

~~FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
05 JUL 14 AM 10:34
OFFICE OF THE CLERK~~

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

Civil Action No.

8:05 CV 339

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

THE HERTZ CORPORATION,

Defendant.

**FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
05 JUL 29 PM 12:28
OFFICE OF THE CLERK**

CONSENT DECREE

RECEIVED

JUL 14 2005

CLERK
U.S. DISTRICT COURT
OMAHA

TABLE OF CONTENTS

I. RECITALS 1

II. JURISDICTION 2

III. ISSUES RESOLVED 2

IV. MONETARY RELIEF 2

V. EQUITABLE RELIEF 3

A. Scope 3

B. Injunctive Relief 3

C. Anti-discrimination Policy 3

D. Training 4

E. Posting of Notice 6

F. Record Keeping And Reporting Provisions 6

VI. RETENTION OF JURISDICTION AND FILING OF DECREE 9

VII. ENFORCEMENT 9

VIII. EEOC AUTHORITY 9

IX. COSTS AND ATTORNEY'S FEES 10

X. NOTICE 10

Attachment A 12

I. RECITALS

1. This matter was instituted by Plaintiff, Equal Employment Opportunity Commission ("Commission" or "Plaintiff" or "EEOC"), an agency of the United States government, alleging that, in September - October ,2002, Defendant, The Hertz Corporation ("Hertz" or "Defendant") subjected James Lam Bil to verbal harassment based on his race, Black, and failed to take immediate remedial action to prevent future harassment.

2. The Commission and Defendant, desiring to settle this action by an appropriate Consent Decree ("Decree"), agree to the jurisdiction of this Court over the parties and the subject matter of this action, and agree to the power of this Court to enter a Consent Decree enforceable against Defendant.

3. This Decree is final and binding upon the parties as to the issues resolved, as well as upon their successors and assigns.

4. The parties agree that this Consent Decree fairly resolves the issues alleged in this lawsuit, and constitutes a complete resolution of all of the Commission's claims of unlawful employment practices under Title VII that arise from the charge of discrimination (32E-2003-00141) filed by James Lam Bil.

5. For the purpose of amicably resolving disputed claims, the Defendant joins with the Commission in requesting this Court to adjudge as follows:

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

6. The parties stipulate to the jurisdiction of the Court over the parties and subject matter of this action, and have waived the entry of findings of fact and conclusions of law.
7. The duration of this Decree shall be two (2) years from the date of signing by the Court.

III. ISSUES RESOLVED

8. This Decree resolves all claims for damages arising out of the issues and claims set forth in Civil Action No. *8:05 CV 339*.
9. Defendant and its officers, agents, employees, successors, and all other persons in active concert or participation with any of them will not interfere with the relief herein ordered, but shall cooperate in the implementation of this Decree.

IV. MONETARY RELIEF

10. Defendant agrees to pay the amount of \$8,500 to James Lam Bil for compensatory and punitive damages, and interest.
 - 10.1 Payments pursuant to this Paragraph 10 shall be paid to James Lam Bil by certified check within five business days after entry of this Consent Decree by the Court;
 - 10.2 Defendant shall pay all administrative and/or other costs associated with the payment of monetary relief under this Decree.
 - 10.3 Defendant shall mail a copy of the certified check to the EEOC Attn. Kim Rogers, Trial Attorney, 303 E. 17th Ave. Ste 510, Denver, CO 80011

V. EQUITABLE RELIEF

A. Scope

11. The terms of this Decree shall apply to all Hertz facilities in Nebraska, excluding Hertz Local Edition locations.

B. Injunctive Relief

12. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with it, or any of them, are enjoined from engaging in any employment practice which discriminates on the basis of race or color.

13. During the term of this Consent Decree, Defendant, its officers, agents, successors and other persons in active concert or participation with them, or any of them, are enjoined from engaging in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, or the Equal Pay Act, because of such person's filing a charge, testifying or participating in any manner in any investigation, proceeding or hearing under any of these statutes, because such person was identified as a witness or possible witness for the Commission, because such person participated in any manner in this action or in the investigation giving rise to this action, or because such person is designated as an aggrieved individual under this Decree.

C. Anti-discrimination Policy

14. Defendant shall adopt and/or maintain a policy proscribing discrimination based on race or color, and proscribing retaliation against any employee who complains about race

discrimination or who files a charge of discrimination alleging race discrimination. ("Anti-Discrimination Policy"). Defendant shall post and keep posted for the duration of this Decree, in a conspicuous place in each of its facilities, where notices to employees and applicants for employment are customarily kept or posted, a copy of the Anti-Discrimination Policy. Within thirty (30) days of entry of this Decree, Defendant shall provide a copy of the Anti-Discrimination Policy, and will provide the policy to newly hired employees within ten (10) days of their hire. Within forty-five (45) days of entry of this Decree, Defendant shall forward a copy of the Anti-Discrimination Policy to the Commission and a letter indicating that the Anti-Discrimination Policy has been posted and distributed.

D. Training

15. Beginning August 1, 2005, and annually thereafter, Defendant shall conduct annual training for all its employees on what constitutes employment discrimination. Training will include employee notification of the Defendant's policy and procedures for registering complaints of discrimination. Defendant agrees that said training will also counsel employees on the penalties of engaging in such discriminatory behavior. Defendant agrees that said training will include the Defendant's non-retaliation policy. All training under this Paragraph 15 shall be at Defendant's selection and expense. The training will be conducted as follows:

15.1 Non-managerial Employees.

Defendant will require non-managerial employees to attend two (2) hours of training per year regarding workplace discrimination, with emphasis on harassment and retaliation. Harassment training will include discussion of harassment based on race, color, national origin,

disability, gender, age, and religion. Additionally, Defendant will require new employees to complete the requisite two (2) hours of training within ninety (90) days of being hired.

15.2 Managerial and Supervisory Employees

Defendant will require all individuals who work in a managerial or supervisory capacity to receive at least eight (8) hours of training *annually* regarding Title VII and other federal anti-discrimination laws. Four (4) of the eight (8) hours must directly address harassment, retaliation, and racial discrimination. Additionally, Defendant will require employees newly hired or promoted into a managerial or supervisory position to complete the requisite four (4) hours of training within thirty (30) days of being hired or promoted.

15.3 Human Resource Employees

Defendant will require all individuals who work in a human resource capacity to receive at least twenty (20) hours of training *annually* regarding Title VII and other federal anti-discrimination laws. Four (4) of the twenty (20) hours must directly address harassment, retaliation, and racial discrimination. Additionally, Defendant will require employees newly hired or promoted into a human resource position to complete seven (7) hours of general EEO training within thirty (30) days of being hired or promoted into a human resource position.

16. Defendant agrees that the first such training session for each employee group identified in Paragraph 15, above, will take place within one hundred twenty (120) days after entry of this Decree. Defendant agrees that all personnel shall both register and attend the seminar training sessions. In the semi-annual reports required under the Reporting provisions of this Decree, Defendant shall submit copies of the agenda of the training programs, identify the

individuals providing the training, and provide the registries of attendance.

17. Defendant shall provide the Commission with thirty (30) days notice that a seminar-training session will be conducted.

E. Posting of Notice

18. Within five (5) business days of the entry of this Consent Decree, Defendant shall post in a conspicuous place in each of its facilities where notices to employees and applicants for employment are customarily kept or posted, the Notice attached as Attachment A to this Decree. The Notice shall remain posted for the duration of this Decree. If the Notice becomes defaced or illegible, Defendant will replace it with a clean copy. Defendant shall certify to the Commission, in writing, within twenty (20) days of entry of this Decree that the Notice has been properly posted and shall provide recertification in each of the semi-annual reports required under the Reporting provision of this Consent Decree.

F. Record Keeping And Reporting Provisions

19. For the duration of this Consent Decree, Defendant shall maintain all records concerning implementation of this Consent Decree. The Commission shall have the right to interview any personnel employed by Defendant for the purpose of determining Defendant's compliance with the terms of this Consent Decree. In the event the Commission exercises its right to interview personnel pursuant to this paragraph, said interviews shall be scheduled with due regard to the convenience of the individual to be interviewed.

20. Each party shall bear its own costs in conjunction with the maintenance of records, preparation of any report, access or copying of records, or interviews of employees.

21. Defendant shall provide semi-annual reports for each six-month period following

the entry of the Decree. The reports shall be due thirty (30) days following the respective six-month period, except the final report which shall be submitted to the Commission two weeks prior to the date on which the Consent Decree is to expire.

22. Each report shall provide the following information:

22.1 Complaints of Race Discrimination

22.1.1 For purposes of this Paragraph 22.1, the term “complaint of race discrimination” will include any written or verbal complaint which alleges discrimination based on race, color, or national origin, or alleges conduct, which the Defendant recognizes as presenting an allegation of race discrimination. For example, an employee may complain that he was denied promotion because he is Black, or that co-workers call him “coon”. These are “complaints of discrimination” even though the employee does not expressly allege discrimination.

22.1.2 The name, address and telephone number of each person making a complaint of race discrimination to Defendant or to any federal, state, or local government agency.

22.1.3 A brief summary of each complaint, including the date of the complaint, the name of the individual(s) who allegedly engaged in the discriminatory conduct, the Defendant’s response to the complaint, the name of the person who investigated or responded to the complaint, and what, if any resolution was reached;

22.1.4 Copies of all documents memorializing or referring to the

complaint, investigation, and/or resolution thereof.

22.2 Training

22.2.1 For each training program required under Para. 15, and conducted during the reporting period, Defendant shall submit a registry of attendance.

22.2.2 For each training program required under Para. 15.3 (HR), and completed during the reporting period, Defendant shall provide a certificate of completion.

22.2.3 For each training program conducted by Defendant's staff, Defendant will provide the following information: (a) a detailed agenda; (b) copies of all training material provided to or utilized by the trainer(s); (c) the name of each training and a summary of his or her qualifications.

22.2.4 For each training program conducted by a vendor not affiliated with Defendant, Defendant will identify the vendor and provide a copy of the program agenda.

22.3 Posting of Notice: Defendant shall re-certify to the Commission, that the Notice required to be posted under Paragraph 18 of this Consent Decree has been properly posted or, if removed, was promptly replaced, during the duration of the reporting period.

VI. RETENTION OF JURISDICTION AND FILING OF DECREE

23. This Court shall retain jurisdiction of this case for purposes of compliance with this Decree and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees. Upon submission of the final report referenced in Paragraph 21, and the expiration of a period of thirty (30) days after submission of said report, within which the Commission has not filed an objection thereto, the Commission and Defendant shall promptly file a Joint Stipulation for Dismissal with Prejudice (Joint Stipulation) of this civil action, upon which filing this Decree shall automatically dissolve, and this Civil Action shall be dismissed with prejudice. If the Commission files an objection to the final report within said thirty-day (30) period, the Parties will file the Joint Stipulation promptly after the Court's resolution of the Commission's objection.

VII. ENFORCEMENT

24. There is no private right of action to enforce Defendant's obligations under the Decree and only the Commission and Defendant, or their successors or assigns, may enforce compliance herewith.

25. Enforcement may be had by the Commission or Defendant petitioning the Court for enforcement of the terms of this Decree.

VIII. EEOC AUTHORITY

26. With respect to matters or charges outside the scope of this Decree, this Decree shall in no way limit the powers of the Commission to seek to eliminate employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority, and are unrelated to the claims asserted in this lawsuit.

IX. COSTS AND ATTORNEY'S FEES

27. Each party shall be responsible for and shall pay its own costs and attorney's fees.

X. NOTICE


28. Any notice, report, or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, to the appropriate parties as follows:

Regional Attorney
Denver District Office
Equal Employment Opportunity
Commission
303 E. 17th Avenue, Suite 510
Denver, CO 80203

The Hertz Corporation
225 Brae Boulevard
Park Ridge, NJ 07656

SO ORDERED this 28th day of July, 2005.


BY THE COURT:


United States District Court Judge

APPROVED AS TO FORM:


Joseph H. Mitchell
Regional Attorney

Nancy A. Weeks
Supervisory Trial Attorney



Fred Lerner
Senior Staff Counsel
225 Brae Blvd.
Park Ridge, NJ 07656-0713

Attorney for Defendant



Kim R. Rogers
Trial Attorney
(303) 866-1361


Equal Employment Opportunity
Commission
303 East 17th Avenue, Suite 510
Denver, CO 80203

Attorneys for Plaintiff

BY CONSENT:

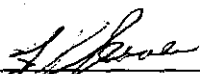
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

THE HERTZ CORPORATION

BY: 

Joseph H. Mitchell
Regional Attorney
7/11/05

Date

BY: 

Fred Lerner
Senior Staff Counsel
7/7/05

Date

NOTICE

The following notice is being posted pursuant to the terms of a Consent Decree reached between the parties in EEOC v. The Hertz Corporation, filed in the United States District Court for the District of Nebraska, Civil Action No.

Management of The Hertz Corporation wishes to emphasize the company's fundamental policy of providing equal employment opportunity in all of its operations and in all areas of employment practices. Hertz respects the right of its employees and applicants for employment to work in an environment free from discrimination and reaffirms its commitment to complying with the strictures of Title VII. It is our policy to prohibit all discrimination in terms of hiring, promotion, compensation, benefits, discharge or discipline because of race or color, as well as all other protected bases. Each of us at Hertz deserves a workplace where we can achieve our full potential.

Unlawful Discrimination: Under federal law, it is unlawful for an employer to discriminate based on race, color, religion, sex, national origin, age (over 40), or disability. This means that a supervisor or manager cannot make decisions about hiring, promotion, pay, or other conditions of employment, based on race, color, religion, sex, national origin, age (over 40), or disability. This policy extends to insurance benefits and all other terms, conditions and privileges of employment.

Unlawful Harassment: Harassment is unwelcome conduct based on sex, race, religion, national origin, age, or disability that is so severe or pervasive that it alters employment conditions or creates a hostile work environment. It can be spoken or written, graphic or physical, and may include foul or obscene language or name-calling. It can be done to offend, or simply as insensitive joking. Harassment of any kind has no place in the work environment and will not be tolerated.

Unlawful Retaliation: It is also unlawful to discriminate, harass, or retaliate against any individual who reports or complains about what he or she believes to be unlawful discrimination based on race, color, religion, sex, national origin, age (over 40), or disability, or because he or she has filed, or participated in an investigation of, a charge of discrimination.

Reporting Improper Conduct: If you are aware of any events, conduct, or information which you believe may indicate some improper discrimination or harassment, it is very important that you report the information so the necessary steps may be taken to investigate, identify, and promptly remedy any problems.

Any employee who believes that he/she has suffered discrimination or harassment on the basis of age, race, color, religion, sex, pregnancy, national origin, or disability, has the right to contact the EEOC directly at 1-800-669-4000. In compliance with federal law, no official at The Hertz Corporation will retaliate against an employee who makes an internal complaint of discrimination or who contacts the EEOC, the Nebraska Employment Opportunity Commission, or its state counterpart.

This Notice shall remain posted for the term of two years.

The Hertz Corporation

By: _____ Date: _____