

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

EQUAL EMPLOYMENT OPPORTUNITY,
COMMISSION,

Plaintiff,

Civ. No. 06-3731 MJD/AJB

v.

CONSENT DECREE

AMERICA'S BEST CONTACTS
& EYEGASSES, INC.,

Defendant.

INTRODUCTION

Plaintiff Equal Employment Opportunity Commission ("EEOC") instituted this action alleging that America's Best Contacts & Eyeglasses, Inc., ("America's Best") discriminated against Gloria Orth based upon her age by subjecting her to different discipline, denying her full-time employment, and discharging her because of her age. The EEOC contends that America's Best violated the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.* (hereinafter "ADEA"). America's Best denied the allegations of discrimination in its answers to the Complaint in this matter. No party to this Consent Decree admits the claims or defenses of the other parties.

Following arms' length negotiations, the parties reached mutually agreeable terms for resolution of this matter, which they submitted for the Court's review.

THEREFORE, it is the finding of this Court, made on the pleadings and on the record as a whole and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action, (ii) the requirements of the ADEA will be carried out by the implementation of this Consent Decree, (iii) this Consent Decree is intended to and does resolve all matters in controversy in this lawsuit among the parties, (iv) the terms of this Consent Decree

constitute a fair and equitable settlement of all issues in this lawsuit, and (v) this Consent Decree is intended to and does resolve claims of the EEOC pursuant to the ADEA that are based upon the employment and discharge of Gloria Orth.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. SCOPE OF DECREE

A. “America’s Best” as used in this Decree shall refer to the Roseville, Minnesota, facility, where Gloria Orth was employed. This Decree is not intended to apply to other America’s Best facilities or to resolve claims, if any, that may exist against such facilities.

B. The EEOC agrees that it will not bring any further claim against America’s Best relating to any claims that have been or could have been brought as a part of this lawsuit. The EEOC does not waive or in any manner limit its right to process or seek relief in any other charge or investigation based upon allegations not included in the charge underlying this litigation.

C. This Consent Decree shall be for a period of two years and can only be extended for good cause shown such as failure to comply with all obligations under the Decree. During the Consent Decree's term, the Court shall retain jurisdiction of this cause for purposes of compliance.

II. INJUNCTIVE RELIEF

A. America’s Best is enjoined from discriminating based upon age in violation of the ADEA in the discipline of employees, in determining the fulltime status of employees or in the discharge of employees.

B. America’s Best shall not discriminate or retaliate against any person because he or she has opposed any practices alleged in this action as unlawful under the ADEA, has participated in an investigation conducted under the ADEA with respect to this complaint, or has participated in

this lawsuit or has benefited in any way as a result of this Consent Decree.

III. MONETARY RELIEF

Within thirty (30) days of the entry of this Consent Decree, America's Best shall issue a check to Gloria Orth in the gross amount of \$40,000, less only any applicable deductions for the employee's portion of FICA and applicable federal and state income tax withholdings, provided that Ms. Orth has executed the Waiver and Release attached hereto as Exhibit A. The check shall be mailed by certified mail to Ms. Orth's last known address, which shall be provided by the EEOC within ten days of the entry of this judgment. America's Best shall send a copy of the check to the EEOC at the time of mailing to Ms. Orth.

IV. POSTING AND POLICIES

- A. America's Best shall post and cause to remain posted the posters required to be displayed in the workplace by EEOC regulation 29 C.F.R. § 1601.30.
- B. America's Best shall post and cause to remain posted the notice attached hereto as Exhibit B in a location where employee notices are typically posted for the term of this Consent Decree.

V. TRAINING

Annually for the term of this Consent Decree, America's Best shall provide training to its management on the ADEA and its prohibitions against age discrimination. The first training session will take place within 45 days of entry of this Decree. Each training session shall last a minimum of three hours, and information relating to other prohibitions against employment discrimination under federal law can also be covered during this training session. The training session shall be mandatory for covered personnel.

VI. REPORTING

- A. Within 45 days of the entry of this Consent Decree, America's Best shall prepare and submit to the undersigned EEOC attorney a letter indicating that the notice has been posted as required by Section IV(B) above.
- B. America's Best shall prepare and submit to the undersigned EEOC attorney a letter when it has completed each of its training sessions as required by Section V above.
- C. Every six months during the term of this Consent Decree, America's Best will notify the undersigned EEOC attorney if it receives any complaints of discrimination based upon age, and identify the circumstances surrounding the complaint, including the resolution, if any, of the complaint.
- D. During the term of this Consent Decree, America's Best shall allow representatives of the EEOC to review America's Best's compliance with this Consent Decree by inspecting and photocopying relevant documents and records, interviewing employees and management officials on their premises, and inspecting its premises. Such review of compliance shall be initiated by written notice to America's Best's attorney of record at least seven (7) business days in advance of any inspection of a District's documents or premises.

VI. COSTS AND ATTORNEYS FEES

Each party shall bear that party's own costs and attorneys fees.

BY THE COURT:

DATE: October 16, 2007

s/Michael J. Davis
Michael J. Davis
United States District Judge

BY CONSENT:

FOR AMERICA'S BEST CONTACTS
& EYEGLASSES, INC.

By s/Mitchell Goodman

Its: Sr. VP

FOR PLAINTIFF EEOC:

RONALD S. COOPER
General Counsel

JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

s/John C. Hendrickson/LAV
JOHN C. HENDRICKSON
Regional Attorney

s/Jean P. Kamp/LAV
JEAN P. KAMP
Associate Regional Attorney

s/Laurie A. Vasichek
LAURIE A. VASICHEK (0171438)
laurie.vasichek@eeoc.gov
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
330 2nd Avenue South, Suite 430
Minneapolis, MN 55401
(612) 335-4061

EXHIBIT A

In consideration for \$40,000 paid to me by America's Best Contacts & Eyeglasses, Inc., in connection with the resolution of EEOC v. America's Best Contacts & Eyeglasses, Inc., Civ. No. 06-3731 MJD/AJB, I waive my right to recover for any claims of age discrimination under the Age Discrimination in Employment Act that I had against America's Best Contacts & Eyeglasses, Inc., and that were included in the claims made in EEOC's complaint in EEOC v. America's Best Contacts & Eyeglasses, Inc., Civ. No. 06-3731.

Dated: _____

Gloria Orth

EXHIBIT B

NOTICE TO EMPLOYEES

This Notice is posted pursuant to a Consent Decree resolving a lawsuit with the Equal Employment Opportunity Commission (“EEOC”). The EEOC brought suit against America’s Best Contacts & Eyeglasses, alleging that it had discriminated against an employee based upon her age. America’s Best denied the allegations of discrimination in its answers to the Complaint in this matter, and no party to this Consent Decree admits the claims or defenses of the other parties. In resolution of this lawsuit, America’s Best Contacts & Eyeglasses agreed to pay the employee \$40,000, to post this notice, and other equitable relief.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the individual’s race, color, religion, sex, national origin or age (40 and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment.

America’s Best Contacts & Eyeglasses, Inc., will comply with such Federal law in all respects and will not take any action against employees because they have exercised their rights under the law.

Specifically, America’s Best Contacts & Eyeglasses, Inc., will not discriminate against employees on the basis of age in the discipline, the assignment, or the discharge of employees.

Date: October 16, 2007

s/Michael J. Davis
Michael J. Davis
U.S. District Court Judge