

ORIGINAL

WILLIAM R. TAMAYO - #084965 (CA)
DAVID OFFEN-BROWN #063321 (CA)
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

San Francisco District Office
350 The Embarcadero, Suite 500
San Francisco, California 94105-1260
Telephone: (415) 625-5652
Facsimile: (415) 625-5657

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 04 2006
at 8 o'clock and 30 min. AM
SUE BEITIA, CLERK

WILFREDO TUNGOL #2550 (HI)
EEOC Honolulu Local Office
300 Ala Moana Blvd. #7-127
Box 50082
Honolulu, Hawaii 96850-0051
Telephone: (808) 541-3121
Facsimile: (808) 541-3390

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JAN 03 2006
2:25 pm
CLERK, U. S. DISTRICT COURT
DISTRICT OF HAWAII

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
Plaintiff,)

CIV. NO. 05-00631 SOMBMK
CONSENT DECREE

v.)

BALLY NORTH AMERICA,)
INCORPORATED,)
Defendant.)

I. INTRODUCTION

1. Plaintiff, Equal Employment Opportunity Commission (“EEOC”), filed this action alleging that Defendant Bally North America, Inc. (“Defendant”) subjected Charging Party Yolanda Wang, to a hostile work environment based on her race and national origin. The lawsuit also alleged that Defendant retaliated against Wang due to her opposition to the Defendant’s unlawful employment practices.
2. Defendant has denied the foregoing allegations.
3. The EEOC and Defendant want to fully and finally conclude all claims arising out of the above action without the expenditure of further resources and expenses in contested litigation. They enter into and agree to the filing of this Consent Decree to further the objectives of equal employment opportunity as set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et. seq. , as amended by the Civil Rights Act of 1991, 42 U.S.C. Section 1981a.

II. NON-ADMISSION OF LIABILITY

This Consent Decree is not an adjudication or finding on the merits of this case and shall not be construed as an admission of alleged Title VII violations by Defendant.

III. PURPOSE OF THE DECREE

The parties have entered into this Consent Decree in order to achieve the following purposes:

- a. To ensure the implementation of policies and procedures which prohibit Defendant from discriminating or retaliating against employees on the basis of race, national origin, or other impermissible reasons.
- b. To ensure that Defendant enforces policies and programs to promptly prevent discrimination based upon race, national origin, or other impermissible reasons.
- c. To ensure that the aggrieved individual, Yolanda Wang, is fully compensated for losses allegedly suffered in connection with the alleged discrimination by Defendant.
- d. To avoid the time, expense and uncertainty of further litigation.

IV. DEFINITION OF TERMS

1. "Charging Party" refers to Yolanda Wang, the individual who filed the charge of discrimination leading to the instant lawsuit.
2. For the purposes of this decree, the term "Discriminatory Harassment" refers to any harassment based on the protected status of race, gender, religion,

national origin, color, age or disability.

V. GENERAL PROVISIONS

1. This Consent Decree is intended to and does effectuate the full, final, and complete resolution of all allegations of unlawful employment practices, discrimination and retaliation arising from or relating to the original charge of discrimination, EEOC Charge No. 378-A2-00223 and the Complaint filed in EEOC v. Bally North America, Inc., Civil No. 05-00631SOM/BMK pursuant to Title VII of the Civil Rights Act of 1964.
2. This Consent Decree in no way affects EEOC's right to process, in accordance with standard Commission procedures, charges filed by individuals against Defendant alleging violations of Federal employment discrimination statutes. Charges include those pending as of the effective date of this Consent Decree and filed in the future. Processing includes the administrative investigation and conciliation and commencement of civil actions on the basis of such charges.
3. This Court has jurisdiction over the subject matter and the parties to this action.
4. This Consent Decree constitutes a full resolution of Plaintiff's Complaint and the underlying charge of discrimination filed by the Charging Party with the

EEOC.

5. This Consent Decree shall become effective upon its entry by the Court.
6. Each party shall bear its own costs and attorney fees.
7. The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record herein, and the applicable law, and now approves the Consent Decree in its entirety.

VI. MONETARY CONSIDERATION

8. In settlement of the EEOC's claim for employment discrimination alleged in its Complaint or related to this lawsuit, Defendant agrees to pay Charging Party the monetary sum of two hundred thousand dollars (\$200,000).

Monetary payment shall be in the form of a business check, cashier's check, or certified check by certified first-class mail addressed to Charging Party, through her private attorney Peter Fong, 733 Bishop Street, Suite 1550 Makai Tower, Honolulu, Hawaii 96813-4006.

Defendant will mail a copy of the settlement check to Wilfredo Tungol, Trial Attorney for the EEOC, at 300 Ala Moana Boulevard, Prince Kuhio Federal Building Room 7-17, Honolulu, Hawaii 96850-0051.

VII. GENERAL INJUNCTIVE RELIEF

1. ***Discriminatory Harassment:*** Consistent with Section 703 of Title VII, 42

U.S.C. §2000e-2, Defendant, its officers, agents, managers (including supervisory employees), successors and assigns, and all those in active concert or participation with them, will comply with all requirements of Title VII with respect to providing a work environment free from discrimination on the basis of race or national origin and free from any action, policy or practice that is known to Defendant to have the effect of harassing or discriminating against any employees on the basis of race or national origin or creating, facilitating or permitting the existence of a work environment that is hostile to employees based on their protected status.

2. ***Retaliation:*** Consistent with Section 704 of Title VII, 42 U.S.C. §2000e-3, Defendant, its officers, agents, managers (including supervisory employees), successors and assigns, and all those in active concert or participation with them, agree not to engage in, implement or permit any action, policy or practice with the purpose of retaliating against any witness in this case, or any employees because they opposed any harassment or other discriminatory acts on the basis of race or national origin made unlawful under Title VII; filed a charge of discrimination with EEOC alleging any such practice; or testified or participated in any manner in any investigation, proceeding or hearing.

VIII. SPECIFIC INJUNCTIVE RELIEF

Defendant affirms the following “Statement of Zero-Tolerance Policy and Equality Objectives”:

Defendant is firmly committed to maintaining a zero-tolerance policy concerning discriminatory harassment and retaliation against individuals who report harassment in the company’s workplace; to swiftly and firmly respond to any acts of harassment and retaliation of which the company becomes aware; to implementing a disciplinary system that is designed to strongly deter future acts of harassment or retaliation; and to actively monitor its workplace in order to ensure tolerance, respect and dignity for all people.

Consistent with this Zero-tolerance policy and equality objectives, Defendant will provide training to all of its Hawaii employees as follows:

Harassment Training

- a. Within six months of entry of this Decree, Defendant will present to all non-managerial employees, at least two (2) hours of mandatory training in the subject area of Title VII - race and national origin discrimination and American with Disabilities Act (ADA) and at least two (2) hours of mandatory training for all of its managerial employees (managers, assistant managers, sales supervisors) in the subject area of Title VII - race and

national origin discrimination, ADA, proper handling and investigation of discrimination complaints and training on non-retaliation under Title VII. Defendant agrees to provide a syllabus at least two weeks before the date of training to the EEOC.

- i. The training shall be conducted by persons with expertise in Equal Employment Opportunity laws who are knowledgeable about Title VII and discriminatory harassment and who have the background, skill and ability to educate Defendant employees about the issue of discriminatory harassment in the workplace. The training will include examples of the types of remarks and behavior that will not be tolerated in Defendant's business locations. The training will further inform each participant that he or she is responsible for knowing and complying with the contents of Defendant's EEO and harassment policies and procedures.
- ii. Managers who will assume responsibility for enforcing Defendant's EEO and harassment policies upon expiration

of the Consent Decree shall also receive training on appropriate techniques for documenting and investigating complaints of harassment. The training on investigative techniques can be included as a component of the mandatory discriminatory harassment training.

- b. The cost of the training described in paragraph “a”, above, shall be borne by Defendant.
- c. Defendant will retain records of the training programs, copies of any materials distributed during the training and lists documenting the dates on which it held the training and identifying the persons who attended and those who did not attend. Defendant will provide a copy of these records, the training materials and the acknowledgment of training forms to the Commission within forty (40) days of completion of the trainings.
- d. Defendant shall provide annual refresher training sessions for all of its employees in Hawai’i after the completion of the initial anti-harassment training for a period of one year after the entry of this Consent Decree. This training shall be at least one (1)

hour long.

IX. REPORTING

1. Within thirty days of providing the training under section VIII, Defendant will send the EEOC appropriate verification of its completion of harassment training for its Hawaii-based employees.
2. Defendant will file six month interval reports beginning in the second year of the Consent Decree of any internal discrimination complaints filed by employees of Defendant in the state of Hawaii, with the first interval report filed within the first six months of the second year of the Consent Decree and the second report to be submitted no later than thirty (30) days before the expiration of the consent decree.
3. Defendant shall submit a final report to the EEOC thirty (30) days before the Consent Decree expires containing a statement verifying its compliance with the terms of the Consent Decree.

X. EXECUTION IN COUNTERPARTS

This Decree may be executed in two or more counterparts, or by facsimile with the original to follow promptly, and any set of counterparts which is collectively executed by all the parties shall be sufficient proof of the Decree.

XI. RETENTION OF JURISDICTION AND EXPIRATION OF
CONSENT DECREE

1. This Consent Decree shall terminate two (2) years from the date of entry by the Court. EEOC reserves the right to petition this Court for an extension of the Decree because of noncompliance by the Defendant. If EEOC determines that a Defendant has not complied with the Consent Decree, EEOC will provide written notification of the alleged breach to Defendant and will not petition the Court for enforcement sooner than ninety (90) days after providing written notification. The ninety (90) day period following written notice shall be used by the parties for good faith efforts to resolve the issue. If EEOC petitions the Court and the Court finds a Defendant to be in substantial violation of the terms of the Decree, the Court may provide whatever relief it deems proper.
2. This Court shall retain jurisdiction over this action for the purposes of enforcing the provisions of this Consent Decree. This Consent Decree shall expire by its own terms at the end of two (2) years without further action by the parties.

DATED: 12/27, 2005



WILLIAM TAMAYO
Regional Attorney
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DATED: 12/27, 2005



DAVID F. OFFEN-BROWN
Supervisory Trial Attorney
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DATED: 12/30, 2005



WILFREDO TUNGOL
Trial Attorney
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Bally North America, Inc.

DATED: _____, 2005

By _____
MASSIMO PIOMBINI
Chief Executive Officer

DATED: _____, 2005

TRACEY I. LEVY
PROSKAUER ROSE LLP
Attorney for Defendant Bally North America,
Inc.

APPROVED AND SO ORDERED:

U.S. District Judge

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Dec-05-05 10:19 From:U.S. EEOC

800-541-3800

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DATED: _____, 2005

WILLIAM TAMAYO
Regional Attorney
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DATED: _____, 2005

DAVID F. OFFEN-BROWN
Supervisory Trial Attorney
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

DATED: _____, 2005

WILFREDO TUNGOL
Trial Attorney
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Bally North America, Inc.

DATED: 12/20, 2005

By *Massimo Piombini*
MASSIMO PIOMBINI
Chief Executive Officer

DATED: 12/22, 2005

Tracey Levy
TRACEY I. LEVY
PROSKAUER ROSE LLP
Attorney for Defendant Bally North America,
Inc.

APPROVED AND SO ORDERED:

Suzanne Chi Mollway
U.S. District Judge

CONSENT DECREE
CV 05-3801 SOM/AMK