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EEOC v. Parker Palm Springs Hotel

Judge Virginia A. Phillips

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EEOC v. Parker Palm Springs Hotel

Keywords

EEOC, Parker Palm Springs Hotel, ED CV 06-01044 VAP (OPx), Consent Decree, Disparate Treatment, Hiring, Sex, Female, Employment Law, Title VII

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JUL 10 2007
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION BY DEPUTY

6 Attorneys for Plaintiff
7 U.S. EQUAL EMPLOYMENT
8 OPPORTUNITY COMMISSION

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ORIGINAL

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

23 U.S. EQUAL EMPLOYMENT
24 OPPORTUNITY COMMISSION,

25 Plaintiff,

26 v.

27 PARKER PALM SPRINGS HOTEL,

28 Defendant.

CASE NO. ED CV 06-01044 VAP
(OPx)

CONSENT DECREE; ~~PROPOSED~~
ORDER

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I.

INTRODUCTION

On September 25, 2006, Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or "Commission") brought this action against Defendant Parker Palm Springs, LLC d/b/a Le Parker Meridien Palm Springs (incorrectly identified as "Parker Palm Springs Hotel") ("Parker Palm") under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). In the Complaint, the Commission alleged that Parker Palm discriminated against Charging Party Lorraine Morton ("Charging Party" or "Morton") and similarly situated individuals (collectively, "Claimants") by denying them employment as food servers in its restaurant, Mister Parker, because of their gender, female.

Parker Palm denies the allegations in the Complaint and asserts that it did not deny employment to Morton or any other person based on gender.

In the interests of avoiding the time and expenses of litigation the Commission and Parker Palm (collectively, the "Parties") have resolved the above-entitled action and have agreed that it should be finally resolved by entry of this Consent Decree ("Decree").

II.

JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this lawsuit, pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343, 1345, 1367 and 42 U.S.C. 2000e-5(f).

The Court shall retain jurisdiction of this action during the period of this Decree for the purposes of entering all orders, judgments and decrees that may be necessary to implement the relief provided herein.

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III.

EFFECTIVE DATE AND DURATION OF DECREE

A. The provisions and agreements contained herein are effective immediately upon the date on which this Decree is entered by the Court (the "Effective Date").

B. The duration of this Decree shall be two (2) years from the Effective Date.

IV.

FINDINGS

Having examined the terms and provisions of this Decree and based on the pleadings, record and stipulation of the parties, the Court finds the following:

A. The Court has jurisdiction over the Parties and the subject matter of this action. The Complaint asserts claims that, if proven, would authorize the Court to grant the relief set forth in this Decree.

B. The terms and provisions of this Decree are adequate, fair, reasonable, equitable and just. The rights of Parker Palm, the Commission and the Claimants are protected adequately by this Decree.

C. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interest of Parker Palm, the Commission and those for whom the Commission seeks relief.

D. Parker Palm expressly denies that it engaged in any unlawful conduct, and there has been no finding that Parker Palm engaged in any unlawful conduct of any kind.

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V.

RESOLUTION OF CLAIMS

A. This Decree fully and completely resolves all claims raised by the Commission against Parker Palm in the Complaint filed in this action in the United States District Court, Central District of California on September 25, 2006, captioned U.S. Equal Employment Opportunity Commission v. Parker Palm Springs Hotel, Case No. ED CV 06-01044 VAP(OPx) (the "Complaint").

B. Nothing in this Decree shall be construed to preclude the Commission from moving to enforce this Decree in the event that Parker Palm fails to perform the promises and representations contained herein.

C. Nothing in this Decree shall be construed to limit or reduce Parker Palm's obligation to comply fully with Title VII or any other federal employment statute.

D. This Decree in no way prejudices the Commission's right to bring, process, investigate or litigate other charges that may be in existence or may later arise against Parker Palm in accordance with standard Commission procedures.

VI.

MODIFICATION AND SEVERABILITY

A. This Decree constitutes the complete understanding of the Parties with respect to the matters contained herein.

B. No waiver, modification or amendment of any provision of this Decree will be effective unless made in writing and signed by an authorized representative of each of the Parties.

C. If one or more provisions of the Decree are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.

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VII.

COMPLIANCE AND DISPUTE RESOLUTION

The Parties expressly agree that if the Commission has reason to believe that Parker Palm has failed to comply with any provision of this Decree, the Commission may file a motion before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify Parker Palm and/or its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes has/have been breached. Absent a showing by either party that the delay will cause irreparable harm, Parker Palm shall have thirty (30) days to attempt to resolve or cure the putative breach.

B. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After thirty (30) days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as Parker Palm is shown to be in breach of the Decree and the Commission's costs incurred in securing compliance with the Decree.

VIII.

MONETARY RELIEF

A. Parker Palm shall pay a total of \$70,000.00 to the Claimants in full settlement of EEOC's action. EEOC has the sole discretion in determining who is a Claimant, and the allocation of monetary amount(s) to each of them. EEOC's determination is final, and Parker Palm agrees that it will neither participate in, nor object to the EEOC's designation of a Claimant.

B. Upon entry of this Consent Decree, the EEOC shall provide in writing to Parker Palm the specific monetary distribution that is to be provided to the Claimants and their respective addresses to where the checks should be delivered

1 (known hereafter as the "distribution list"). Parker Palm shall issue and deliver by
2 certified mail with return receipt requested, a check to each Claimant specified by
3 the EEOC within 5 (five) days of receiving the distribution list. Parker Palm shall
4 provide by mail a copy of each check and related correspondence to Regional
5 Attorney Anna Y. Park, c/o United States Equal Employment Opportunity
6 Commission, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012.

7 C. The EEOC has designated the monetary relief as compensatory
8 damages under Title VII. Parker Palm, as such, shall issue 1099 forms or the
9 equivalent as required by law for the payment made to each Claimant. The EEOC
10 shall be notified in writing within five days of the issuance of the 1099s.

11
12 IX.

13 GENERAL INJUNCTIVE RELIEF

14 A. Non-discrimination and non-retaliation

15 Parker Palm, its officers, agents, management (including all supervisory
16 employees), successors, assigns, and all those in active concert or participation
17 with them, or any of them, hereby agree not to: (a) engage in any hiring practices
18 that discriminate based upon gender; (b) discriminate against persons on the basis
19 of gender in the terms and conditions of employment; (c) engage in or be a party to
20 any action, policy or practice that is intended or is known to them to have the effect
21 of harassing or intimidating any employee on the basis of gender; and (d) create,
22 facilitate or permit the existence of a work environment that is hostile to employees
23 due to gender.

24 Parker Palm, its officers, agents, management (including all supervisory
25 employees), successors, assigns, and all those in active concert or participation
26 with them, or any of them, hereby agree not to engage in, implement or permit any
27 action, policy or practice with the purpose of retaliating against any current or
28 former employee or applicant of Parker Palm because he or she has in the past, or

1 during the term of this Decree: (a) opposed any practice made unlawful under Title
2 VII; (b) filed a charge of discrimination alleging such practice; (c) testified or
3 participated in any manner in any investigation (including without limitation, any
4 internal investigation undertaken by Parker Palm), proceeding in connection with
5 this case and/or relating to any claim of a Title VII violation; (d) was identified as
6 a possible witness or claimant in this action; (e) asserted any rights under this
7 Decree; or (f) sought and/or received any relief in accordance with this Decree.

8 A. Policies and Procedures

9 1. Parker Palm shall review, revise, and redistribute its written
10 policies and procedures on discrimination and retaliation, and shall provide a copy
11 to the EEOC within sixty (60) days after the entry of this Decree. The policies and
12 procedures shall include an express prohibition against hiring on the basis of sex.

13 2. Within sixty (60) days after the entry of this Decree, the
14 policies shall be distributed (or redistributed) to all of Parker Palm's employees,
15 including management and supervisory staff, and shall be included in any relevant
16 handbooks or manuals distributed to employees by Parker Palm.

17 3. In the event that Parker Palm further revises its discrimination
18 policies at any time during the term of this Decree, Parker Palm shall provide the
19 EEOC with written notice within ten (10) days after implementation of any such
20 revision and shall provide copies of the revised policies.

21 B. Training

22 1. Within one hundred twenty (120) days after the entry of the
23 Decree, all of Parker Palm's employees shall be required to attend a training
24 program of at least two (2) hours addressing compliance with anti-discrimination
25 laws. The training shall include coverage of the subjects of equal employment
26 opportunity rights and responsibilities, including but not limited to Title VII's
27 prohibitions against discrimination on the basis of sex and Parker Palm's
28 commitment to non-discriminatory hiring. For the remainder of the term of this

1 Decree, all new employees and all employees recently promoted from a
2 staff/hourly to a managerial/supervisory position shall receive such training within
3 sixty (60) days of hire or promotion.

4 2. At least fifteen (15) days prior to providing any training
5 pursuant to this Paragraph, Parker Palm shall submit to the EEOC a description of
6 the training to be provided. The EEOC shall also be informed of the date, time and
7 location of the upcoming trainings during the term of the Decree.

8 C. Recruiting and Hiring

9 1. Parker Palm shall endeavor to increase diversity into server
10 positions. For the first year of this Decree, Parker Palm shall endeavor to obtain a
11 hiring rate of at least 20% percent women in the server positions, including but not
12 limited to Mister Parker. Parker Palms shall endeavor to obtain a hiring rate of
13 40% the second year of this decree to promote equal employment opportunity for
14 men and women into server positions.

15 2. If Parker Palms fails to meet this annual hiring endeavor, the
16 EEOC shall review Parker Palms good faith compliance with its obligations under
17 the Decree in order to determine whether Parker Palms has violated the Decree. If
18 Parker Palms has acted in good faith in its hiring practices, but, in spite of its good
19 faith efforts, has not attained the hiring endeavor for that year, Parker Palms will
20 be excused from such non-compliance and shall not be deemed in violation of this
21 section of the Decree. If, however, the EEOC contends that Parker Palms has
22 violated this provision of the Decree, the parties shall follow the procedure set out
23 in this Decree for resolution of any dispute or enforcement of the Decree.

24 3. In pursuing this endeavor, Parker Palm shall engage the
25 following activities:

- 26 1. Advertise to and actively recruit women;
- 27 2. Advertise in publications and newspapers in Palm Springs that
- 28 have female readership; and

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3. Parker Palm shall retain the following categories of documents in support of its Position Recruitment Log:

(a) A job description for the position filled;

(b) A copy of all advertisements placed in connection with recruiting for the position;

(c) Applications for all applicants who applied for the position, as well as applications indicating that the applicant was seeking employment in any or all available positions;

(d) Any other documentation submitted by the applicant in connection with the application process;

(e) The application and other documentation submitted by the person selected to fill the position; and

(f) Any documents pertaining to the selection process, including but not limited to interview notes.

XI.

COSTS OF ADMINISTRATION AND IMPLEMENTATION OF CONSENT DECREE

Parker Palm shall bear all costs associated with its administration and implementation of its obligations under this Consent Decree.

XII.

COSTS AND ATTORNEYS' FEES

Each party shall bear its own costs of suit and attorneys' fees.

XIII.

MISCELLANEOUS PROVISIONS

A. During the term of this Consent Decree, Parker Palm shall provide any anticipated successor-in-interest with a copy of this Decree within a reasonable time of not less than thirty (30) days prior to the execution of any agreement for

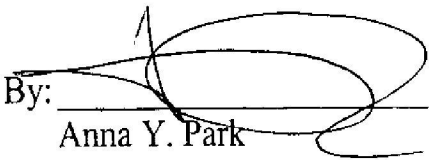
1 acquisition or assumption of control of any or all of Parker Palm's operations, or
2 any other material change in corporate structure.

3 B. During the term of this Decree, Parker Palm and its successors shall
4 assure that each of its officers, managers and supervisors is aware of any term in
5 this Decree which is related to his/her job duties.

6 C. The parties agree to entry of this Decree subject to final approval by
7 the Court.

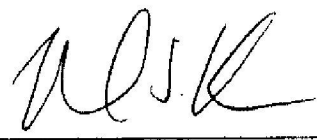
8 EQUAL EMPLOYMENT
9 OPPORTUNITY COMMISSION
10 Anna Y. Park
11 Dana C. Johnson

12 Date: 6/28/07

13 By: 
14 Anna Y. Park
15 Attorneys for Plaintiff

16 EPSTEIN BECKER & GREEN, P.C.

17 Date: 6/27/07

18 By: 
19 David Jacobs
20 Michael S. Kun
21 Attorneys for Defendant

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~~[PROPOSED]~~ ORDER

Good Cause Appearing,

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is HEREBY ORDERED.

IT IS SO ORDERED

Date: July 6 2007

Virginia A. Phillips
The Honorable Virginia A. Phillips
United States District Judge