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EEOC and Majid Borumand v. Merrill Lynch & Co. Inc., and Merrill Lynch Pierce, Fenner & Smith Incorporated

Judge Deborah A. Batts

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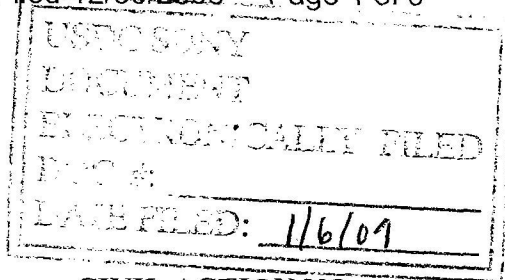
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Keywords

EEOC, Majid Borumand, Merrill Lynch & Co Inc., Merrill Lynch Pierce Fenner & Smith Incorporated, 07-CIV-6017 (DAB) (KNF), consent decree, financial services, religion, national origin, disparate treatment, employment law, title VII



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

**MERRILL LYNCH & CO., INC. and
MERRILL LYNCH PIERCE, FENNER &
SMITH INCORPORATED,**

Defendants.
-----X

MAJID BORUMAND,

Plaintiff-Intervenor

v.

**MERRILL LYNCH & CO., INC. and
MERRILL LYNCH PIERCE, FENNER &
SMITH INCORPORATED,**

Defendants.
-----X

CIVIL ACTION NO.

07-CIV-6017 (DAB) (KNF)

CONSENT DECREE

This cause of action was brought on June 26, 2007 by Plaintiff Equal Employment Opportunity Commission (“EEOC”) against Defendant Merrill Lynch & Co., Inc.; on February 29, 2008, the EEOC filed an amended complaint adding Merrill Lynch, Pierce, Fenner & Smith Incorporated as a Defendant.

The EEOC alleges that Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (collectively “Merrill Lynch”) discriminated against Majid Borumand by refusing to promote him and by terminating him because of his religion, Muslim, and national origin, Iranian, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §

2000e et seq. (“Title VII”) and the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

Merrill Lynch denied the EEOC’s allegations.

The EEOC and Merrill Lynch (collectively (“the Parties”)) desire to settle this action, and therefore stipulate and consent to the entry of this Decree as final and binding amongst the Parties, their successors, and their assigns.

Mr. Borumand, who has intervened as a party, also desires to settle this action, and has separately executed a general release of claims with Merrill Lynch.

The Parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all Parties to this Decree and approved or ordered by the Court.

In consideration of the mutual promises and agreements contained in this Decree, the sufficiency of which is hereby acknowledged, the Parties agree as follows, the Court finds appropriate, and it is therefore **ORDERED, ADJUDGED AND DECREED** that:

I. GENERAL PROVISIONS

1. This Decree resolves all allegations raised in EEOC Charge Number 520-2006-00075 and all allegations that were raised in the Complaint filed by the EEOC. This Decree in no way affects the EEOC’s right to process any pending or future charges that may be filed against Merrill Lynch and to commence civil actions on any such charges as the EEOC sees fit.
2. The Court has jurisdiction over the subject matter and the Parties to this action, 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 the EEOC to bring an enforcement suit or proceeding on the breach of any term of this Decree by Merrill Lynch.

II. MONETARY RELIEF

5. Merrill Lynch shall pay a total of One Million, Five Hundred and Fifty Thousand Dollars (\$1,550,000.00) , which is allotted as follows:

(a) a total of Seven Hundred Thirteen Thousand Three Hundred and Thirty-Three Dollars (\$713,333.00) as backpay damages to Mr. Borumand. The check shall be reduced only by any applicable deductions for the employee's portion of FICA and by applicable federal and state income tax withholdings related to the payment of employees' wages. In addition, Merrill Lynch will be responsible for the employer contributions to FICA and for all taxes and deductions regularly paid by employees.

Merrill Lynch shall include, with the check, a statement of all payments and deductions;

(b) a total of Three Hundred Fifty-Six Thousand Six Hundred and Sixty-Seven Dollars (\$356,667.00) as compensatory damages to Mr. Borumand. As the Parties agree that this (\$356,667.00) payment represents damages for alleged compensatory damages, Merrill Lynch is not required to make any employer FICA contributions, except that it must issue a 1099 for the payment;

(c) a total of Four Hundred Eighty Thousand Dollars (\$480,000.00) as attorney's fees, which Merrill Lynch shall pay to the law firms of Mango & Iacovielli, LLP and Liddle & Robinson, L.L.P. Merrill Lynch will report the payment as non-wage income to Mr. Borumand on a W-2, and to the law firms on a 1099. Each law firm receiving a payment will provide Merrill Lynch with a Form W-9 and the specific amount of the payment to that law firm.

6. Merrill Lynch shall make such payments within fourteen (14) business days after receiving notice of the Court's entry of this Consent Decree, by delivering to Michael E. Grenert, Esq., counsel for Intervenor-Plaintiff, by United States Postal Service, certified mail return receipt requested, separate business checks for each of the amounts set forth in paragraph 5 above, as well as the required statement of all payments and deductions and, at the time Merrill Lynch issues year-end tax reports, it will deliver 1099's/W-2s. Merrill Lynch shall, at the same time it makes said payments, mail to counsel for the EEOC in the instant lawsuit, by United States Postal Service, certified mail return receipt requested, copies of the checks and statements, and at the time Merrill Lynch issues year-end tax reports, copies of 1099's/W-2s.

III. INJUNCTIVE RELIEF

7. Merrill Lynch is enjoined from discriminating against any individual because of her or his national origin, Iranian, or religion, Muslim, in violation of Title VII.

8. Merrill Lynch is enjoined from retaliating against any individual for asserting rights under Title VII, including but not limited to complaining about discrimination, opposing discrimination, filing a charge, providing assistance or evidence or testifying in the investigation or litigation of this or any other charge of discrimination, or for asserting her or his rights under Title VII.

IV. TRAINING AND MONITORING

9. Within sixty (60) days of the entry of this Decree, Merrill Lynch will provide employees within the Equity Linked Technology group (ELT) one (1) hour of training regarding national origin discrimination and religious discrimination. The training has been approved by the EEOC. Merrill Lynch will, within thirty (30) days of this training, provide the EEOC with attendance sheets or records containing the dates of attendance and the names of attendees.

10. With respect to any complaints of discrimination or retaliation made by employees with ELT to the Human Resources Employee Relations group, Merrill Lynch will provide the EEOC with a log indicating the nature of the complaint, without specifically identifying the complainant. The log will be provided by Merrill Lynch to the EEOC every six (6) months, beginning six (6) months from the date of the entry of this Decree.

11. Upon written notice to the undersigned counsel for Merrill Lynch, the EEOC may monitor Merrill Lynch's compliance with this Decree through the inspection of Merrill Lynch's premises and records relevant to Merrill Lynch's compliance with its specific obligations under this Decree and through interviews with relevant employees. Such written notice shall be given ten (10) business days in advance of the inspection and interviews unless such notice would compromise the public interest.

V. RETENTION OF E-MAIL AND ELECTRONIC DOCUMENTS

12. Prior to the entry of this Decree, Merrill Lynch will send a memo to those employees responsible for processing employment discrimination charges confirming that it is Merrill Lynch's policy to place a litigation hold on electronic communications upon receipt of an EEOC charge consistent with Merrill Lynch's obligations under law.

VI. POSTINGS

13. Merrill Lynch will conspicuously display and maintain, in all places in all ELT offices where employee notices are posted, the EEOC poster, as required by federal law, outlining all applicable EEO-laws.

14. Merrill Lynch will display and maintain, in all places in all ELT offices where employee notices are posted, a copy of the Notice of Lawsuit and Settlement, in the form and with the content specified in Exhibit A hereto.

15. This Decree constitutes the complete understanding between the EEOC and Merrill Lynch. No other promises or agreements shall be binding unless agreed to in writing and signed by the Parties.


16. This Decree will remain in effect for two (2) years from the date of entry. The Court shall retain jurisdiction over this action during the duration of the Decree. The matter may

be administratively closed but shall not be dismissed during the duration of the Decree.

SO ORDERED, ADJUDGED AND DECREED this _____ day of _____, 2008.


UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK

FOR THE EEOC


Elizabeth Grossman, Esq.
Regional Attorney
33 Whitehall Street, 5th Floor
New York, New York 10004-2112

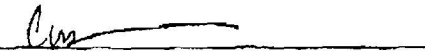
December 30, 2008
Dated

FOR MAJID BORUMAND


Majid Borumand

12/30/08
Dated

FOR MERRILL LYNCH & CO., INC. and
MERRILL LYNCH PIERCE, FENNER &
SMITH INCORPORATED


Catherine W.H. So, Esq.
Director, Employment Law
Office of General Counsel
Merrill Lynch
222 Broadway, 16th Floor
New York, New York 10038

December 30, 2008
Dated

SO ORDERED


DEBORAH A. BATTS *11/01/09*
UNITED STATES DISTRICT JUDGE

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