

FILED
at Santa Fe, N.M.

OCT 26 2006

MATTHEW J. DYKMAN
CLERK

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
RICHARD DONALDSON,)
R W W ENTERPRISES, INC., AND)
M & D INDUSTRIES d/b/a)
SONIC DRIVE-IN)
)
Defendants,)
)

CIV 05-1033 JH/RLP

CONSENT DECREE

The Equal Employment Opportunity Commission (EEOC or Commission) filed this action against Richard Donaldson, R W W Enterprises, Inc., and M & D Industries, d/b/a Sonic Drive-In, collectively the "Defendants," to enforce Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, and Title I of the Civil Rights Act of 1991. In the Complaint, the Commission alleged that Defendants discriminated against Chelsea Correa Sink and a class of females, including Crystal Berumen, when Defendants failed or refused to hire the women because of their sex, female and their pregnancies, in violation of Title VII. The Commission further alleged that Defendants effectively discharged and/or rescinded a job offer to Ms. Correa Sink because of her sex, female, and her pregnancy, in violation of Title VII.

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.

B

It is hereby ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all claims of the Commission against Defendants arising out of this lawsuit, including claims for back pay, compensatory damages, punitive damages, interest, injunctive relief, attorney's fees and costs.

2. This consent decree does not constitute an admission of liability by any Defendant.

3. The sole and exclusive party to this lawsuit that is required and responsible for any and all aspects of consent decree compliance is Richard Donaldson and the Sonic #2 store. The Decree and or terms of any injunctive relief do not apply to Defendants M&D Industries and RWW Enterprises Inc., other than as it relates to these Defendants' ownership interest in the Sonic #2 store, located in Albuquerque, NM.

4. The Court has jurisdiction of the subject matter of this action and of the parties.

5. The terms and provisions of this Consent Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties are adequately protected by this Consent Decree.

6. This Consent Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of Defendants, the Commission, and the public.

INJUNCTION

7. For the duration of this Consent Decree, Defendants, their owners, managers, agents, officers, employees, successors, and assigns, and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from

discriminating against any individual because of his or her sex, including subjecting employees or applicants to sex or pregnancy discrimination. This injunction will remain in effect for the duration of the decree at any facility operated by Defendants in the state of New Mexico.

8. Defendants, their owners, managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from retaliating against any employee or individual because the employee or individual has (a) opposed practices made unlawful by Title VII or a state equal employment opportunity statute, (b) filed a charge of discrimination, including sexual harassment, (c) assisted or participated in the filing of a charge of discrimination, including sexual harassment, (d) assisted or participated in an investigation or proceeding under Title VII or a state equal employment opportunity statute, or (e) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at any facility operated by Defendants in the state of New Mexico.

RELIEF TO CHARGING PARTY AND THE CLASS

9. Within ten (10) days of entry of this Decree, Defendants agree to pay the total amount of \$23,500.00 to Ms. Correa Sink (\$17,500.00) and Ms. Berumen (\$6,000) pursuant to the distribution set forth in Exhibit A. For these payments designated as compensatory damages, Defendants shall issue check(s) and 1099 forms for the amounts pursuant to Exhibit A.

10. The checks provided for in this Decree shall be mailed by Defendant's counsel, directly to Ms. Correa Sink and Ms. Berumen at the addresses supplied by the Commission, and as designated by the Commission. Within five (5) business days of the issuance of the checks, Defendants shall submit a copy of the checks and related correspondence to the United States Equal Employment Opportunity Commission Albuquerque Area Office, Regional Attorney, 505

Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

11. Defendants shall not take any action against Ms. Correa Sink, Ms. Berumen or any witness in this proceeding or any other individual in retaliation for filing a charge of employment discrimination, or for participating, assisting or testifying in this action.

DEFENDANT'S POLICIES AND PRACTICES

12. Defendants shall institute and carry out policies and practices that foster a work environment free from sex discrimination, including pregnancy discrimination in the hiring of employees, the firing of employees, and all other terms, conditions, and privileges of employment. To assist Defendants in their efforts to foster a work environment free of sex and/or pregnancy discrimination, the Defendants shall take the actions provided for in Paragraphs 13-15 and 17.

13. Within sixty (60) days of the entry of this Decree, Defendants shall review their policies, practices and procedures relating to sex and pregnancy discrimination and make any changes necessary so that their policies, practices and procedures comply with Title VII. Defendants shall ensure that any written policies include a statement that employees who believe they have been subjected to sex or pregnancy discrimination have the right to complain directly to EEOC or any state equal opportunity agency. Within ninety (90) days of entry of this Decree, Defendants shall distribute their new or revised policies and procedures relating to sex and/or pregnancy discrimination to each of its current full and part-time employees, and to each new employee hired for the duration of this Decree at facilities operated by Defendants in New Mexico.

14. Within ten (10) days of entry of this Decree and for duration of this Decree, Defendants shall post, in a prominent place frequented by its employees at its New Mexico

facilities, the Notice attached as Exhibit B. The Notice shall be the same type, style and size as set forth in Exhibit B to this Decree.

15. Defendants will provide training on Title VII prohibitions relating to sex discrimination and the Pregnancy Discrimination Act (PDA) for its employees, including management employees, its personnel managers, and any individual involved in the hiring, disciplinary or termination process at its New Mexico facilities. The PDA training shall include some interactive component. Training required by this Decree will occur according to the following terms.

- A. Defendants shall provide three (3) training sessions during the term of this decree. All hiring officials, managers, supervisors and employees at facilities owned or operated by Defendants in New Mexico shall attend the training. Duplicative sessions may be held to accommodate staffing needs. Defendants shall be responsible for all costs associated with this training.
- B. During the first year of the decree, the first training shall be conducted within ninety (90) days of the entry of this decree. Additional training shall be conducted for all other New Mexico facilities subject to this Decree (Sonic Store #2), at least once each remaining year of this Decree. Defendant may complete its training obligations under this Decree within thirty (30) months of entry of the Decree as long as all other requirements of the Decree are met.
- C. Defendants shall select a qualified trainer or facilitator and shall submit the trainer's or facilitator's name, resume, training agenda and the date(s) of the proposed training to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within forty-five (45) days of the

entry of this decree. During the second and third years of the Decree, the above information shall be submitted to the Regional Attorney at least sixty (60) days prior to the seminar-training session. The Commission shall have thirty days from the date of receipt of the information described above to accept or reject the proposed trainer and/or the contents of the seminar. In the event the Commission does not approve defendants' designated trainer, the Commission shall designate the trainer at a cost not to exceed \$1000.00 per seminar-training session which shall be paid by defendants.

- D. The training shall include a minimum of two hours of instruction. All personnel, designated in Paragraph A shall both register and attend the training. The registry of attendance shall be retained by defendant at least for the duration of the decree.
- E. The training, at a minimum shall include the subjects of: what constitutes sex and pregnancy discrimination, and retaliation; that sex and pregnancy discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment and retaliation violates Title VII; how to prevent sex and pregnancy discrimination and retaliation; how to provide a work environment free from sex and pregnancy discrimination, and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to sex or pregnancy discrimination, or retaliation in the workplace. Defendants will also include in the training sessions an overview of the PDA, Defendants' recognition of a commitment to the obligations imposed by the PDA , as well as, applicant and employee rights under the PDA.
- F. Immediately following the training sessions, Defendants' highest ranking

managerial official in the facility shall speak to the employees about: (1) potential discipline that can be taken against supervisors, managers and employees who commit acts of sex or pregnancy discrimination or retaliation or who allow sex or pregnancy discrimination or retaliation to occur in the workplace; (2) the importance of maintaining an environment free of sex and pregnancy discrimination and retaliation; and (3) the employer's policies regarding sex and pregnancy discrimination, and retaliation. This time shall not be counted toward the two hour minimum training required in paragraph 15D.

- G. For the duration of this decree, at or around the time of hire, employees hired after the annual training is presented, shall view a video tape of the training and/or a professional training tape which covers the topics set forth in paragraph 15E and shall be given any written material disseminated at the training.

16. The Commission, at its discretion, may designate Commission representatives to attend and participate in any of the training sessions described above.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

17. Defendants shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, beginning six months from the date of the entry of this Decree, and thereafter every six months for the duration of the Decree the following information:

- A. Any changes, modifications, revocations, or revisions to Defendants' policies and procedures which concern or affect the subjects of sex or pregnancy discrimination and retaliation.
- B. The name, address, position, social security number and telephone number of any

employee in the State of New Mexico who has brought allegations of sex discrimination, including pregnancy discrimination against Defendants or their personnel, including but not limited to, management officials, vendors, agents, or employees, during the six months preceding the report. The nature of the complaint, investigatory efforts made by Defendants, and the corrective action taken, if any, shall be specified.

- C. The registries of persons attending each of the seminar-training sessions required by this Decree, and lists of current New Mexico employees on the days of the seminar-training sessions.
- D. An affidavit by each Defendant stating: (1) the Notice required in paragraph 14 of this Decree was posted and the locations where it was posted and, (2) Defendants have complied with paragraphs 12-13 and 15 of this Decree.

18. The Commission, upon reasonable notice, shall have the right to enter and inspect the premises of Defendants' business facilities located in New Mexico to ensure compliance with this Decree and federal anti-discrimination laws.

COSTS AND DURATION

19. Each Party shall bear its costs and attorney's fees in this case, through entry of this Decree.

20. The duration of this Decree shall be three years from its entry. This Court shall retain jurisdiction over this action for the duration of the Decree, during which time the Commission, may petition this Court for compliance with this Decree. Should the Court determine that Defendants have not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered. This

Decree shall expire by its own terms at the end of three years from the date of entry, without further action by the Parties.

21. The Parties agree to entry of this Decree and judgment subject to final approval by the Court.

Entered and ordered this 25 day of Oct 2006.


THE HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE

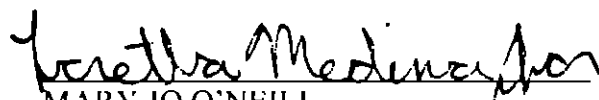
APPROVED AND CONSENTED:


Ronald Cooper
General Counsel

James L. Lee
Deputy General Counsel

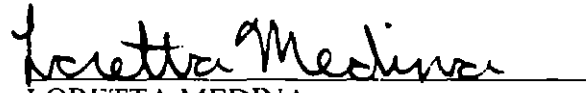
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Distribution of Settlement Amount

	Compensatory Damages
Chelsea Correa Sink	\$17,500.00
Crystal Berumen	\$6,000.00

EXHIBIT A

NOTICE TO ALL EMPLOYEES OF SONIC DRIVE-IN

This Notice is posted pursuant to a Consent Decree entered into between Richard Donaldson, RWW Enterprises, Inc., and M & D Industries, d/b/a Sonic Drive-In and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under federal law, Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of pregnancy in recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Sonic Drive-In shall not discriminate against any applicant or employee on the basis of sex, including pregnancy, and shall not retaliate against any individual.

If you believe you have been discriminated against by Sonic Drive-In, you have the right to seek assistance from:

(1) Equal Employment Opportunity Commission (EEOC), 505 Marquette NW, Suite 900,
Albuquerque, New Mexico 87102, (505) 248-5201.

or

(2) The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St.,
Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838 or 1 (800) 566-9471.

You have the right to file a charge with the EEOC or HRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Sonic Drive-In for (1) opposing discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the New Mexico Department of Labor, Human Rights Division at the addresses or telephone numbers listed above.

EXHIBIT B