

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAY 9 2000

R. Stummach
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	CIV. 99-0114 BB/KBM
)	
Plaintiff,)	
)	
v.)	CONSENT DECREE
MONK'S INC., d/b/a)	
INTERNATIONAL HOUSE OF)	
PANCAKES,)	
)	
Defendant.)	
)	

This Consent Decree is entered into by the United States Equal Employment Opportunity Commission (the "Commission" or "EEOC"), Richard L. Monks and Monk's Inc., d/b/a International House of Pancakes ("Monk's Inc.,").

The EEOC filed this action against defendant Monk's Inc., to enforce the Americans with Disabilities Act ("ADA") and the Civil Rights Act of 1991. In the complaint the Commission alleged that Monk's Inc. discriminated against Mr. Staffeldt when it denied him reasonable accommodation and discharged him because of his disabilities. The Commission also alleged that Monk's Inc. failed to preserve records relevant to the determination of whether unlawful employment practices have been committed.

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Defendant filed an Answer to the Commission's Complaint on March 19, 1999. On or about March 25, 1999, Monk's Inc., filed a Chapter 7 bankruptcy proceeding in the United States Bankruptcy Court for the District of New Mexico in Cause No. 7-99-11757-SL. The bankruptcy proceeding was closed in June, 1999 with no distribution of assets.

Defendant asserts that on or about December, 1998 it sold its restaurant to Tellez Management Corp. At present, the restaurant at issue in this lawsuit is under the management and control of Tellez Management Corp. In order to permit the Commission to secure appropriate relief in this matter and in consideration of its own interest in educating its employees regarding the ADA, Tellez Management Corp. has agreed to participate in this Consent Decree. Tellez Management Corp. further agrees to submit to the jurisdiction of this Court for the limited purpose of providing the relief, described more fully in Paragraphs 9-13 below. Participation in this decree by Tellez Management Corp. does not constitute an admission of liability.

The parties to this Consent Decree do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of Findings of Fact and Conclusions of Law. This Consent Decree does not constitute an admission by Monk's Inc. of any violation of the ADA.

It is hereby ORDERED, ADJUDGED, AND DECREED:

1. This Consent Decree resolves all claims of the Commission against Monk's Inc. and its Las Cruces, New Mexico, facility arising out of the facts and issues involved in this lawsuit including back pay, damages, interest, injunctive relief, attorney's fees, and costs.
2. Should Monk's Inc., and/or Richard L. Monks re-enter into business activity

in New Mexico during the period beginning three years from the date of entry of this Decree, Monk's Inc., and/or Richard L. Monks shall not discriminate against its employees on the basis of disability.

3. Should Monk's Inc., and/or Richard L. Monks re-enter into business activity in New Mexico during the period beginning three years from the date of entry of this Decree, Monk's Inc., and/or Richard L. Monks shall comply with Section 107 (a) of the ADA, 42 U.S.C. § 12117 (a), which incorporates by reference Section 709(c) of Title VII, 42 U.S. C. §2000e-8(c) and 29 C.F.R. § 1602.14 regarding the preservation of records relevant to the determination of whether unlawful employment practices have been or are being committed.

4. Should Monk's Inc., and/or Richard L. Monks re-enter into business activity in New Mexico during the three-year term of this Decree, such re-entry shall be reported to the Regional Attorney of the Albuquerque District Office of the Equal Employment Opportunity Commission, within three months of re-starting business, the nature of the business activity, and all personnel policies concerning disability discrimination, retaliation, and the preservation of records relevant to the determination of whether unlawful employment practices have been or are being committed.

INJUNCTION

5. Monk's Inc., and/or Richard L. Monks, their officers, agents, employees, successors, assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from: (a) discriminating on the basis of disabilities, including denying reasonable accommodations to and/or discharging employees because of their disabilities; retaliating against any employee or individual because the employee or individual

(i)opposed practices made unlawful by the ADA or a state equal employment opportunity statute, (ii) filed a charge of discrimination, (iii) assisted or participated in the filing of a charge of discrimination, (iv) assisted or participated in an investigation or proceeding under the ADA or a state equal employment opportunity statute, or (c) files an internal complaint of discrimination with the employer. This injunction will remain in effect for the duration of this decree at any facility operated by Monk's Inc., or Richard L. Monk's in the State of New Mexico.

RELIEF ON BEHALF OF CHARGING PARTY

6. Judgment is entered against Richard L. Monks ("Monks") in favor of the Commission for the benefit of Scott Staffeldt in the total amount of \$11,000.00 in compensatory damages. This amount is payable according to the following schedule of payments and terms.

- A. Within ten (10) days of the entry of this Consent Decree, Monks shall pay via check the sum of \$5,000.00 to Jamye Boone Ward and Ruth Staffeldt on behalf of Scott Staffeldt.
- B. In the year 2001 and within 365 days of the payment made pursuant to paragraph 6.A., Monks shall pay via check the sum of \$3,000.00 to Ruth Staffeldt on behalf of Scott Staffeldt.
- C. In the year 2002 and within 365 days of the payment made pursuant to paragraph 6.B., Monks shall pay via check the sum of \$3,000.00 to Ruth Staffeldt on behalf of Scott Staffeldt.

7. The checks provided for in paragraph 6. shall be mailed directly to the individual(s) listed via certified mail at the addresses provided by the EEOC.

8. Within five (5) days of the issuance of each check required by paragraph 6., Richard L. Monks will submit a copy of the check and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, 505 Marquette NW, Suite 900, Albuquerque, NM 87102-2189.

POLICIES AND PRACTICES OF TELLEZ MANAGEMENT CORP.

9. Tellez Management Corp. shall endeavor to carry out policies and practices that guarantee a work environment free from disability discrimination of its applicants or employees.

10. Tellez Management Corp. shall post in a prominent place frequented by its employees at its Las Cruces, New Mexico facilities the notice attached as Exhibit A. The Notice shall be in the same type, style and size as Exhibit A.

TRAINING

11. Tellez Management Corp. shall provide training on disability discrimination and retaliation according to the following terms:

- A. Tellez Management Corp. shall select and retain a consultant/lecturer who shall provide consultation and training for one seminar-training session. All supervisory and non-supervisory employees employed by Tellez Management Corp. at the restaurant operated by it shall attend the seminar-training session. Duplicative sessions to accommodate staffing needs, are permitted.
- B. Monks shall pay for the consultant/lecturer selected and retained by Tellez Management Corp.

- C. Monks' failure to pay or reimburse Tellez Management Corp. for the expense of any training seminars required by this Decree within thirty (30) days of demand for payment or reimbursement shall constitute a default under the terms of this Decree.
- D. The seminar-training session shall be conducted within four months of the entry of this Consent Decree.
- E. The consultant/lecturer shall be a person(s) acceptable to the Commission. Tellez Management Corp. shall submit the name(s), address(es), telephone number(s), and resume(s) of the proposed consultant/lecturer(s) together with the date(s) of the proposed seminar and the details of the contents of the training to the Regional Attorney of the Albuquerque District Office of the Equal Employment Opportunity Commission within 60 days of the entry of this Consent Decree. The Commission shall have thirty days from the date of receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve the proposed consultant/lecturer, the Commission shall designate the consultant/lecturer at a cost not to exceed \$1,000.00 per seminar-training session which shall be paid by Monks.
- F. The seminar-training session shall be no less than two hours of instruction. All personnel designated in paragraph A shall both register and attend the seminar-training session. The registry of attendance shall be retained by

Tellez Management Corp. for the duration of this Consent Decree.

- G. The seminar shall include the subject of what constitutes disability discrimination, an explanation of the employer's obligation under the ADA to provide a reasonable accommodation for an employee's known disability, prohibitions on discharging employees because of their disabilities, prohibitions on retaliation against person's with disabilities, and by what means employees may complain if they feel they have been subjected to disability discrimination in the workplace.
- H. The Commission, at its discretion, may designate Commission representatives to attend and participate in the seminar-training session described above, and the representatives shall have the right to attend and fully participate in the session.

REPORTING

12. Tellez Management Corp. shall report in writing and in affidavit form to the Regional Attorney of the Albuquerque District Office of the Equal Employment Opportunity Commission at 505 Marquette N.W., Suite 900, Albuquerque, New Mexico, 87102-2189, beginning six months from the date of the execution of this Consent Decree, and thereafter every six months for a period not to exceed 24 months, the following information:

- A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of disability discrimination and retaliation.

- B. An affidavit stating that the Notice required in paragraph 10 of this Consent Decree was posted and the locations where it was posted.
- C. The first report shall also contain a list of persons attending the seminar-training session described in paragraph 11 of this Consent Decree and a list of current personnel employed by at the Las Cruces, New Mexico, facility at issue on the day of the seminar-training session.

13. During the duration of this Decree, the Commission, upon reasonable notice, may enter and inspect the premises of the restaurant facility at issue, now operated by Tellez Management Corp., Las Cruces, New Mexico, to ensure compliance with this Consent Decree and federal anti-discrimination laws.

COSTS AND DURATION


14. Each party shall bear its own costs and attorney's fees incurred as a result of this action through the entry of this Consent Decree.

15. The duration of this Consent Decree shall be three years from the date it is entered; however, should Monk's Inc., and/or Richard L. Monks re-enter business in New Mexico as provided in paragraph 4 during the final year of this Decree, this Decree shall be extended for one year from the date of that re-start of business activities. This decree shall expire by its own terms at the end of three years after entry, without further action by the parties.

16. The Commission may bring an action to enforce the Consent Decree based upon non-compliance with any provision of this Consent Decree by either Monk's Inc., and/or Richard L. Monks' or by Tellez Management Corp.

17. The parties agree to entry of this decree subject to final approval by the Court.

ENTERED AND ORDERED this 8th day of May, 2000.

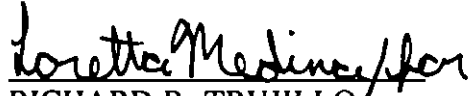

HONORABLE JUDGE BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

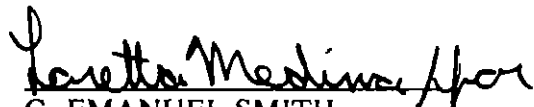
APPROVED AND CONSENTED TO:

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Attorneys for Plaintiff

and


Tellez Management Corp. by its
President Mike Tellez

NOTICE TO ALL EMPLOYEES OF
THE INTERNATIONAL HOUSE OF PANCAKES

Disability discrimination in the work place is against federal law, the Americans with Disabilities Act (the "ADA"). Under the ADA, it is unlawful for an employer to discriminate on the basis of disability or to fail to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless providing such an accommodation would impose an undue hardship on the employer.

Tellez Management Corp., will make reasonable accommodation for the known disabilities of qualified individuals with disabilities, except when making such accommodation would cause undue hardship to its business. Tellez Management Corp. will not discriminate against any individual because of their disability(s).

If you believe you have been subjected to disability discrimination during the course of your employment with Tellez Management Corp. you have the right to seek assistance from:

- (1) The United States Equal Employment Opportunity Commission (the EEOC), 505 Marquette, Suite 900, Albuquerque, New Mexico 87102-2189, (505) 248-5201 or 1-800-669-4000;

or

- (2) The New Mexico Department of Labor, Human Rights Division (NMHRD), 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, 505) 827-6838.

You have the right to file a charge with the EEOC or the NMHRD if you believe you are being subjected to disability discrimination.

It is also unlawful for any management official or employee of Tellez Management Corp. to discriminate by **retaliation** against an individual because you have opposed an act or practice made unlawful by the ADA, or because you made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under the ADA. It is also unlawful for any management official or employee of Tellez Management Corp. to **coerce, interfere, intimidate or threaten** any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA. If you believe any acts to retaliate, coerce, intimidate, or threaten you have been made, you should contact the EEOC or NMHRD at the addresses and numbers listed above.

EXHIBIT A