inspect the records of the Claims Fund.

25. EEOC will have sole discretion regarding the distribution of the Claims Fund.

26. Defendant shall pay all costs associated with distributing and administering the Fund and no costs shall be deducted from the fund.

27. For purposes of this Decree, Potential Claimants are defined as female employees of Defendant who worked for Defendant in its Cobleskill, New York facility from March 2002 up to the date of entry of this Decree.

28. Within ten days, Defendant will send all Potential Claimants a Notice of Settlement in the form attached as Appendix M, together with a Claim Form attached as Appendix N. The Claim Form will explicitly advise Potential Claimants of their responsibility to fully respond to each question in the Claim Form and to supply all of the requested information before the expiration of the deadlines set forth herein, and to keep EEOC advised of any change in name, address or telephone number, in order to preserve any rights they may have under the Decree. The deadline for returning the Claim Form will be prominently displayed at the top of the Claim Form. All Claim Forms submitted to EEOC must be postmarked by the 90th day from the date of entry of this Decree.

29. The Notice of Settlement and Claim Form shall be sent to all Potential Claimants at their last known address both by regular First Class U.S. mail and by certified mail, return receipt requested. A list of Potential Claimants, their address, telephone number and Social Security number shall be provided simultaneously to EEOC. Defendant will provide EEOC with mail tracking information.

30. Each Potential Claimant will be offered an opportunity to submit a claim to EEOC. Any Potential Claimant wishing to file a claim must submit to EEOC a completed Claim Form to the Boston Area Office of EEOC within 90 days of the date of entry of this Decree,

together with all relevant information the Potential Claimant wishes to submit with her claim. EEOC, in its discretion, may request additional information. If a Potential Claimant fails to provide EEOC with a completed Claim Form and all relevant information the Potential Claimant wishes to submit with her claim by the deadline stated in this Decree, the Claim will be denied as untimely. If a Potential Claimant fails to timely provide other information which may be requested by EEOC, EEOC in its sole discretion may deny the claim for failure to cooperate.

31. EEOC will review the Claims Forms and other relevant information timely received by EEOC in order to make a determination of the distribution of the Claims Fund. EEOC shall make all determinations as to eligibility for monetary relief which may include compensatory damages, back pay and/or front pay. EEOC will have sole discretion to deny any claims submitted to it. For purposes of this Consent Decree, an eligible Claimant is a person who EEOC has determined is eligible for relief from the Claims Fund in this matter. EEOC shall divide the Claims Fund among eligible Claimants in amounts to be determined by EEOC. EEOC retains sole discretion to determine the amounts to be awarded from the Claims Fund. No person or party has a right to object to EEOC's determinations.

32. Upon EEOC's determination regarding the distribution of the Claims Fund, EEOC will notify Defendant in writing via U.S. Mail of the eligible Claimants and the amounts to be paid to each eligible Claimant. EEOC will also furnish Defendant of any updated information which has been received by EEOC from a Claimant regarding the Claimant's name, address, or telephone number. EEOC shall also furnish to Defendant a Release of Title VII rights, in the form attached as Appendix K, executed by each Claimant for whom payment is required. Within ten days of the date EEOC mails the notice and properly executed Release to Defendant regarding distribution of the Claims Fund, Defendant will issue and send checks to

the eligible Claimants in the amounts directed by EEOC, together with a notice to the eligible Claimant that the check must be cashed within 90 days of the date of the check, or the check will be void and the claim will be denied. Defendant will supply EEOC a copy of the checks and with mail tracking information. Defendant will pay all costs associated with mailing and distributing the funds.

33. If a Claimant has not cashed a check within 90 days after the date of the check, the check will be voided and the claim will be deemed denied.

34. On the 120th day after the entry of this Decree, the Fund Administrator shall advise EEOC in writing of the amount of any funds remaining in the Claims Fund account, including any funds which remain because checks were not cashed, funds which could not be distributed after diligent efforts by Defendant to locate a Claimant, and interest which has accrued. EEOC shall then instruct Defendant in writing to issue a check for the remaining balance in the Claims Fund account to a 501(c) organization in New York selected by EEOC which promotes equal employment opportunities. Defendant shall issue a check to such organization with ten days of mailing of EEOC's instruction regarding final distribution of the funds to such organization, and will send EEOC a copy of the check and cover letter. The Claims Fund account may then be closed.

35. Defendant will provide EEOC with copies of transmittal letters and checks sent to Charging Parties and all Claimants within ten days of issuance.

36. Defendant will issue Forms 1099 to Charging Party and to eligible Claimants who have received funds from the Claims Fund.

Additional Monitoring Provisions

37. For the duration of this Decree, Defendant shall maintain records of all written or oral complaints or allegations of discrimination, harassment or retaliation made by any of its employees. Within three months of the entry of this Decree, and every six months thereafter, Defendant shall provide EEOC with a written report containing, at a minimum, a summary of each complaint, and for each such complaint: the name of the complaining party or party who was allegedly subjected to discrimination, harassment or retaliation, the name of the person(s) who allegedly engaged in such discriminatory, harassing or retaliatory conduct, the results of any investigation of the complaint or allegation, and any remedial action taken by Defendant. A final report shall be sent to EEOC 15 days before the date of the expiration of this Decree.

38. In addition to the monitoring provisions set forth elsewhere in this Decree, EEOC may monitor compliance during the duration of this Decree by inspection of Defendant's premises, records, and interviews with employees at reasonable times. Upon five days notice by the EEOC, Defendant will make available for inspection and copying any records requested by EEOC, facilities sought to be inspected by EEOC, and employees sought to be interviewed by EEOC.

39. All materials required by this Decree to be sent to EEOC shall be addressed to:

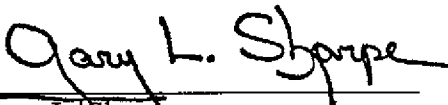
Equal Employment Opportunity Commission
Boston Area Office
Legal Unit
Attention: Arnold J. Lizana III, Trial Attorney
John F. Kennedy Federal Building, Room 475
Boston, MA 02203-0506

Duration of Decree

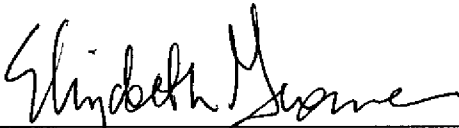
40. This Decree will remain in effect for three years from the date of entry.

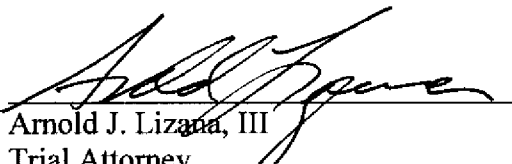
SO ORDERED, ADJUDGED AND DECREED this 12th day of October,

2006.


Hon. Gary L. Sharpe
United States District Judge

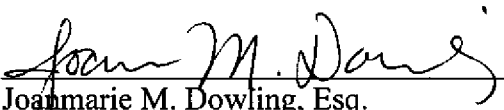
Dated: New York, New York
10/4, 2006


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Regional Attorney


Arnold J. Lizana, III
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Dated: New York, New York
October 4, 2006


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