

ORIGINAL

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Boal

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
NEW ENGLAND LIFE)
INSURANCE COMPANY)
)
Defendant.)
_____)

CIVIL ACTION
CASE NO. CV498-275

CONSENT DECREE

This action was instituted by the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (the "Commission") against NEW ENGLAND LIFE INSURANCE COMPANY, ("Defendant") pursuant to the Age Discrimination in Employment Act ("ADEA") to remedy the alleged wrongful employment practices identified in the Complaint filed in this action.

This Court has jurisdiction of the subject matter of this action and of the parties to this Action. The Commission alleged in the foregoing Civil Action that the Defendant acted unlawfully by adhering to a mandatory retirement policy requiring its General Agents to retire on the April 1st following their 65th birthday.

In its Complaint, the Commission sought make whole relief on the part of Thomas Madison and other allegedly similarly situated individuals, including rightful place reinstatement, back pay relief, liquidated damages and prejudgment interest.

The Defendant filed its Answer to the Complaint denying the allegations made by the Commission. Specifically, Defendant denied that Thomas Madison or any other General Agents has ever been an “employee” of Defendant as that term is defined by the ADEA. Defendant also denied that it has any mandatory retirement policy for its independent contractor General Agents.

All of the parties to this action desire to avoid the additional expense, delay and uncertainty which would result from the continuance of this litigation and desire to formulate a plan to be embodied in a Consent Decree which will promote and effectuate the purpose of the ADEA.

This agreement constitutes a good faith settlement of disputed claims and is not to be deemed or construed to be an admission of liability or wrongdoing by Defendant.

This Court has reviewed the terms of the proposed Consent Decree in light of the pleadings and the applicable law and regulations, and has approved this Consent Decree as one which will promote and effectuate the purposes of the ADEA.

Now, therefore, this Court, being fully advised in the premises, it is hereby
ORDERED, ADJUDGED AND DECREED:

I. DISCLAIMER OF VIOLATION:

It is understood and agreed that the negotiation, execution, and entry of this Consent Decree, and the undertakings made by the Defendant hereunder, are in settlement and compromise of a claim of alleged discrimination in employment, the validity of which is denied by Defendant. Neither the negotiation, execution, nor entry of this Consent Decree shall constitute an acknowledgment or admission of any kind by the Defendant that its General Agents are employees of Defendant or that any of Defendant's

officers, agents or employees have violated the ADEA or any other applicable law, regulation or order.

II. NON-DISCRIMINATION:

Defendant agrees that, in order to insure equal opportunity in the employment process, it shall make all employment decisions without regard to an employee's age. In accordance with the above, Defendant shall not maintain a policy of mandatory retirement for its General Agents on the April 1st after their 65th birthday.

III. NON-RETALIATION:

Defendant agrees that it will not retaliate against Charging Party Thomas Madison, Charging Party's sons or any other member of Madison's family as a result of Madison's filing his Charge of Discrimination with the EEOC.

IV. MONETARY RELIEF:

Defendant shall make a charitable donation in the amount of Ten Thousand Dollars and No Cents (\$10,000.00) to a charitable organization mutually agreeable to Defendant and Thomas Madison. Said donation shall be made within sixty (60) days of the entry of this Consent Decree. The parties recognize that such payment is made without admission of liability on the part of Defendant.

V. NOTICES TO BE POSTED:

Defendant shall keep posted the Notice required by Title VII. In addition, Defendant shall mail the letter attached hereto as Exhibit A to all current Managing Partners (formerly known as General Agents). Defendant shall furnish the Commission with written Notice that it has complied with this provision, including the date that such

letters were mailed and the names of all persons to whom Exhibit A was provided. Such notice shall be sent to the following representative of the Commission:

S. Robert Royal
Regional Attorney
Atlanta District Office – Legal Unit
United States Equal Employment Opportunity Commission
Suite 4R30, 100 Alabama Street, S.W.
Atlanta, GA 30303

VI. PROCEDURE FOR ENFORCING COMPLIANCE:

The Commission will attempt to resolve any dispute regarding the enforcement of this Consent Decree by informal mediation and consultation before seeking enforcement through the judicial process. The Commission will notify Defendant in writing if it has any reason to believe that any action or omission by a Defendant is in violation of the Consent Decree. Such notice shall be given by certified mail, return receipt requested, postage paid to Defendant's counsel of record, Forrest W. Hunter, ALSTON & BIRD LLP, 1201 W. Peachtree Street, Atlanta, Georgia 30309 and Defendant's compliance official.

Defendant shall have thirty (30) days after the receipt of such notification to cure any such alleged deficiency, and to notify the Commission, by written report addressed to the Regional Attorney for the EEOC's Atlanta District Office, of the measures taken to cure the alleged deficiencies. If upon receipt of Defendant's report the Commission concludes that the deficiency has not been satisfactorily cured by Defendant, the Commission may seek to resolve the alleged deficiency through good faith conciliation and mediation. If the alleged deficiency is not resolved within thirty (30) days after the initiation of such good faith conciliation and mediation process, then the Commission may seek enforcement of this Consent Decree through the judicial process.

VII. OTHER ACTIONS:

The Commission shall not commence or prosecute against Defendant any action or other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities which arise out of EEOC Charge No. 115940588, or the investigation of that charge or this lawsuit, except that nothing herein shall preclude the Commission from bringing an action to enforce this Consent Decree, subject to the procedures outlined in Section VI above.

VIII. COSTS AND ATTORNEY FEES:

The Plaintiff Commission and Defendant shall each bear their own respective costs and attorney's fees for this action.

IX. TERMS OF DECREE – PERIOD OF JURISDICTION:

This Consent Decree shall continue to be effective and binding upon the parties to this action for a period of twelve (12) months immediately following the entry of this Consent Decree. This Court shall retain jurisdiction over this action for the purposes of clarifying and enforcing this Consent Decree and for any other appropriate or equitable purposes for twelve (12) months from the date of entry of this Consent Decree, unless the Court acts or the Commission has, prior to the expiration of said twelve (12) month period, moved to enforce compliance with the Consent Decree. If this Court acts or the Commission has moved to enforce compliance with this Consent Decree within this period, this Court shall retain jurisdiction of this action until all issues relating to all such motions which are made during the twelve (12) month period have been resolved. Thereafter, this Court shall dissolve this Consent Decree and shall dismiss this action with prejudice.

The parties hereto and the undersigned attorneys of record for the Plaintiff and Defendant in the above-styled action hereby consent to the entry of the foregoing Consent Decree.

BY CONSENT:

Counsel for Plaintiff:

C. GREGORY STEWART
General Counsel

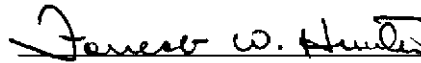


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Atlanta, Georgia 30309-3424
Tel: (404) 881-7000
Fax: (404) 881-7777

APPROVED, DONE AND SIGNED this ____ day of _____, 1999.

UNITED STATES DISTRICT JUDGE

EXHIBIT A

(Company Letterhead)

Subject: Retirement of Managing Partners

Dear _____:

In light of our development of the Distribution Company and the important "exit strategy" component of the Distribution Company, I thought it would be useful to clarify an aspect of New England Financial's policy concerning the retirement of its Managing Partners.

The Company remains committed to the policy of an orderly, planned transition of an Agency upon the retirement of its Managing Partner. This commitment includes our current policy of encouraging a Managing Partner to find a replacement acceptable to New England Financial to facilitate an orderly transition at the Agency upon his or her retirement. This does not mean, however, that New England Financial requires a Managing Partner to retire on any specific date such as his or her 65th birthday or the April 1st following that date. A provision in the old General Agent Contract which referred to a "normal retirement date" was removed many years ago. It remains our intention to permit Managing Partners to choose their own retirement date, while we work with them on a transition plan. Both parties, of course, retain the right to terminate the relationship on 60 days written notice.

As you know, we are very excited about the development of the Distribution Company, and want to make sure there is no confusion regarding this important aspect of our relationship with you as we move forward.

Sincerely yours,
