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EEOC v. Sunland, Inc., and Arizona Corporation

Judge Frank R. Zapata

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EEOC v. Sunland, Inc., and Arizona Corporation

Keywords

EEOC, Sunland Inc. an Arizona Corporation, CV 05-562 TUC FRZ (HCE), Consent Decree, Hostile Work Environment, Sexual Harassment, Retaliation, Constructive Discharge, Sex, Male, Agriculture, Employment Law, Title VII

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission,)	CV 05-562 TUC FRZ (HCE)
Plaintiff,)	CONSENT DECREE
vs.)	
Sunland, Inc., an Arizona Corporation,)	
Defendant.)	

INTRODUCTION

The United States Equal Employment Opportunity Commission (“Plaintiff,” the “Commission” or “EEOC”) filed this action against Defendant Sunland, Inc. (“Defendant” or “Sunland”) to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In its Complaint, the Commission alleges Defendant discriminated against Thomas Bloom and a class of male employees (collectively, “class members”) on the basis of their sex by subjecting them to unlawful sexual harassment. The Commission also alleges Defendant retaliated against employees who complained about the sexual harassment, and constructively discharged them from their employment in violation of Title VII.

The Commission and Sunland do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

1 In the interest of resolving this matter, and as a result of having engaged in
2 comprehensive settlement negotiations, the Commission and Sunland have agreed this action
3 should be resolved finally by entry of this Decree.

4 It is hereby **ORDERED, ADJUDGED AND DECREED:**

5 1. This Decree resolves all claims of the Commission and all class members
6 against Defendant, including back pay, front pay, compensatory and punitive damages,
7 interest, injunctive relief, attorney's fees and costs arising out of any of the issues in this
8 lawsuit, including any issue that could have been raised up to the date of the entry of this
9 Decree.

10 **INJUNCTION**

11 2. Defendant, and its officers, agents, employees, successors, assigns and all
12 persons in active concert or participation with it, both at the time that this Decree becomes
13 effective and for the duration of this Decree, are permanently enjoined for the duration of the
14 Decree from: (a) sexually harassing any employee or applicant; (b) retaliating against any
15 employee or applicant because he or she: (i) opposes or opposed discriminatory practices
16 made unlawful by Title VII; (ii) files or filed a charge of discrimination or is assisting or has
17 assisted or participated or is participating in the filing of a charge of discrimination; or (iii)
18 assists, assisted, participates or participated in an investigation or proceeding brought under
19 the Federal or State laws prohibiting discrimination or retaliation.

20 **MONETARY RELIEF**

21 3. Judgment is entered in favor of the Commission and against Sunland in the
22 amount of one hundred twenty thousand dollars (\$120,000.00).

23 4. Defendant shall pay the gross sum of one hundred twenty thousand dollars
24 (\$120,000.00), to be distributed to the aggrieved persons in a manner that will be provided
25 to counsel for Defendant by the Commission. Defendant shall not condition the receipt of
26 the individual relief on a class member's agreement to: (a) maintain confidentiality; (b)
27 waive his statutory right to file a charge with any federal or state anti-discrimination agency;
28 or (c) waive his right to apply for a position with Defendant.

1 5. Defendant shall pay the settlement amounts by check, cashier's check or
2 money order, for which sufficient funds exist, in accordance with Paragraphs Three (3) and
3 Four (4) of this Decree. Defendant's obligation hereunder is not satisfied until each check
4 issued is negotiated for readily available funds. The payments described in Paragraphs Three
5 (3) and Four (4) of this Decree represent settlement of compensatory damages. By January
6 31, 2007, Defendant shall issue United States Internal Revenue Service Form 1099 to each
7 class member for all such payments.

8 6. Defendant shall mail a copy of the checks provided for in Paragraphs Three (3)
9 and Four (4) of this Decree and any related correspondence to the Regional Attorney, United
10 States Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690,
11 Phoenix, Arizona, 85012.

12 **OTHER RELIEF**

13 7. Defendant's President, Douglas J. DeClusin, shall provide the Charging Party
14 and the class members (identified to counsel for Defendant by the Commission) with a verbal
15 apology, in person, at a place and time to be agreed upon by the parties within thirty (30)
16 days of the entry of this Decree.

17 8. Defendant shall carry out policies and practices that help assure a work
18 environment free from sexual harassment of its employees and that allow employees to raise
19 concerns or complaints without retaliation about matters made unlawful by Title VII. To
20 assist Defendant in its efforts to assure a work environment free of sexual harassment and
21 retaliation, Defendant shall take the actions provided in Paragraphs Eleven (11) - Eighteen
22 (18) of this Decree.

23 9. Within thirty (30) days of the entry of the Decree, Defendant shall
24 appropriately investigate Luis Laguna, and in the event such investigation reasonably
25 establishes that Mr. Laguna engaged in any sexual misconduct, Defendant shall discipline
26 Mr. Laguna to the extent Defendant, in its sole discretion, deems appropriate. The
27 investigation conducted by Defendant shall include, at a minimum, interviews of Thomas
28 Bloom, Jim Rosovich, Mauro Rivera and George Abendano, assuming these individuals are

1 available for such interviews after good faith efforts by Defendant to contact them. In the
2 event the Defendant determines that Luis Laguna has engaged in sexual misconduct, and
3 provided he remains employed by Defendant immediately following such determination, and
4 in addition to the sexual harassment training set forth in Paragraph Twelve (12) below, Luis
5 Laguna shall, as a condition of his employment, be required to attend individual training
6 sessions regarding sexual harassment, which shall be taught by a trainer acceptable to the
7 Commission. This training shall specifically include information about how sexual
8 harassment victims (including male victims) are affected by the conduct. In addition, in the
9 event Luis Laguna remains employed by Defendant after the investigation described in this
10 Paragraph Nine (9), a notation shall be made and kept in the employment file of Luis Laguna,
11 stating that allegations of sexual harassment and retaliation were made against him and,
12 should he be determined to have engaged in any sexual harassment or retaliation in the
13 future, he shall be appropriately disciplined. A notation also shall be made and kept in the
14 employment file of Rogelio Laguna, a former employee, stating that allegations of sexual
15 harassment and retaliation were made against him. Said notation shall be retained in
16 Defendant's records for the duration of this consent decree.

17 10. Mauro Rivera is eligible for employment with Defendant and, in the event he
18 submits an application for employment, Defendant will offer Mauro Rivera a job in an
19 available position for which he possesses the requisite qualifications and experience.

20 **DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES**

21 11. Defendant shall post, for the duration of this Decree, in a prominent place
22 frequented by its employees at its facilities located in the State of Arizona, including, both
23 at the time that this Decree becomes effective and for the duration of this Decree, the Notice
24 attached as Attachment A, in both English and Spanish. The Notice shall be the same type,
25 style and size as set forth in Attachment A to this Decree, and the Notice shall be posted so
26 that both pages are visible side-by-side. It shall be Defendant's responsibility to have the
27 notice properly translated.

28 12. Defendant shall provide training to the employees, supervisors and managers

1 of its facilities in the State of Arizona on sexual harassment and retaliation, according to the
2 following terms:

3 A. Defendant shall provide consultation and training to its employees,
4 supervisors and managers of its Arizona facilities for a period of five (5) years from the date
5 of this Decree. During each of the next five (5) years, the consultant/trainer shall conduct
6 one live seminar training session each year, during which Defendant shall ensure that an
7 officer of Defendant will make either a live or a recorded video statement regarding the
8 severe consequences of sexual harassment and of the failure to investigate and take seriously
9 complaints of unlawful harassment, including the fact that managers and supervisors are
10 evaluated, in part, on their enforcement of Defendant's anti-discrimination policies and the
11 handling of discrimination complaints, and that such individuals may be subjected to
12 discipline, up to and including termination, for violation of Defendant's policies against
13 sexual harassment and retaliation.

14 All Defendant employees, supervisors and managers employed or having
15 responsibility for its Arizona facilities shall attend the live session or the recorded video
16 showing of the live session in each year for the duration of this Decree. Defendant may at
17 its election have duplicative recorded video sessions to accommodate staffing needs.

18 B. During the first year, 2006, the seminar-training session shall be
19 conducted within four months of the entry of this Decree. For the second year, the
20 seminar-training session shall be conducted between 10 and 12 months after the completion
21 of the preceding session. For the third year, the seminar-training session shall be conducted
22 between 10 and 12 months after the completion of the preceding session. For the fourth year,
23 the seminar-training session shall be conducted between 10 and 12 months after the
24 completion of the preceding session. For the fifth year, the seminar-training session shall be
25 conducted between 10 and 12 months after the completion of the preceding session.

26 C. The seminar-training sessions shall be approximately one and one-half
27 hours, plus 15-30 minutes of questions and answers. All personnel, designated in Paragraph
28 Eleven (11) (A), shall both register and attend the seminar-training session. The registry of

1 attendance shall be retained by Defendant for the duration of this Decree.

2 D. The seminars shall include the subjects of what constitutes sexual
3 harassment and retaliation; that sexual harassment and retaliation in the hiring, firing,
4 compensation, assignment or other terms, conditions or privileges of employment violates
5 the law; how to prevent sexual harassment and retaliation; how to provide a work
6 environment free from sexual harassment and retaliation; how to conduct an effective sexual
7 harassment investigation; and to whom and by what means employees may complain if they
8 feel they have been subjected to sexual harassment or retaliation in the workplace. The
9 session shall also review and explain Defendant's policies set out in Paragraph Fifteen (15)
10 (A)-(K) of this Decree.

11 E. During each training session, Defendant shall ensure that an officer of
12 Defendant will speak either live or via recorded video to the employees, supervisors and
13 managers about the discipline that can be taken against supervisors, managers and employees
14 of Defendant who commit acts of sex harassment or retaliation or allow sex harassment or
15 retaliation to occur in the workplace; the importance of maintaining an environment free of
16 sexual harassment and retaliation; and Defendant's policy in regard to sexual harassment and
17 retaliation referred to in Paragraph Fifteen (15) (A)-(K) of this Decree.

18 13. The Commission may designate Commission representatives to attend and
19 participate in the seminar-training sessions. The representatives shall have the right to attend
20 and fully participate in the sessions.

21 14. Defendant shall designate, for the duration of this Consent Decree, person(s)
22 at Sunland to receive and forward complaints of discrimination from its employees within
23 the State of Arizona.

24 15. Defendant shall maintain written policies, in English and in Spanish concerning
25 sexual harassment and retaliation, that conform with the law. Defendant represents that its
26 written policies substantially conform with Paragraphs A-K below:

27 A. A strong and clear commitment to a workplace free of sexual
28 harassment;

1 B. Clear and complete definitions of sexual harassment and of retaliation,
2 with at least four relevant examples;

3 C. A clear and strong encouragement of persons who believe they have
4 been sexually harassed to come forward and make management aware of the harassment;

5 D. A description of the consequences, up to and including termination, that
6 will be imposed upon violators of the policies;

7 E. A promise of maximum feasible confidentiality for persons who believe
8 that they have been sexually harassed;

9 F. An assurance of non-retaliation for persons who have reported to
10 Defendant that they believe they have been sexually harassed, and for witnesses;

11 G. That sexual harassment by any person, including management officials,
12 supervisors, co-workers, customers and third parties is prohibited and will not be tolerated;

13 H. The identification of specific individuals, with their telephone numbers,
14 to whom employees who believe that they have been sexually harassed may report the sexual
15 harassment, including a written statement that the employee may report the harassment to
16 designated persons outside of their chain of management. This information also shall be
17 posted in a conspicuous place at Defendant's facilities in the State of Arizona;

18 I. That employees are not to discuss sexual conduct and/or sexual jokes
19 while at work and that employees are not to expose their genitalia to one another or urinate
20 on one another;

21 J. That no sexually oriented materials or objects shall be brought on the
22 premises of Defendant;

23 K. Assurances that Defendant will investigate sexual harassment
24 allegations promptly, fairly, thoroughly and impartially by using appropriate investigators
25 and that appropriate corrective action will be taken by Defendant to eradicate any known or
26 reported sexual harassment.

27 16. These policies, referred to in Paragraph Fifteen (15) (A)-(K) above, shall be
28 transmitted to employees, supervisors and managers of Defendant's Arizona facilities by an

1 officer of Defendant and distributed to each current em ployee of Defendant’s Arizona
2 facilities within thirty (30) days of the en try of this Decree. These policies shall be
3 distributed, in English and Spanish, to all new employees of Defendant’s Arizona facilities
4 when hired and reissued, in English and Spanish, to each employee once a year for the term
5 of this Decree. The sexual harassm ent policies also shall be posted, in English and Spanish,
6 in a prominent place frequented by the em ployees and shall include a phone num ber for
7 employees to complain and/or ask questions.

8 17. Defendant shall promptly and appropriately investigate all complaints of sexual
9 harassment by employees of its Arizona facilities. Where the com plaint is substantiated,
10 Defendant shall take immediate appropriate corrective action to discipline sexual harassers,
11 and to eradicate the sexual harassm ent. If Defendant determ ines that a victim of sexual
12 harassment has been denied a tangible em ployment benefit as a result of the harassm ent,
13 Defendant shall restore the com promised benefit and take such actions as are reasonably
14 necessary to place the employee in the position the employee would have been absent the
15 discrimination or retaliation.

16 18. Defendant shall not retain docum ents related to the investigation in the
17 personnel file of any employee who complains of harassment. All disciplinary actions taken
18 against employees, supervisors and managers of Defendant’s Arizona facilities for violation
19 of Defendant sexual harassment policy shall be retained in that em ployee’s personnel file
20 where a violation is found and discipline is imposed.

21 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

22 19. Defendant shall report in writing to the Regional Attorney of the Comission's
23 Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix, Arizona 85012,
24 beginning six (6) months from the date of the entry of this Decree, and thereafter every six
25 (6) months for the duration of the Decree the following information:

26 A. Any changes, modifications, revocations, or revisions to its policies
27 which concern or affect the subject of sexual harassment or retaliation.

28 B. The registry of persons attending the seminars required in Paragraph

1 Twelve (12) of this Decree and a list of current personnel employed by Defendant at its
2 Arizona facilities on the day of the seminar-training session.

3 C. Confirmation that: (i) the Notice required in Paragraph Eleven (11) of
4 this Decree was posted, in English and in Spanish, and the locations where it was posted, (ii)
5 the policies required in Paragraph Fifteen (15) (A)-(K) of this Decree were distributed to
6 each current and new employee of Defendant's Arizona facilities, and posted.

7 D. A copy of the polices referred to in Fifteen (15) (A)-(K) of this Decree
8 will be provided with the first report.

9 20. The Commission shall have the right to enter and inspect Defendant premises
10 located in Arizona upon ten (10) days written notice to Defendant counsel, to ensure
11 compliance with this Decree and Title VI's prohibition of sexual harassment and retaliation.

12 **COSTS, DURATION AND PENALTIES FOR NON-COMPLIANCE**

13 21. The parties shall each bear their own costs, and the Commission and Defendant
14 shall each bear their own attorneys' fees incurred as a result of this action through the filing
15 of this Decree.

16 22. The duration of this Decree shall be five (5) years from its entry. This Court
17 shall retain jurisdiction over this action for the duration of the Decree, during which the
18 Commission may petition this Court for compliance with this Decree.

19 23. In the event that the Commission believes that Defendant has failed to comply
20 with any provision(s) of the Decree, the Commission shall:

- 21 (a) Notify Defendant in writing of the alleged non-compliance, which
22 notice shall state that it is being given pursuant to this Paragraph
23 Twenty-Three (23) (a) of this Decree and shall be sent by fax and by
24 first-class mail both to the counsel and the corporate officers who sign
25 this Decree on behalf of Defendant, using the fax numbers and
26 addresses shown in connection with their signatures below.

27 24. Should the Court determine that Defendant has not materially complied with
28 this Decree, appropriate relief may be ordered. This Decree shall expire by its own terms at


1 the end of sixty (60) months from the date of entry, without further action by the parties.

2 25. The parties agree to entry of this Decree and judgment subject to final approval
3 by the Court.

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5 DATED this 27th day of June, 2006.

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FRANK R. ZAPATA
United States District Judge

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1 APPROVED AND CONSENTED TO:

2 GWENDOLYN YOUNG REAMS
Associate General Counsel

3 EQUAL EMPLOYMENT OPPORTUNITY
4 COMMISSION
1801 L Street, N.W.
5 Washington, D.C. 20507

6

7

8 s/ Mary Jo O'Neill
MARY JO O'NEILL
Regional Attorney

s/ Douglas J. Declusin
DOUGLAS J. DECLUSIN
PRESIDENT
Sunland, Inc.

10

11

12 s/ Sally C. Shanley
SALLY C. SHANLEY
Supervisory Trial Attorney

s/ Tibor Nagy
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Approved as to form only

14

15

16 s/ Michelle G. Marshall
MICHELLE G. MARSHALL
Trial Attorney

17

18 EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Phoenix District Office
19 3300 N. Central Ave., Suite 690
Phoenix, Arizona 85012
20 (602) 640-5020

21 Attorneys for Plaintiff

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ATTACHMENT A

NOTICE TO ALL EMPLOYEES OF SUNLAND, INC.

This Notice is posted pursuant to a Consent Decree entered into between Sunland and the Equal Employment Opportunity Commission (EEOC), entering judgment against Sunland.

It is unlawful under federal law, Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of sex, including sexual harassment, in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. Sexual harassment includes unwelcome or offensive sexual advances or touching, requests for sexual favors, or other verbal or physical conduct directed at a person because of her/his sex. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC or the Arizona Civil Rights Division (ACRD).

Sunland shall not discriminate against any employee on the basis of sex, including sexual harassment, and shall not retaliate against any employee for complaining about sexual harassment.

If you believe you have been discriminated against or sexually harassed, you should immediately report such conduct to Sunland's Human Resources Manager, LaVerne Doherty, at (602) 288-5012. You also have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012
Telephone: (602) 640-5000
TTY: (602) 640-5072
Website (national): www.eeoc.gov; or

- (2) Arizona Civil Rights Division (“ACRD”) of the Attorney General's Office

Phoenix Office:

1275 W. Washington, Phoenix, Arizona, 85007

Telephone: (602) 542-5263

TDD: (602) 542-5002

Toll Free: (877) 491-5742

Toll Free TDD: (877) 624-8090

Tucson Office:

400 West Congress, Suite S215

Tucson, AZ 85701

Telephone: (520) 628-6500

TDD: (520) 628-6872

Toll Free: (877) 491-5740

Toll Free TDD (877) 881-7552

Website: www.azag.gov/civil_rights

You have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against, retaliated against or sexually harassed.

No Retaliation Clause. It is against the law for any action to be taken against you by any supervisory or management official of Sunland for: (1) opposing sexual harassment or other discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD at the addresses or telephone numbers listed above.