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EEOC v. Razzoo's, Inc.

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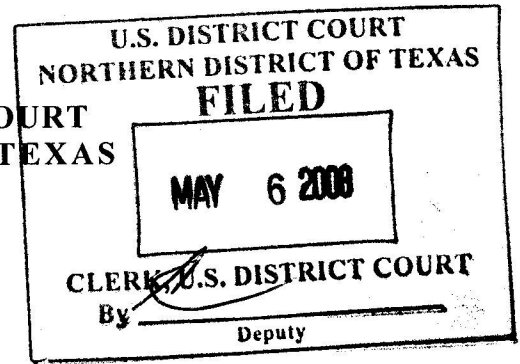
EEOC v. Razzoo's, Inc.

Keywords

EEOC, Razzoo's Inc., 3:05-CV-0562-P, Consent Decree, Disparate Treatment, Hiring, Promotions, Terms and Conditions, Termination, Sex, Male, Hospitality, Employment Law, Title VII

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
RAZZOO'S, INC.,)
)
Defendant.)
)
)
)

CIVIL ACTION NO.

3:05-CV-0562-P

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and among the Plaintiff, Equal Employment Opportunity Commission ("EEOC"), and the Defendant, Razzoo's, Inc. ("Razzoo's"), in the United States District Court for the Northern District of Texas, Dallas Division, with regard to the EEOC's Complaint filed on March 22, 2005 (the "Complaint"), in Civil Action No. 3:05-CV-0562-P (ECF). The Complaint in this case was based upon the Charge of Discrimination filed by Charging Party Dan Henderson against Razzoo's.

The above-referenced Complaint alleges that Razzoo's violated Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. Section 2000e-2(a)(1), by discriminating against Dan Henderson and a class of similarly-situated aggrieved male employees by subjecting them to disparate terms and conditions of employment, termination and failure to promote to bartender positions because of their sex, male. The Complaint also alleges that Razzoo's violated Title VII by discriminating against a class of qualified male applicants by refusing to hire them for vacant bartender positions because of their sex, male. Razzoo's has

denied the allegations and has demonstrated that it always employed male bartenders at all of its restaurants.

The EEOC and Razzoo's agree to compromise and settle the allegations in the Complaint, and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree ("Consent Decree"). It is understood and agreed that this Consent Decree is in compromise of disputed claims, and that this Consent Decree shall not in any way be construed as an admission by Razzoo's that it has violated any federal law or regulation, or violated any rights of any individual.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues raised in EEOC Charge No. 310-2003-01237. This Decree further resolves all issues in the Complaint filed by the EEOC in this case. The EEOC waives further claims and/or litigation on all issues raised in the above-referenced charge and Complaint. The EEOC waives further claims and/or litigation on behalf of all male applicants for bartender and server positions, all males employed as servers, and all males employed as bartenders for any gender discrimination claims they may have under Title VII against Razzoo's through the period 300 days before the entry of the Consent Decree. The EEOC does not waive processing charges other than the charge of discrimination specifically referenced above.

2. The parties agree that this Consent Decree does not constitute an admission by Razzoo's that it has violated Title VII or any other state or local statute, law or regulation.

3. Razzoo's agrees that it shall conduct all employment practices at each of its restaurants in a manner which does not subject any employee to discrimination under Title VII.

4. Razzoo's agrees that it will not discriminate on the basis of gender with respect to recruitment, hiring, promotion, termination, or any other employment action. Razzoo's further agrees not to retaliate in any way against any person because of opposition to any practice declared unlawful under Title VII or because of the filing of a charge, giving testimony, or assisting or participating in any manner in any investigation, proceeding or hearing involving or related to Title VII.

Scope of Consent Decree

5. The duration of this Consent Decree shall be for thirty (30) months from the date of entry of the Consent Decree. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with this Consent Decree, including such orders as may be required to effectuate its purposes. Accordingly, this Consent Decree shall expire and shall be without force and effect thirty (30) months from the date of entry of this Consent Decree.

General Provisions

6. Razzoo's and its officers, owners, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from: (i) discriminating against male employees and applicants on the basis of gender; (ii) engaging in or being a party to any action, policy or practice that is intended to or is known to them to have the effect of discriminating against any male employee or applicant on the basis of his gender; and/or (iii) creating, facilitating or permitting the existence of a work environment that is hostile to male employees at any of its restaurants,

including, but not limited to the Bedford, Mesquite, Sundance, Plano, Lewisville, Cityview, Keystone, Arlington and Irving, Texas restaurants.

7. Razzoo's and its officers, owners, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, or any of them, agree they will not implement, enforce or refer to an "80/20 Rule," which refers to staffing employees according to an 80% female and 20% male ratio. Razzoo's further agrees that it will not utilize or suggest the utilization of a quota system of any type that is based upon the gender of the employee or applicant when making decisions regarding the hiring and promoting employees.

8. Razzoo's and its officers, owners, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, or any of them, agree to train all supervisory employees to employ gender-neutral criteria when making employment decisions relating to hiring, promotions, shift assignments, terminations, and any other term and condition of employment with Razzoo's.

9. Razzoo's and its officers, owners, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from engaging in, implementing or permitting any action, policy or practice with the purpose of retaliating against any current or former employee of Razzoo's at any of its restaurants, including, but not limited to the Bedford, Mesquite, Sundance, Plano, Lewisville, Cityview, Keystone, Arlington and Irving, Texas restaurants, because he or she opposed any practice of gender discrimination made unlawful under Title VII; filed a Charge of Discrimination alleging any such practice; testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Razzoo's), proceeding, or hearing in connection with this case and/or relating to any claim of gender

discrimination; was identified as a possible witness in this action; asserted any rights under this Consent Decree; or sought and/or received any monetary and/or non-monetary relief in accordance with this Consent Decree.

Non-Monetary Relief

10. Razzoo's affirms the following "Statement of Zero-Tolerance Policy and Equality Objectives" ("Zero-Tolerance Policy"):

Razzoo's is firmly committed to developing and maintaining a zero-tolerance policy concerning gender discrimination and retaliation against individuals who report discrimination and/or harassment in our workplace; to swiftly and firmly respond to any acts of gender-based discrimination and/or harassment and retaliation; to implement a disciplinary system that is designed to strongly deter future acts of gender-based discrimination or retaliation; and to actively monitor our workplace in order to promote tolerance, respect and dignity for all people.

Specific Non-Monetary Relief

11. In order to effectuate the objectives embodied in Razzoo's Statement of Zero-Tolerance Policy and this Consent Decree, Razzoo's shall make whatever specific modifications to its existing policies, procedures and practices in order to ensure that the following policies, procedures and practices are implemented at each of its of restaurants, including, but not limited to the Bedford, Mesquite, Sundance, Plano, Lewisville, Cityview, Keystone, Arlington and Irving, Texas restaurants.

12. Razzoo's will retain the services of Smith, Frank & Partners or a similar human resources consultant or establish an internal corporate Human Resources Department. The human resources consultant or internal Human Resources Department will develop and implement policies and practices relating to human resources matters, including but not limited to equal employment opportunity rights and obligations and the matters referenced in paragraphs 11 to 17 of this Consent Decree. During the term of the Consent Decree Razzoo's agrees to

commit to the expenditure or investment of no less than two hundred and twenty-five thousand dollars (\$225,000.00) to carry out its obligations in this paragraph.

13. Policy Against Gender-Based Discrimination: Razzoo's agrees that it shall revise its Policies, Procedures, and General Guidelines employee manual, as necessary, in order to: (i) restate in writing its Zero-Tolerance Policy above; (ii) include strong non-retaliation language with examples to supplement the definition of retaliation, and provide for substantial and progressive discipline for incidents of gender-based discrimination and/or retaliation; (iii) provide that complaints of gender discrimination will be accepted by Razzoo's in writing and orally; (iv) provide for a prompt and thorough investigation of gender-based discrimination complaints; and (v) indicate that, promptly upon the conclusion of its investigation of a complaint, Razzoo's will communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any. Razzoo's further agrees to notify employees that an individual may simultaneously pursue a claim of discrimination pursuant to the terms of Razzoo's policy against gender discrimination and by filing a Charge of Discrimination with the EEOC.

14. Complaint Procedures: Razzoo's agrees that it shall:

(i) revise its complaint procedure as necessary to encourage employees to come forward with complaints about violation of its policy against gender discrimination. As part of this policy, Razzoo's agrees that it shall provide its employees with convenient, confidential and reliable mechanisms for reporting incidents of gender-based discrimination. Razzoo's shall designate at least one employee employed at each of its restaurants who may be contacted, and his or her name and telephone number shall be routinely and continuously posted at the restaurant where they are employed. Also as part of its procedure, Razzoo's agrees that it will take seriously anonymous complaints of gender-based discrimination that it receives.

(ii) Razzoo's agrees that it shall revise its complaint handling and disciplinary procedures as necessary to ensure that all complaints of gender-based discrimination are promptly and thoroughly investigated

(iii) Razzoo's agrees that it shall take appropriate remedial action to resolve complaints of gender-based discrimination and to avoid the occurrence of further incidents of gender-based discrimination.

15. Persons Rejected for Bartender/Server Positions: (i) Razzoo's authorizes the EEOC to review any and all employment application materials received for the bartender/server positions within two years from the effective date of this Consent Decree.

(ii) Razzoo's agrees to maintain in a central location all applications received for the position of Bartender/Server at each of its restaurants, including, but not limited to the Bedford, Mesquite, Sundance, Plano, Lewisville, Cityview, Keystone, Arlington and Irving, Texas restaurants, for the term of this Consent Decree.

16. Policies Designed to Promote Supervisor Accountability: (i) Razzoo's agrees that it shall impose substantial discipline--up to and including termination, suspension without pay or demotion--upon any supervisor or manager who engages in gender-based discrimination, or who permits any such conduct to occur in his or her work area or among employees under his or her supervision, or who retaliates against any person who complains or participates in any investigation or proceeding concerning any such conduct. Razzoo's shall communicate this policy to all of its supervisors and managers.

(ii) Razzoo's agrees that it shall continue to advise all managers and supervisors of their duty to actively monitor their work areas to ensure employees' compliance with Razzoo's gender-based discrimination policies, and to report any incidents and/or complaints of gender-

based discrimination, of which they become aware to the persons charged with handling such complaints.

(iii) Razzoo's agrees that it will revise its current supervisor appraisal process to include performance evaluations for the handling of equal employment opportunity issues as an element in supervisor appraisals.

(iv) Razzoo's agrees that it shall include "commitment to equal employment opportunity" as a criterion for qualification for supervisory positions.

17. Gender-Based Discrimination Training: Razzoo's agrees to provide equal employment opportunity training specified below to its managers and employees during the term of the Consent Decree.

(i) Specifically, Razzoo's agrees to provide two hours of mandatory training to all of its management employees each year during the term of this Consent Decree. The training shall be conducted by an experienced employment law trainer and shall cover gender discrimination in the workplace and the techniques for investigating and stopping discrimination and harassment.

(ii) Razzoo's also agrees to provide two hours of mandatory training to all employees employed at the restaurant on the date of the training at each of its restaurants each year during the term of this Consent Decree. The training shall inform employees of the complaint procedure for those individuals who believe they have been harassed or who otherwise experienced discrimination by Razzoo's. Further, all training shall advise all employees of the consequences of violating Title VII and of the importance of working in an environment free of discrimination based on an employee's or applicant's gender.

(iii) Razzoo's agrees that it shall require a senior management official to introduce all training on gender-based discrimination to communicate Razzoo's commitment to its Zero-Tolerance Policy.

Reporting Requirements

18. For each year this Consent Decree is in effect, Razzoo's agrees to meet annually with the EEOC to review all complaints alleging gender-based discrimination, including the results of Razzoo's investigation and disciplinary response. The EEOC shall give Razzoo's at least ten business days advance notice of when it wishes to meet.

19. Within five business days prior to each scheduled annual meeting, as described in Paragraph 18 above, Razzoo's agrees to forward to the EEOC copies of all written complaints Razzoo's has received alleging gender-based discrimination and the remedial action taken by Razzoo's, if any.

20. During each of these annual meetings, Razzoo's and the EEOC will also discuss Razzoo's compliance with its Zero-Tolerance Policy and the terms of this Consent Decree.

Posting of Notice

21. Within two weeks after entry of this Consent Decree, Razzoo's shall post a Notice ("Attachment A") in prominent and conspicuous locations at each of its restaurants, including, but not limited to the Bedford, Mesquite, Sundance, Plano, Lewisville, Cityview, Keystone, Arlington and Irving, Texas restaurants. This notice shall inform employees that gender-based discrimination will not be tolerated and that the first violation thereof will subject the employee found to have violated Razzoo's policy against gender-based discrimination to those disciplinary consequences specified within the policy.

22. The Notice shall also inform employees where to report violations of Razzoo's policies against gender-based discrimination, the name of the designated company official to whom they should report said violations, along with the address and telephone number of the Dallas District Office of the EEOC. The Notice shall remain posted for the duration of this Consent Decree. In the event that the persons and/or departments to whom individuals should make complaints alleging gender-based discrimination change during the term of the Consent Decree such that the information contained in the Notice is no longer accurate, Razzoo's shall immediately prepare and post a revised notice that contains the correct information. Razzoo's shall promptly thereafter forward a copy of the revised notice to the EEOC.

23. Razzoo's will report to the EEOC that it has complied with this requirement within fourteen days after posting the notice.

Dispute Resolution

24. In the event that either party to this Consent Decree believes that the other party has failed to comply with any provision(s) of the Consent Decree, the complaining party shall notify the alleged non-complying party in writing of such non-compliance and afford the alleged non-complying party ten business days to remedy the non-compliance or 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 business days, the complaining party may apply to the Court for appropriate relief. In the event that, upon the expiration date of this Consent Decree, a dispute is pending pursuant to this paragraph, then the term of this Consent Decree shall be extended, with respect to the issue in dispute only, until such time as such dispute is resolved by the parties or the Court.

Monetary Relief

25. Razzoo's agrees to establish a Claim Fund in the amount of seven hundred and seventy-five thousand dollars (\$775,000.00) to resolve all claims for damages in this case. Razzoo's will contribute \$275,000.00 to the Claim Fund within ten days from the entry of this Consent Decree (Contribution I). Razzoo's will contribute \$250,000.00 to the Claim Fund six months after the entry of this Consent Decree (Contribution II). Razzoo's will contribute \$250,000.00 to the Claim Fund twelve months after the entry of this Consent Decree (Contribution III).

Within thirty days from the date of each Contribution identified above, the EEOC will inform Razzoo's in writing of the names of the Eligible Claimants, their social security numbers, and amount of payment the EEOC has determined should be distributed from the Claim Fund to the named Eligible Claimants. Within thirty days from the date Razzoo's receives this information from the EEOC, Razzoo's will prepare checks to the identified Eligible Claimants in the designated amounts and will mail the checks to the EEOC who will distribute the checks to the Eligible Claimants. If the EEOC is unable to deliver a check to an Eligible Claimant for any reason, the EEOC will notify Razzoo's that the check should be cancelled and the amount of the undelivered check will be reinstated to the Claim Fund. Razzoo's agrees to verify the balance in the Claim Fund to the EEOC within fourteen days from a request by the EEOC. The EEOC shall notify each Eligible Claimant that he is responsible for all tax liability arising out of any payment received by the Eligible Claimant from the Claim Fund and obtain his agreement that he will indemnify and hold Razzoo's harmless from any tax liability in regard to the payment. Razzoo's will provide each Eligible Claimant with an Internal Revenue Service Form 1099 for the amount of the payment made to the Eligible Claimant from the Claim Fund.

26. If Razzoo's fails to tender payment or otherwise fails to timely comply with the terms of Paragraph 25, above, Razzoo's shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the noncompliance or delay of the defendant.

27. Neither the EEOC nor Razzoo's shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms nor the right of either party to the Consent Decree to bring an enforcement action upon breach of any term of this Consent Decree by either such party. Nothing in this Consent Decree shall be construed to preclude the EEOC from enforcing this Consent Decree in the event that Razzoo's fails to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court. The EEOC also reserves the right to seek contempt sanctions for non-payment and non-compliance with this Consent Decree.

Eligible Claimants shall have no independent right to enforce any of the terms of this Consent Decree and nothing in this Consent Decree is intended to confer upon any person or entity other than the EEOC and Razzoo's the right to seek enforcement of this Consent Decree.

Costs

28. The parties to this Consent Decree agree to bear their own costs associated with the litigation of the above-referenced Complaint and the administration of this Consent Decree. Neither the EEOC nor Razzoo's shall seek reimbursement for any outstanding litigation costs.

Other General Provision

29. Computation of Time Periods: In computing any period of time prescribed or allowed by this Consent Decree, unless otherwise stated, such computation shall be made consistent with the Federal Rules of Civil Procedure. The term of this Consent Decree is for 30 months from the date of entry by the Court.

30. Persons Bound by Decree: The terms of this Consent Decree are and shall be binding upon the EEOC, all Eligible Claimants, and Razzoo's, including all of its present and future representatives, agents, directors and officers.

31. Notices: Except as otherwise provided for in this Consent Decree, all notification, reports and communications to the parties required under this Consent Decree shall be made in writing and shall be sufficient if hand-delivered or sent by first-class mail to the following persons:

For EEOC: Robert A. Canino, Regional Attorney
207 South Houston Street, Dallas, Texas 75202

Suzanne M. Anderson, Supervisory Trial Attorney
207 South Houston Street, Dallas, Texas 75202

For Razzoo's: Robert E. Luxen
Molly B. Cowan
HALLETT & PERRIN, P.C.
2001 Bryan Street, Suite 3900
Dallas, Texas 75201

32. Construction: The terms of this Consent Decree are the product of joint negotiations and shall not be construed as having been authored by one party rather than another.

33. Integration: This Consent Decree constitutes the entire agreement between the EEOC and Razzoo's hereto with respect to the matters herein and it supersedes all negotiations, representations, comments, contracts and writings prior to the date of this Decree.

SO ORDERED, ADJUDGED AND DECREED this 6th day of May,
2008.

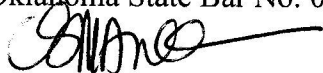

UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

Counsel for the Plaintiff,
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION



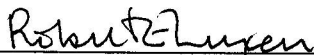
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HALLET & PERRIN, P.C.
2001 Bryan Street, Suite 3900
Dallas, Texas 75201
(214) 953-0053; Fax No. (214) 922-4143

NOTICE

This notice is being posted pursuant to a Consent Decree entered into between Razzoo's, Inc. and the Equal Employment Opportunity Commission, based upon a charge alleging gender discrimination under Title VII of the Civil Rights Act of 1964, as amended.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age or disability with respect to hiring, firing, compensation or other terms and conditions of employment.

Razzoo's affirms the following "Statement of Zero-Tolerance Policy and Equality Objectives" ("Zero-Tolerance Policy"):

Razzoo's is firmly committed to developing and maintaining a zero-tolerance policy concerning gender discrimination and retaliation against individuals who report discrimination and/or harassment in our workplace; to swiftly and firmly respond to any acts of gender-based discrimination and/or harassment and retaliation; to implement a disciplinary system that is designed to strongly deter future acts of gender-based discrimination or retaliation; and to actively monitor our workplace in order to promote tolerance, respect and dignity for all people.

Discrimination because of gender is prohibited by Title VII of the Civil Rights Act of 1964, as amended. This federal law prohibits an employer from discriminating against any employee as to the terms and conditions of employment because of an employee's gender. Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination because of sex by employers, labor organizations and employment agencies.

The law also prohibits an employer from retaliating against employees who oppose what they believe to be unlawful employment practices. This Notice is intended to inform employees of their rights under federal law and to prevent future acts of employment discrimination.

The employee has the right, and is encouraged to exercise the right, to report allegations of discrimination, including age discrimination and retaliation in the workplace. An employee may do so by notifying _____ . Employees may also report allegations of discrimination to any supervisor or manager with Razzoo's.

Any report of such an allegation will be thoroughly investigated, with appropriate disciplinary action taken against any person(s) found to have engaged in discriminatory conduct.

A person either alternatively, or in addition to reporting such an allegation to company officials, may contact the Equal Employment Opportunity Commission for the purposes of filing a Charge of employment discrimination. The address and telephone number of the local EEOC office is 207 South Houston Street, Third Floor, Dallas, Texas 75202. The telephone number is (214)

253-2721. Information about your rights and how to file a Charge is also available on the Internet at www.eeoc.gov.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE. THIS NOTICE WILL BE POSTED FOR A PERIOD OF THIRTY (30) MONTHS.

Date

MICHAEL LEATHERWOOD