

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
 Plaintiff,)
)
 vs.)
)
 PORT ELIZABETH TERMINAL &)
WAREHOUSE (a subsidiary of the)
Judge Organization),)
)
 Defendant.)

CIVIL ACTION NO.: 05-cv-4828 (WJM)
JURY TRIAL DEMANDED

CONSENT DECREE

Introduction

A. This action was instituted by the U.S. Equal Employment Opportunity Commission (“the EEOC” or “the Commission”) on or about October 5, 2005 against Port Elizabeth Terminal & Warehouse Corp. (“Port Elizabeth” or “Defendant”) to enforce provisions of Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”) and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (“ADEA”). In its Complaint, the Commission alleged that Charging Party, Shirley Hicks, an African American female, was wrongfully terminated on the basis of her race and age. As a result of the alleged racial and age discrimination, the Charging Party suffered severe emotional distress and damages as a result of the aforementioned illegal conduct of the Defendant.

B. This Consent Decree is entered into by and shall be final and binding between the EEOC and Port Elizabeth, its directors, officers, agents, successors and assigns.

C. The Commission and Defendant agree to the entry of this Consent Decree, which

shall fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No. 05-cv-4828 (WJM). This Consent Decree shall not constitute either an adjudication of or finding on the merits of the complaint and shall not be construed as an admission by Defendant of any violation of Title VII and/or the ADEA. To the contrary, Defendant denies all said allegations and points to its record of diversity hiring, employment of persons of all races and age, and its 82 year history without any other such claim. Defendant avers that it is entering into this Consent Decree for the main purpose of conserving resources and avoiding the burden, expense, delay and uncertainties of litigation.

Findings

D. Having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the parties, the Court finds: (1) it has jurisdiction of the parties and subject matter jurisdiction of this action; and (2) the terms of this Decree are fair, reasonable, equitable and just, and adequately protect the rights of the parties, and the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination and Non-Retaliation

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Defendant will not harass or discriminate against any employee on the basis of race and/or age in violation of Title VII and the ADEA.
3. Defendant will not engage in any employment practices which retaliate in any manner against any person because of that person's opposition to any practice made an unlawful employment practice under Title VII and/or the ADEA or because that person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title

VII and/or the ADEA

4. Defendant shall only divulge to any identifiable employer or potential employer of Shirley Hicks, Ms. Hicks' start date, position title, final salary and end date and indicate that such limited disclosure is part of its business practice.

5. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant under Title VII or the ADEA or the EEOC's authority to process or litigate any charge of discrimination now pending or filed in the future against Defendant.

Monetary Relief

6. No later than 15 days after receipt of a Release executed by Ms. Hicks, Defendant agrees to pay monetary relief in the amount of **\$28,500.00** to Shirley Hicks, in full settlement of the claim raised on her behalf against Defendant in the EEOC's Complaint and any other claims she may have, as detailed in the Settlement Agreement and General Release entered into by Defendant and Shirley Hicks. A copy of the check will be mailed to Ms. Hicks' private residence and a copy within five business days thereafter shall be sent to the attention of Stephanie Marino, Trial Attorney, EEOC, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515. In order to receive this monetary relief, Ms. Hicks must execute a Release, to be presented to her by Defendant. **In the event that said Release is a general release which addresses any issue other than that raised in the EEOC's complaint, the cost of an attorney to review same on behalf of Ms. Hicks shall be borne by Defendant, not to exceed \$300.00.** Late payment of the check will be subject to the accrual of interest on the unpaid amount, calculated pursuant to 28 U.S.C. § 1961.

Posting of Notice

7. Within 20 business days after entry of this Decree, Defendant shall post at its

Port Elizabeth work site(s) on all bulletin boards, used by Defendant for communicating with employees, same-sized copies of the Notice attached as Exhibit A to this Decree. The Notice shall remain posted for two (2) years from the date of entry of this Decree. Defendant shall forward a certification that the Notice has been posted and dates of posting within 30 days after entry of this Decree to Stephanie Marino, Trial Attorney, EEOC, 21 South Fifth Street Suite 400, Philadelphia, PA 19106-2515. If posted copies become defaced, removed, marred or otherwise illegible, Defendant agrees to post a readable copy in the same manner as heretofore specified.

Non-Discrimination and Anti-Harassment Policies and Complaint Procedures

8. Defendant agrees to draft a policy against race and age discrimination, harassment and retaliation, as well as complaint procedures, which shall be drafted in plain and simple language. Defendant shall ensure that its policy or policies against race and age discrimination, harassment and retaliation and related complaint procedures meet the following minimum criteria:

(a) state that Defendant: (i) prohibits discrimination against employees on the basis of race and age and prohibits retaliation in violation of Title VII and/or the ADEA; (ii) prohibits retaliation against employees for opposing employment practices they reasonably believe are discriminatory or for participating in an investigation by the EEOC or a state or local governmental agency of a charge of discrimination under Title VII and/or the ADEA; (iii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of race and/or age, in violation of Title VII and the ADEA; and (iv) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to employees through acts such as physical/verbal abuse and derogatory comments based on race and/or age, in violation of Title VII and the ADEA;

(b) include a complaint procedure designed to encourage employees to come forward with complaints regarding violations of its policy or policies against race and age discrimination, harassment and retaliation, which shall meet the following minimum criteria: (i) provide effective mechanism(s) for reporting incidents of race and age discrimination, harassment and retaliation; (ii) provide that the complaints of race and age discrimination, harassment and/or retaliation can be made either in writing or verbally; (iii) identify an employee or employees at Defendant's worksite(s), to whom an employee can make a complaint; (iv) encourage prompt reporting by employees; and (v) provide assurances that complainants shall not be subjected to retaliation;

(c) provide for prompt investigation of complaints of race and age discrimination, harassment and/or retaliation;

(d) provide for prompt communication to the complaining party of the results of the investigation and any remedial actions taken or proposed; and

(e) provide for discipline up to and including discharge of an employee or supervisor who violates Defendant's policy or policies against race and age discrimination, harassment and retaliation, and for increasingly severe discipline of repeat offenders.

9. Defendant shall distribute to all of its employees and newly-hired employees, its policy or policies against race and age discrimination, harassment and retaliation within 60 days after entry of this Consent Decree.

10. Within 60 days after entry of this Consent Decree, Defendant shall advise Stephanie Marino, Trial Attorney, EEOC's Philadelphia District Office, that its policy or policies against race and age discrimination, harassment and retaliation have been distributed to current employees, including temporary employees, via paycheck enclosure or other procedure to ensure full

dissemination, and that new employees, including temporary employees, will receive these policies and an opportunity to acknowledge receipt. Defendant will retain copies of any acknowledgment of receipt form for an employee in the employee's personnel file.

11. Defendant shall annually for the duration of the Consent Decree send a copy of its policy or policies against race and age discrimination, harassment and retaliation with each employee's paycheck or other procedure to ensure full dissemination.

Supervisor Accountability

12. Defendant shall promote supervisor accountability by the following conduct:

(a) providing annual anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraphs 13;

(b) disciplining, up to and including discharge, any supervisor or manager who violates Defendant's policy or policies against race and age discrimination, harassment and retaliation; and

(c) imposing on all managers and supervisory personnel a duty to administer their work areas to ensure compliance with Defendant's policy against race and age discrimination, harassment and retaliation; and

(d) requiring all managers and supervisors to report any incidents and/or complaints of race and/or age discrimination, harassment and/or retaliation of which they become aware to the employee or employees designated to handle complaints of race and age discrimination, harassment and retaliation.

Training

13. Defendant shall provide training on the requirements of Title VII as follows:

(a) Defendant agrees to provide annual training sessions for any employee or employees at its Port Elizabeth work sites responsible for responding to Title VII and/or ADEA complaints

made at Port Elizabeth by a vendor approved by the EEOC. The training will cover employee rights and employer obligations under both Title VII and the ADEA and relevant state or local anti-discrimination laws, and will emphasize what constitutes unlawful harassment and discrimination in the workplace, how to keep the company free from such race and age discrimination, what constitutes unlawful retaliation, and will summarize how to conduct a prompt and effective investigation into allegations, complaints or charges of race and age discrimination;

(b) Defendant shall first provide training in accordance with Paragraph 13(a) by no later than 90 calendar days after entry of this Consent Decree and also shall provide such training in calendar year 2007.

14. Defendant shall obtain the EEOC's approval of its proposed trainer prior to each year's training session, and Defendant's undersigned counsel shall update those supervisors each year thereafter as required hereby.

15. Defendants agree at its expense to provide the EEOC with copies of all pamphlets, brochures, outlines or other written materials provided to attendees of training sessions. Even though the EEOC has approved of or designated a trainer to provide training for one year, it is not required to approve of or designate the same trainer for future training sessions.

16. Defendant shall certify to the EEOC in writing within 10 business days after the training sessions required by Paragraph 13 have occurred that the training has taken place and the personnel who attended. Such certification shall include: (i) the dates, location and duration of the training session; (ii) a copy of the registry of attendance, including the name and position of each person in attendance; and (iii) a listing of the employee or employees at Port Elizabeth's work site(s), responsible for responding to Title VII and ADEA complaints made at Port Elizabeth as of the date of the training.

17. Defendant shall furnish to the EEOC the following written reports annually for a

period of two (2) years following entry of this Decree with the first report due twelve (12) months after entry of the Decree and the final report due 24 months after entry of the Decree. Each such report shall contain:

(a) a certification by Defendant that the Notice required to be posted by Paragraph 7 was posted during the twenty-four (24) months following entry of this Consent Decree;

(b) a certification by Defendant that it has or will distribute the policy or policies against race and age discrimination, harassment and retaliation annually to employees, and that Defendant has disseminated the policy against race and age discrimination, harassment and retaliation to all new employees, including temporary employees, hired within the twelve-month period preceding the report;

(c) a certification that Defendant has complied with training requirements of this Consent Decree;

(d) a summary of any additional actions Defendant took to prevent race and age discrimination, harassment and retaliation at Port Elizabeth's work site(s) during the twelve-month period preceding the report.

Dispute Resolution

18. In the event either party to this Decree believes the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within 20 days of the alleged non-compliance and afford the alleged non-complying party 20 business days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within 20 business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

19. Each party to this Decree shall bear its own expenses, costs and attorneys' fees, **except as set forth in paragraph 6.**

20. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Defendant in their capacities as representatives, agents, directors and officers of Defendant and not in their individual capacities. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event any individual is found in contempt for a violation of this Decree.

21. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 05-cv-4828.

22. This Consent Decree shall be filed in the United States District Court for the District of New Jersey and shall continue in effect for two (2) years. During this time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate its purposes. Any application by any party to modify or vacate this Consent Decree during such period shall be made by motion to the Court on no less than 30 days' notice to the other party. Should any material disputes under this Decree remain unresolved after this four-year period, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Consent Decree) until such time as all disputes have been resolved.

23. The Clerk of the District Court is hereby directed to send a file-stamped copy of this Consent Decree to counsel of record.

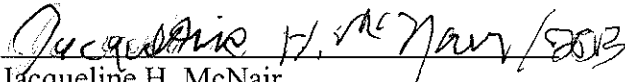
For Plaintiff EEOC:

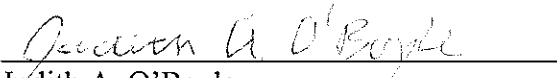
For Defendant Port Elizabeth Terminal & Warehouse Corp.:

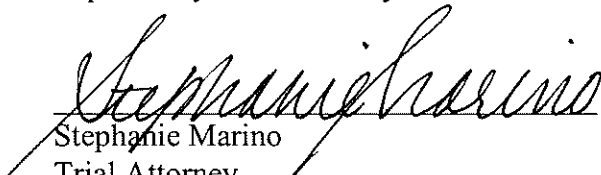
James L. Lee
Deputy General Counsel

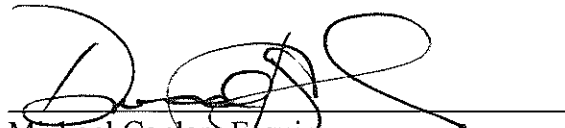
Gwendolyn Young Reams
Associate General Counsel
Wash., D.C.

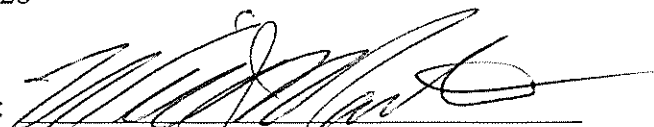
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION


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Regional Attorney


Judith A. O'Boyle
Supervisory Trial Attorney


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750 College Road East, Suite 100
Princeton, NJ 08540-6617
and
Donald J. Vogel, Esquire
Scopelitis, Garvin, Light & Hanson
30 West Monroe Street, Suite 600
Chicago, IL 60603

By the Court: 
WILLIAM J. MARTINI
UNITED STATES DISTRICT JUDGE

Date: 6/15/06

EXHIBIT A

NOTICE TO ALL PORT ELIZABETH TERMINAL & WAREHOUSE EMPLOYEES

This Notice is posted pursuant to a Consent Decree entered by the federal court for the District of New Jersey memorializing a voluntary settlement by the parties in EEOC v. Port Elizabeth Terminal & Warehouse Corp., Civil Action Number 05-cv-4828, a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Port Elizabeth Terminal & Warehouse Corp. ("Port Elizabeth")

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended ("Title VII") and the Age Discrimination in Employment Act of 1967, 29 U.S.C. §626(b), as amended ("ADEA"), prohibits discrimination against employees and applicants for employment based upon national origin, sex, race, color or religion and age, respectively. Title VII and the ADEA further prohibits retaliation against employees or applicants who avail themselves of their rights under Title VII and/or the ADEA by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII and the ADEA.

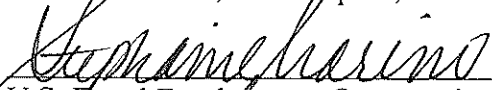
In its lawsuit, the EEOC alleged that Port Elizabeth subjected an employee to discrimination based on race and age in violation of Title VII and the ADEA. Port Elizabeth denies the claim, and has defenses which it believes defeats the claim.

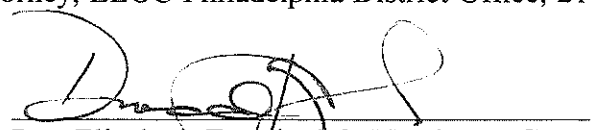
To resolve the case, Port Elizabeth and the EEOC have entered into a Consent Decree which provided, among other things, that: (1) Port Elizabeth denied any liability as alleged and no finding of liability was made; (2) Port Elizabeth agrees that it will not discriminate on the basis of race and/or age in the future; (3) Port Elizabeth will not retaliate against any person because he or she opposed any practice made unlawful by Title VII and/or ADEA, filed a Title VII and/or ADEA charge of discrimination, participated in any Title VII and/or ADEA proceeding, or asserted any rights under the Consent Decree; and (4) Port Elizabeth will maintain training any employee or employees at Port Elizabeth's work sites with responsibility for responding to Title VII complaints made at Port Elizabeth, regarding race and/or age discrimination, harassment and retaliation, and regarding its policy prohibiting race and age discrimination, harassment and retaliation.

If you believe you have been discriminated against, you may contact the EEOC at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for two (2) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the Regional Attorney, EEOC Philadelphia District Office, 21 South 5th Street, Philadelphia, PA 19106.


U.S. Equal Employment Opportunity
Commission


Port Elizabeth Terminal & Warehouse Corp.

DATED: 6/12/06

DATED: 6/15/06