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Jones, et al. v. Scientific Colors, Inc., d/b/a Apollo Colors; EEOC v. Scientific Colors, Inc., d/b/a Apollo Colors

Judge David C. McKeague

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Jones, et al. v. Scientific Colors, Inc., d/b/a Apollo Colors; EEOC v. Scientific Colors, Inc., d/b/a Apollo Colors

Keywords

Jones, EEOC, Scientific Colors, Inc., Apollo Colors, 99 C 1959, 00 C 0171, Consent Decree, Hostile Work Environment, Manufacturing, Race, African American or Black, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|---|---|--------------------------------|
| NORMAN JONES, et al. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| SCIENTIFIC COLORS, INC., |) | |
| d/b/a APOLLO COLORS, |) | |
| Defendant. |) | |
| and |) | |
| |) | Case No. 99 C 1959 |
| EQUAL EMPLOYMENT OPPORTUNITY |) | |
| COMMISSION, |) | consolidated with |
| Plaintiff, |) | |
| |) | Case No. 00 C 0171 |
| v. |) | |
| |) | Visiting Judge McKeague |
| SCIENTIFIC COLORS, INC., |) | |
| d/b/a APOLLO COLORS, |) | |
| Defendant. |) | |
| <hr style="width: 40%; margin-left: 0;"/> | | |

CONSENT DECREE

THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission (the "EEOC") filed this action alleging that since at least January 1, 1997, Defendant, Scientific Colors, Inc., doing business as Apollo Colors ("Defendant" or "Apollo"), violated Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e-2(a), by discriminating against Charging Parties Norman Jones, Donald Newell, Nathaniel J. Bell, Harlan L. Bennett, Terry Fuller, Douglas George, Jr., Thomas Heywood, Derrick Lee, Trent Perry, Henry Williams, Franklin D. Thomas and a class of current and former Black employees on the basis of race. Specifically, the EEOC alleged

that Defendant, at its Rockdale, Illinois production facility, violated Title VII by fostering or tolerating a working environment that was hostile to Black employees. Apollo denies these allegations. Charging Parties Norman Jones, Donald Newell, Nathaniel J. Bell, Harlan L. Bennett, Terry Fuller, Douglas George, Jr., Thomas Heywood, Trent Perry, and Derrick Lee filed independent claims under 42 USC Section 1981 on March 25, 1999.¹ They were represented by private counsel and shall hereinafter be known collectively as the Private Plaintiffs. Private Plaintiff's §1981 claims and EEOC's Title VII claims were consolidated by Order of this Court on October 19, 2000.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC in this action. Nothing in this Decree should be construed as an admission by any party regarding either liability or non-liability.

FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

¹ Charging Party Franklin Thompson later joined the §1981 action and is a Private Plaintiff. Derrick Lee's individual claims were dismissed on Summary Judgment. Though Lee is no longer a Private Plaintiff he remains an EEOC claimant.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties, the Private Plaintiffs, the EEOC claimants, and the public interest are adequately protected 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 or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties, the claimants, and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-DISCRIMINATION

4. Apollo, its officers, agents (including management personnel), successors, and assigns are enjoined from discriminating on the basis of race. Nothing in this decree shall be construed as placing any obligation on any individual except in their capacity as an officer or agent of Apollo.

5. Apollo shall ensure that an inspection for racial graffiti is made on a daily basis at its production facility. Any racial graffiti, nooses or other racially derogatory images discovered or brought to the attention of Apollo supervisors or other managers personally or in writing by any of its employees shall first be photographed, and then removed or obliterated, within twenty-four hours. Swastikas, nooses and references to the Ku Klux Klan, the Klan, KKK (collectively "KKK"), are racial graffiti to be dealt with by Defendant in accordance with this paragraph and Paragraph 10 below. Any racial graffiti, nooses or other racially derogatory images discovered or brought to the attention of Apollo Group Leaders shall be immediately reported by the Group Leader to his/her immediate supervisor or to the Human Resources Manager.

NON-RETALIATION

6. Apollo, its officers, agents, employees, successors, assigns and all persons acting in concert with it shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

MONETARY RELIEF

7. Apollo shall pay the gross sum of one million eight hundred twenty five thousand dollars (\$1,825,000) to be distributed as follows:

a. Apollo shall pay a total of \$375,000 to the claimants for whom the EEOC seeks relief, listed below, as damages. None of the money shall be considered compensation for lost wages, so no withholdings shall be made from the monetary amount. Apollo will issue IRS Form 1099's with respect to the money paid. The division of the total amount among the claimants has been at the sole discretion of the EEOC, subject to Court approval. In exercising such discretion, EEOC took into account the evidence and information available to it through the investigation and litigation of this matter, including but not limited to the relative length of service of the respective claimants. Apollo had no part in determining how the monetary relief was divided among the claimants. The division is as follows:

| | CLAIMANT | Amount |
|---|-----------------|---------------|
| 1 | L. MICHAEL AMOS | \$8,015.00 |
| 2 | ELLIOT BACQUET | \$7,010.00 |
| 3 | NICHOLAS BATES | \$7,345.00 |
| 4 | ANTHONY BROOKS | \$13,375.00 |
| 5 | KEVIN BROOKS | \$9,690.00 |

| | CLAIMANT | Amount |
|----|-------------------|---------------------|
| 6 | GARRY CARTER | \$8,350.00 |
| 7 | CAGER CHAPMAN | \$6,005.00 |
| 8 | AUDWIN FITTS | \$22,085.00 |
| 9 | ROBERT JOHNSON | \$19,740.00 |
| 10 | HENRY JONES | \$8,015.00 |
| 11 | TOMMY LASTER | \$9,020.00 |
| 12 | DERRICK LEE | \$21,725.00 |
| 13 | LEE LONG | \$44,195.00 |
| 14 | MICHAEL POOLE | \$32,135.00 |
| 15 | TOMEKER ROBERTSON | \$22,085.00 |
| 16 | ROBERT ROBINSON | \$15,050.00 |
| 17 | RAYMOND SHIRLEY | \$35,820.00 |
| 18 | MARVIN SIMPSON | \$15,385.00 |
| 19 | JACK SMITH | \$16,725.00 |
| 20 | CHRISTOPHER SNAPP | \$14,715.00 |
| 21 | ARTIES TITUS | \$25,100.00 |
| 22 | HENRY WILLIAMS | \$11,005.00 |
| 23 | LECARTIS WEST | \$2,410.00 |
| | | |
| | TOTALS | \$375,000.00 |

b. Apollo shall pay \$1,450,000, inclusive of attorneys' fees and costs, to the Private Plaintiffs represented by the law firm of Specia, Ayers and Ardaugh. This amount shall be distributed in a manner and on terms separately agreed to by Defendant and by Specia, Ayers and Ardaugh on behalf of the Private Plaintiffs.

8. Within five (5) business days after receipt by Apollo of a Release Agreement in the format of Exhibit A from a claimant, Apollo shall issue and mail by certified mail to each EEOC claimant, a certified or cashier's check payable to the order of such claimant to the addresses indicated in Exhibits A and B, in settlement for damages claimed in this case by the EEOC, with a copy to the EEOC. In the event that a check is deemed undeliverable, Apollo shall advise the EEOC.

The EEOC shall then have an additional sixty (60) days to provide an alternative address for the mailing of such check. If a check remains undeliverable, then Apollo shall issue a check in the same amount to the United Negro College Fund. Upon issuance of any such check to the United Negro College Fund, Apollo shall be released from all obligations under this Decree to make any payment to such claimant, as if such claimant had signed the Release Agreement (Exhibit A), and the right of such claimants to receive any monetary or other relief under this Decree shall be extinguished and forever barred. No portion of the monetary relief provided for by this Decree shall revert to Apollo.

POSTING OF NOTICE

9. Within ten (10) business days after entry of this Decree, Apollo shall post same-sized copies of the Notice attached as Exhibit C to this Decree on the two bulletin boards, secured and glassed in, usually used by Apollo for communicating with employees at its Rockdale, Illinois production facility. The Notice shall remain posted for three (3) years from the date of entry of this Decree. Apollo shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Apollo shall certify to the EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. Apollo shall permit a representative of the EEOC to enter Apollo's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

INSTALLATION OF CAMERAS

____ 10. Within ninety (90) days of the entry of this Decree, Apollo will install video cameras directed at the entrances to the restrooms, locker rooms and break rooms. Notices will be posted advising employees that such video cameras have been installed. Tapes from each camera will be kept for four (4) days. In the event racial graffiti is found in any area following the daily inspection

of the premises, Apollo will increase the frequency of inspection of that area to at least twice per shift. If a future inspection of that area reveals a recurrence of graffiti, Apollo will review the tapes, seek to determine which employees entered the area in question during the time period between inspections and question those employees in an effort to determine who posted the graffiti.

RECORD KEEPING

11. For a period of three (3) years following entry of this Decree, Apollo shall maintain and make available for inspection and copying by the EEOC records of each complaint of graffiti or of any racial incident occurring in its Rockdale, Illinois production facility. Such report shall indicate the date the complaint was made, who made it, what was alleged, and what actions the Defendant took to resolve the matter. The Defendant shall also make records of all actions it takes to prevent racial incidents or graffiti in its plant during the duration of this Decree.

12. Apollo shall make all documents or records referred to in Paragraphs 10 and 11, above, available for inspection and copying within ten (10) business days after the EEOC so requests. In addition, Apollo shall make available for interview all persons within its employ whom the EEOC reasonably requests for purposes of verifying compliance with this Decree and shall permit a representative of the EEOC to enter Apollo's premises for such purposes on five (5) business days advance notice by the EEOC.

13. Nothing contained in this Decree shall be construed to limit any obligation Apollo may otherwise have to maintain records under Title VII or any other law or regulation.

REPORTING

14. Apollo shall furnish to the EEOC the following written reports semi-annually for a period of three (3) years following entry of this Decree. The first report shall be due six (6) months

after entry of the Decree. The final report shall be due thirty-six (36) months after entry of the Decree. Each such report shall contain:

a. A summary of the information recorded by Apollo pursuant to Paragraph 10, including the identity of all persons present in a room when graffiti reappeared, the dates and times of the reappearance, and the actions taken by Apollo, including any discipline given;

b. A summary of the information recorded by Apollo pursuant to Paragraph 11, including the name of the complainant, the allegation of the complaint and the action taken by Defendant in response; and,

c. A certification by Apollo that the Notice required to be posted in Paragraph 9, above, remained posted during the entire six (6) month period preceding the report.

ADOPTION AND DISTRIBUTION OF POLICY
AGAINST RACIAL HARASSMENT

15. Within fourteen (14) working days after the entry of this Consent Decree, Apollo shall adopt and distribute to all employees a policy against racial harassment (“the Policy”). Apollo shall also provide a copy of the Policy to the EEOC. The Policy shall specifically prohibit racial insults, nooses and graffiti (including racially derogatory terms, swastikas, nooses and references to the KKK). It shall provide that complaints of racial harassment may be made to any person in the chain of command above an employee or directly to the Director of the Department of Human Resources. It shall not require employees to complain of harassment to a person against whom they allege harassment. It shall provide that employees who violate the policy are subject to discipline up to and including discharge. Apollo shall forward the Policy to the EEOC within three (3) business days after entry of this Decree.

16. A copy of the Policy shall be distributed to each new temporary employee on the day the person is hired as a temporary employee either directly by Apollo or through a temporary agency. In addition if an employee is first hired as a permanent employee, a copy of the Policy shall be given to him/her on the date of hire. Copies of the Policy shall also be posted on the bulletin boards customarily used for posting notices from management to employees.

TRAINING

17. Defendant shall provide training on the requirements of Title VII on the following terms:

a. Defendant shall retain and pay for a consultant/lecturer (“trainer”), approved by the EEOC, to provide training with respect to racial harassment and with respect to the Policy implemented pursuant to Paragraph 15 above.

b. The training will be provided to all Apollo employees, including temporary employees employed at the time of the training. A registry of attendance shall be retained by Apollo for the duration of the Consent Decree.

c. Apollo shall first provide training in accordance with Paragraph 17(a) within ninety (90) calendar days of the entry of this Consent Decree. Apollo shall then also provide such training on at least one occasion in calendar years 2003, and 2004.

18. Apollo shall obtain the EEOC’s approval of its proposed trainer prior to each year’s set of training sessions. Apollo shall submit the name, address, telephone number and resume of the proposed trainer, together with the date(s) of the proposed training sessions to the EEOC within thirty (30) calendar days prior to the first day of the proposed date(s) of training. The EEOC shall

have fifteen (15) calendar days from the date of receipt of the information described above to accept or reject the proposed trainer(s). In the event the EEOC does not approve Apollo's designated trainer(s), Apollo shall have fifteen (15) calendar days to identify an alternate trainer. The EEOC shall have fifteen (15) calendar days from the date of receipt of the information described above to accept or reject the alternate trainer. In the event the EEOC does not approve Apollo's alternate trainer, the EEOC shall designate the trainer to be retained and paid for by Apollo.

19. Apollo agrees to provide the EEOC with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions. Even though the EEOC has approved of or designated a trainer for trainings one year, it is not required to approve of or designate the same trainer for future training sessions.

20. Apollo shall certify to the EEOC in writing with five (5) business days after the trainings have occurred that the training has taken place and that the required personnel have attended. Such certification shall include: (i) the dates, location and duration of the trainings; (ii) a copy of the registry of attendance, which shall include the name and position of each person in attendance; and (iii) a listing of all current employees, including temporary employees, as of the date of the training.

DISPUTE RESOLUTION

21. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within ninety (90) days of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to 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 (10) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

22. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of three (3) years immediately following entry of the Decree, provided, however, that if, at the end of the three (3) years period, any disputes under Paragraph 16, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

23. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

24. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of Apollo in their capacities as representatives, agents, directors and officers of Apollo, and not in their individual capacities. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event that any individual is found to be in contempt for a violation of this Decree.

25. When this Decree requires the submission by Apollo of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: Apollo Settlement, c/o Ethan M. M. Cohen, Trial Attorney, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by the EEOC of materials to

Apollo, they shall be mailed to: Daniel V. Kinsella, Rooks, Pitts & Poust, 10 S. Wacker Drive, Suite 2300, Chicago, IL 60606.

For the EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

Nicholas M. Inzeo
Acting General Counsel

Gwendolyn Young Reams
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
500 West Madison Street
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Chicago, Illinois 60661
(312) 353-7568

John C. Hendrickson
Regional Attorney

Gregory M. Gochanour
Supervisory Trial Attorney

Ethan M. M. Cohen
Trial Attorney

DATE: _____

For Scientific Colors, Inc.:

Daniel V. Kinsella
Rooks, Pitts & Poust
10 S. Wacker Drive, Suite 2300
Chicago, IL 60606

For Private Plaintiffs Norman Jones, Donald
Newell, Nathaniel J. Bell, Harlan L. Bennett,
Terry Fuller, Douglas George, Jr., Thomas
Heywood, Trent Perry, and Franklin D. Thomas

Christian Specia
Specia, Ayers and Ardaugh
116 N. Chicago, #200
Joliet, IL 60432

ENTER:

The Honorable David C. McKeague
United States District Judge

EXHIBIT A

RELEASE AGREEMENT

I, XXXXXXXXXX, for and in consideration of the sum of \$XXX000.00, payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Scientific Colors, Inc., No. 00 C 0171 (N.D. Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge Scientific Colors, Inc. ("Apollo"), and all past and present shareholders, officers, agents, employees, and representatives of Apollo, as well as all successors and assignees of Apollo, from any and all claims and causes of action of any kind which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Scientific Colors, Inc., No. 00 C 0171.

Date

XXXXXXXXXX

EXHIBIT B

_____, 2002

XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXX,XXXXX

Re: EEOC v. Scientific Colors, Inc.,
No. 00 C 0171 (N.D. Ill.)

Dear Mr. XXXXXXXXX:

A Consent Decree resolving the above-referenced lawsuit was signed by the parties and entered by the Court on _____, 2002. Pursuant to the terms of the Consent Decree, enclosed you will find a copy of a Release to be signed by you.

In order to obtain any monetary relief under the Consent Decree in this case, you must sign the Release and return it to me. Please mail the signed Release to me as soon as possible at the following address:

Ethan M. M. Cohen
Equal Employment Opportunity Commission
500 West Madison Street
Suite 2800
Chicago, Illinois 60661

I have enclosed a pre-addressed envelope for your convenience. You may, of course, wish to make and keep a copy of the signed Release for your own records.

If you have any questions about the Release or cannot sign and return the enclosed documents within seven days, please contact me at (312) 353-7568.

Sincerely,

Ethan M. M. Cohen
Trial Attorney

Encls.

EXHIBIT C
NOTICE TO ALL APOLLO EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Scientific Colors, Inc., No. 00 C 0171 (N.D. Ill.), resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Scientific Colors, Inc., ("Apollo").

In its suit, the EEOC alleged that Apollo fostered or tolerated a working environment that was hostile to Black employees, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Apollo denies these allegations.

To resolve the case, Apollo and the EEOC have entered in to a Consent Decree which provided, among other things, that:

- 1) Apollo paid monetary relief to certain current and former employees;
- 2) Apollo will not discriminate on the basis of race in the future and will photograph and remove any racial graffiti if it should appear;
- 3) Apollo will not retaliate against any person because he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree;
- 4) Apollo will adopt and distribute to all employees a policy against racial harassment and will train all its employees regarding racial harassment and its policy.

The EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age or disability. If you believe you have been discriminated against, you may contact the EEOC at (312) 353-8195. The EEOC charges no fees and has employees who speak languages other than English. If you believe you have been discriminated against you may contact the EEOC.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for three years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: Apollo Settlement, EEOC 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

Date

The Honorable David McKeague
District Judge