

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

U.S. DISTRICT COURT
EAST. DIST. MICH.
LANSING, MI

JUL 19 4 26 PM '04

FILED

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Case No. 1:03-CV-10172

vs.

Hon. David M. Lawson

BENCHMARK RESIDENTIAL SERVICES,
INC.,

Defendant.

TAMMY C. KLEIN (P60256)
Attorney for Plaintiff
Equal Employment Opportunity
Commission
865 Patrick V. McNamara Building
477 Michigan Avenue
Detroit, Michigan 48226
(313) 226-5673

JAMIE HECHT NISIDIS (P48969)
Attorney for Defendant
Braun Kendrick Finkbeiner
P.L.C.
4301 Fashion Square Boulevard
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(989) 498-2100

DEBRA FREID (P33078)
Attorney for Intervening Plaintiff
Freid, Gallagher, Taylor, &
Associates
604 S. Jefferson Avenue
Saginaw, Michigan 48605
(989) 754-0411

CONSENT DECREE

On June 4, 2003, the Equal Employment Opportunity Commission, (the "Commission" or "EEOC") commenced this action in the United States District Court for the Eastern District of Michigan, Southern Division, on behalf of the Charging Party, Kim Helm, ("Charging Party" or "Helm") against Defendant, Benchmark Residential Services, Inc., ("Defendant" or "Benchmark"). Thereafter, this matter was transferred by Stipulation and Order to the Eastern

District of Michigan, Northern Division, and Helm intervened in the Commission's lawsuit. The Commission alleged in its Complaint that Helm had been subjected to sexual harassment, both Quid Pro Quo and hostile work environment.

FINAL DISPOSITION

1. Through this Consent Decree, ("Decree") the Commission, on behalf of Kim Helm and Benchmark, desire to forever resolve all issues raised, presented or joined in Civil Action Number 1:03-10172, without the burden, expense and potential delay of further litigation of all issues set forth in this lawsuit, and intend to be bound by the promises made herein.

STIPULATED FACTS

2. The Parties stipulate and agree that the EEOC is the agency of the United States government authorized to investigate allegations of unlawful employment discrimination, to bring civil actions to prohibit unlawful employment practices and to seek relief for individuals affected by the practices complained of in this lawsuit.

3. Benchmark is an employer engaged in an industry affecting commerce within the meaning of Section 701(g) and (h) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e(g) and (h). Benchmark had at least fifteen (15) employees for twenty (20) or more calendar weeks during the relevant time period.

4. Pursuant to Title VII, the Parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Michigan over the subject matter and Parties to this case for the purpose of entering this Decree, and, if necessary, enforcing the provisions of this Decree.

5. Venue is appropriate in the Eastern District of Michigan, Northern Division. For purposes of this Decree and proceedings related to this Decree only, Benchmark agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

MONETARY SETTLEMENT

6. Benchmark agrees to pay Kim Helm monetary relief in the amount of \$62,000. Payment shall be made in accordance with the schedule of payments set forth in paragraph 7 below. Interest at the rate of 10% compounded annually shall attach to \$37,000 of the total amount to be paid. No interest shall attach to the remaining amount to be paid.

7. The first payment of \$5,000 shall be made to Kim Helm and the law firm of Freid, Gallagher, Taylor & Associates, P.C. on or before 6/04/04. The Parties acknowledge that said \$5,000 payment has been made as of the date of the signing of this Decree. Additional payments shall be made as follows:

\$37,000 w/interest	Payment on \$37,000	Interest Rate	Interest	Revised Basis	Payment on \$20,000	Total Payment/date
37,000		10%	154.16	\$37,154.16		
	772.00				415.50	1187.50 6/15/04
36,382.16		10%	151.59	36,533.75		
	772.00				415.50	1187.50 6/30/04
35,761.75		10%	149.00	35,910.75		
	772.00				415.50	1187.50 7/15/04
35,138.75		10%	146.41	35,285.16		
	772.00				415.50	1187.50 7/30/04
34,513.16		10%	143.80	34,656.96		
	772.00				415.50	1187.50 8/15/04
33,884.96		10%	141.18	34,026.14		
	772.00				415.50	1187.50 8/30/04
33,254.14		10%	138.55	33,392.69		
	772.00				415.50	1187.50 9/15/04
32,620.69		10%	135.91	32,756.60		
	772.00				415.50	1187.50 9/30/04

31,984.60		10%	133.26	32,117.86		
	772.00				415.50	1187.50 10/15/04
31,345.86		10%	130.60	31,476.46		
	772.00				415.50	1187.50 10/30/04
30,704.46		10%	127.93	30,832.39		
	772.00				415.50	1187.50 11/15/04
30,060.39		10%	125.25	30,185.64		
	772.00				415.50	1187.50 11/30/04
29,413.64		10%	122.55	29,536.19		
	772.00				415.50	1187.50 12/15/04
28,764.19		10%	119.85	28,884.04		
	772.00				415.50	1187.50 12/30/04
28,112.04		10%	117.13	28,229.17		
	772.00				415.50	1187.50 1/15/05
27,457.17		10%	114.40	27,571.57		
	772.00				415.50	1187.50 1/30/05
26,799.57		10%	111.66	26,911.23		
	772.00				415.50	1187.50 2/15/05
26,139.23		10%	108.91	26,248.14		
	772.00				415.50	1187.50 2/30/05
25,476.14		10%	106.15	25,582.29		
	772.00				415.50	1187.50 3/15/05
24,810.29		10%	103.37	24,913.66		
	772.00				415.50	1187.50 3/30/05
24,141.66		10%	100.59	24,242.25		
	772.00				415.50	1187.50 4/15/05
23,470.25		10%	97.79	23,568.04		
	772.00				415.50	1187.50 4/30/05
22,796.04		10%	94.98	22,891.02		

	772.00				415.50	1187.50 5/15/05
22,119.02		10%	92.16	22,211.18		
	772.00				415.50	1187.50 5/30/05
21,439.18		10%	89.32	21,528.50		
	772.00				415.50	1187.50 6/15/05
20,756.50		10%	86.48	20,842.98		
	772.00				415.50	1187.50 6/30/05
20,070.98		10%	83.62	20,154.60		
	772.00				415.50	1187.50 7/15/05
19,382.60		10%	80.76	19,463.36		
	772.00				415.50	1187.50 7/30/05
18,691.36		10%	77.88	18,769.24		
	772.00				415.50	1187.50 8/15/05
17,997.24		10%	74.98	18,072.22		
	772.00				415.50	1187.50 8/30/05
17,300.22		10%	72.08	17,372.30		
	772.00				415.50	1187.50 9/15/05
16,600.30		10%	69.16	16,669.46		
	772.00				415.50	1187.50 9/30/05
15,897.46		10%	66.23	15,963.69		
	772.00				415.50	1187.50 10/15/05
15,191.69		10%	63.29	15,254.98		
	772.00				415.50	1187.50 10/30/05
14,482.98		10%	60.34	14,543.32		
	772.00				415.50	1187.50 11/15/05
13,771.32		10%	57.38	13,828.70		
	772.00				415.50	1187.50 11/30/05
13,056.70		10%	54.40	13,111.10		
	772.00				415.50	1187.50 12/15/05

12,339.10		10%	51.41	12,390.51		
	772.00				415.50	1187.50 12/30/05
11,618.51		10%	48.41	11,666.92		
	772.00				415.50	1187.50 1/15/06
10,894.92		10%	45.39	10,940.31		
	772.00				415.50	1187.50 1/30/06
10,168.31		10%	42.36	10,210.67		
	772.00				415.50	1187.50 2/15/06
9,438.67		10%	39.32	9,477.99		
	772.00				415.50	1187.50 2/28/06
8,705.99		10%	36.27	8,742.26		
	772.00				415.50	1187.50 3/15/06
7,970.26		10%	33.20	8,003.46		
	772.00				415.50	1187.50 3/30/06
7,231.46		10%	30.13	7,261.59		
	772.00				415.50	1187.50 4/15/06
6,489.59		10%	27.03	6,516.62		
	772.00				415.50	1187.50 4/30/06
5,744.62		10%	23.93	5,768.55		
	772.00				415.50	1187.50 5/15/06
4,996.55		10%	20.81	5,017.36		
	772.00				415.50	1187.50 5/30/06
4,245.36		10%	17.68	4,263.04		
	1,131.50				56.00	1187.50 6/15/06
3,131.54		10%	13.04	3,144.58		
	1,187.50				0	1187.50 6/30/06
1,957.08		10%	8.15	1,965.23		
	1,965.23				0	1187.50 7/15/06

8. Payment of all applicable federal, state and local taxes including, but not limited to any FICA and/or Social Security taxes on the monetary amount set forth above shall be the sole responsibility of Kim Helm and the law firm of Freid, Gallagher, Taylor & Associates, P.C.. Benchmark will issue a Form 1099 to both Kim Helm and the law firm of Freid, Gallagher, Taylor & Associates, P.C., for the payments received by each party, as required by the IRS. The bi-monthly payments set forth in paragraph 7 above are to be paid directly to Kim Helm (\$791.67) at 2375 N. Carter, Linwood, Michigan 48634 and to Freid, Gallagher, Taylor & Associates, P.C. (\$395.83) at P.O. Box 3305, 604 S. Jefferson Avenue, Saginaw, Michigan 48605 (Freid Gallagher) via Certified Mail with a copy of the checks sent to Adele Rapport, Regional Attorney, United States Equal Employment Opportunity Commission, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226. It is further understood that no payments shall be made to Helm or the law firm of Freid, Gallagher, Taylor & Associates, P.L.C., until the Dismissal With Prejudice, attached as Attachment B, is signed by Helm.

SECURITY

9. As security for the payments set forth in paragraph 7 above, Benchmark grants Helm and Freid Gallagher a security interest in its accounts receivables.

ACCELERATION OF JUDGMENT

10. Benchmark agrees to make all scheduled payments on or before the date each payment is due. If any one (1) payment is thirty (30) days late, Benchmark shall be considered to be in default of the payment plan. In the event of such a default, the total balance owed on the agreed amount shall become due immediately and the Commission may take any and all steps under the law to recover the entire amount still owing. This shall include, but is not limited to, exercising the security interest in Benchmark's accounts receivables as described in paragraph 9 above.

Further, failure of the Plaintiff to exercise acceleration with respect to any one payment does not constitute a waiver of this section.

NON-MONETARY RELIEF

11. Benchmark agrees to reinstate Helm to the position of Medication Coordinator at the rate of \$22,000 per year with the same fringe benefit package that is offered to the Assistant Home Coordinator. In the event that Benchmark's insurance carrier (Blue Cross Blue Shield) will not provide Helm with coverage immediately, Helm will obtain a private policy that is comparable to Benchmark's current policy. Upon Helm's finding a comparable policy that is mutually agreeable to the parties, Benchmark agrees to pay the employer's percentage of the policy that it would normally pay (75%-single; 50%-dual; 50%-family). Benchmark acknowledges Ms. Helm's physical limitations and agrees to work within her physician's designated restrictions. Additionally, Benchmark agrees to provide all of the requisite training for the position to Helm at no cost to her.

NON-DISCRIMINATION

12. Benchmark, its officers, agents, employees, successors, assigns and all persons in active concert of participation with it, shall comply with the provisions of Title VII of the Civil Rights Act of 1964, as amended, and agree that it will not discriminate against any and all individuals who work for Benchmark.

NON-RETALIATION

13. Benchmark, through its directors, officers, agents, successors, assigns and employees, will not retaliate against any person known to it who participated or cooperated in the investigation and civil action by the EEOC of Charge of Discrimination No: 230-A2-017A5, filed under Title VII of the Civil Rights Act of 1964, as amended.

DISPUTE RESOLUTION AND COMPLIANCE

14. The Parties agree that this Court shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either Party, the Court may schedule a hearing for the purpose of reviewing compliance of this Decree. The Parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court, and shall be required to give notice to each other ten (10) business days before moving for such review. If such review is deemed necessary by either Party, discovery will be conducted in an expedited fashion. More specifically, documents and other discovery materials shall be exchanged amongst the Parties within five (5) business days of Notice.

POSTING OF NOTICE

15. Benchmark shall post a mutually agreeable Notice, attached as Attachment A, in at least one (1) conspicuous location at its Pinconning, Michigan facility (House #3) for a period of three (3) years. In addition, Benchmark will continue to post all employment discrimination Notices as required by applicable law at all times in one (1) conspicuous place at its Pinconning, Michigan location.

NON-ADMISSION OF LIABILITY

16. Benchmark has denied all allegations set forth in Civil Action Number 1:03-10172 along with any and all inferences of wrongdoing, and neither its consent to the entry of this Decree, nor any of the terms or conditions set forth herein, including, but not limited to paragraphs 10 and 11 above, shall constitute an adjudication or finding on the merits of the case or be construed as an admission of liability, wrongdoing, guilt, and/or violation of federal law, which Benchmark expressly denies.

ALLOCATION OF COST

17. The Parties agree to pay their respective costs and attorneys fees associated with the drafting and enforcement of this Decree.

SEVERABILITY CLAUSE

18. If any provision of this Decree is found to be unenforceable by a Court, only the specific provision in question shall be affected and the other enforceable provisions shall remain in full force.

TRAINING

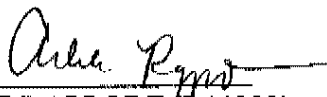
19. Benchmark agrees to provide training to its officers, directors, supervisors, coordinators, assistant coordinators and its staff regarding Title VII of the Civil Rights Act of 1964, as amended, ("Title VII") and its prohibition against sexual harassment in the workplace. The training shall include a section on what constitutes sexual harassment and an explanation of the proper manner for reporting any alleged harassment or sex discrimination. Benchmark shall provide a list of employees along with the topics to be covered and the name of the individual conducting the training to Adele Rapport, Regional Attorney, Equal Employment Opportunity Commission, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226, at least thirty (30) days prior to the training session being conducted. In addition, Notice in the form of an attendance list and a list of topics covered shall be provided to Adele Rapport, Regional Attorney, at the previously provided address, within fifteen (15) days of the completion of the training session. All training shall be completed within eighteen (18) months of the signing and entry of this Decree. If any such training has been conducted prior to the entry of this Decree Benchmark will provide the Commission with date of training, an attendance list, list of topics discussed at the training, a copy of materials used, and the name and qualifications of the individual conducting the training to Adele Rapport, Regional

Attorney at the above stated address. If the Commission believes that this training was sufficient it will satisfy the training requirements as set forth in this Decree.

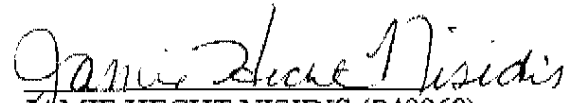
ENTIRE AGREEMENT

20. This Decree constitutes the entire agreement and commitments of the Parties. Any modifications to this agreement must be mutually agreed upon in writing and signed by the Parties hereto.


Respectfully submitted,


ADELE RAPPORT (P44383)
Attorney for Plaintiff
Equal Employment Opportunity
Commission
Patrick V. McNamara Building
477 Michigan Avenue, Rm 865
Detroit, Michigan 48226
(313) 226-5673

Dated: July 7, 2004


JAMIE HECHT NISIDIS (P48969)
Attorney for Defendant
Braun Kendrick Finkbeiner P.L.C.
4301 Fashion Square Blvd.
Saginaw, Michigan 48603
(989) 498-2100

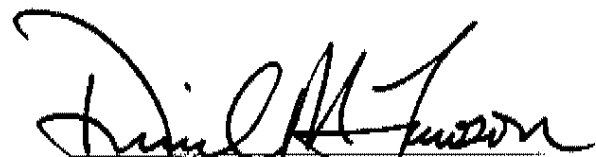
Dated: July 8, 2004


DEBRA FREID (P33078)
Attorney for Intervening Plaintiff
Freid, Gallagher, Taylor & Associates, P.C.
604 S. Jefferson Avenue
Saginaw, Michigan 48605
(989) 754-0411

Dated: July 9, 2004

IT IS SO ORDERED:

JUL 19 2004
Date


DAVID M. LAWSON
United States District Judge

ATTACHMENT A

NOTICE

This notice is being posted to inform you of your rights guaranteed by federal law under Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"). Title VII prohibits discrimination against any employee on the basis of sex, including sexual harassment, race, age, national origin and religion with regard to any term or condition of employment. Title VII also prohibits retaliation against employees who engage in protected activity, which includes filing charges of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") or state administrative agencies, participating in the Commission's investigation process, or otherwise opposing unlawful discrimination.

Prohibited sexual harassing behavior under Title VII includes: sexual talk, unwelcome touching, sexual gestures, dirty jokes, sexual actions and sexual innuendoes of any kind, which are severe or pervasive enough to create a hostile work environment.

The United States Equal Employment Opportunity Commission is the federal agency which investigates charges of unlawful employment discrimination and, if necessary, brings lawsuits in federal court to enforce the provisions of Title VII. Any employee who believes that he or she is the victim of discrimination or retaliation has the legal right to file a charge of discrimination with the U.S. Equal Employment Opportunity Commission.

BENCHMARK RESIDENTIAL SERVICES, INC., supports and will comply with this federal law in all respects, and will not take any action against any employee because of the exercise of his/her rights under these laws.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Case No. 1:03-CV-10172

vs.

Hon. David M. Lawson

BENCHMARK RESIDENTIAL SERVICES,
INC.,

Defendant.

Tammy C. Klein (P60256)
Attorney for Plaintiff
Equal Employment Opportunity Commission
865 Patrick V. McNamara Building
477 Michigan Avenue
Detroit, Michigan 48226
(313) 226-5673

BRAUN KENDRICK FINKBEINER P.L.C.
By: Jamie Hecht Nisidis (P48969)
Attorneys for Defendant
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(989) 498-2100

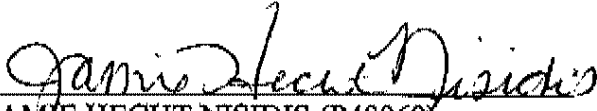
FREID, GALLAGHER, TAYLOR & ASSOCIATES, P.C.
By: Debra A. Freid (P33078)
Attorneys for Intervening Plaintiff
P.O. Box 3305
Saginaw, Michigan 48605-3305
(989) 754-0411

DISMISSAL WITH PREJUDICE

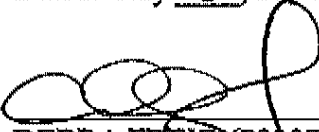
Intervening Plaintiff, Kim Helm ("Intervening Plaintiff" or "Helm") and Defendant, Benchmark Residential Services, Inc., hereby agree to dismissal of the above-captioned lawsuit with prejudice. Given that the issues in this case have been resolved through a Consent Decree signed by the Equal Employment Opportunity Commission (the "Commission") on behalf of Helm, and Benchmark, and given that all parties are in agreement with the terms and conditions contained in

the Consent Decree, dismissal of this lawsuit with prejudice is appropriate. (See, Attachment A, Consent Decree.)

WE HEREBY AGREE:



JAMIE HECHT NISIDIS (P48969)
Attorney for Defendant
4301 Fashion Square Boulevard
Saginaw, Michigan 48603
(989) 498-2100
Dated: July 8, 2004.



DEBRA FREID (P33078)
Attorney for Intervening Plaintiff
604 S. Jefferson Avenue
Saginaw, Michigan 48605
(989) 754-0411
Dated: July 9, 2004

IT IS SO ORDERED:

Dated: _____, 2004.

DAVID M. LAWSON
United States District Judge