

D/R

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

WELLCHOICE, INC.,

Defendant.

05 CV 3161 (ADS)(WDW)
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y

★ SEP 04 2007 ★

LONG ISLAND OFFICE

CONSENT DECREE

This Action was initiated on June 29, 2005, by the Equal Employment Opportunity Commission (hereinafter "EEOC"), an agency of the United States Government, alleging that Defendant, Empire Healthchoice HMO Inc. (subsequently known as WellChoice, Inc., then WellPoint Holding Corp.; hereinafter "Empire"), violated the Age Discrimination in Employment Act ("ADEA") by discriminating against Thomas Guiffrida, James Frullo and other similarly situated workers because of their age. The Complaint further alleges that Guiffrida and Frullo were retaliated against because they protested age discrimination and/or engaged in protected activity.

The parties agree that it is in their mutual interest to fully resolve the matter without further litigation.

EEOC and Empire do hereby stipulate and consent to the entry of this Decree as final and binding between the parties signatory hereto and their successors or assigns.

This Decree resolves all claims raised in the Complaint filed herein. The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

This Decree resolves all of the issues raised by EEOC Charge Numbers 160-A3-000467, 160-A3-00980, 160-A3-01159 and 160-A3-01007 and the EEOC Complaint in this case. This Decree in no way affects the EEOC's right to process any other pending or future charges that may be filed against Empire in accordance with standard EEOC procedures, and to commence civil actions on any such charges.

1. The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.

2. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Breach of any term of this Decree should be deemed to be a substantive breach of this Decree.

3. Empire will provide a two (2) hour legal compliance training on laws regarding equal employment opportunity for all managers and Human Resources employees of the area formerly known as the Provider Audit and Reimbursement Unit of the division formerly known as Empire Medicare Services. This training shall be conducted by ELT via computer. A summary of the topics encompassed by the training is attached as Exhibit A hereto. Empire will complete this training within four (4) months of the date of entry of this Decree, and will forward to EEOC a detailed agenda of the material presented and a copy of the attendance sheet(s) within ten (10) business days of the completion of the training program.

4. Within ten (10) business days of the entry of this Decree, Empire will post the Notice of Non-Discrimination that is attached hereto as Exhibit B in a conspicuous place where employees of the area formerly known as the Provider Audit and Reimbursement Unit of the division formerly known as Empire Medicare Services are employed and which is commonly used for announcements to those employees. This notice shall remain posted for the duration of this Decree.

5. Within ninety (90) days of the entry of this Decree, Empire will revise and redistribute its non-discrimination policy to all employees of the area formerly known as the Provider Audit and Reimbursement Unit of the division formerly known as Empire Medicare Services.

6. Within ten (10) business days of receiving a signed release from Thomas Guiffrida in the form attached hereto as Exhibit C, Empire agrees to pay \$9,000 to Thomas Guiffrida. This amount represents the difference in pay between what Mr. Guriffrida would have received had he been promoted to Senior Auditor in 2001 and what he did receive. The payment is to be made by check to Thomas Guiffrida by mail to an address to be provided by EEOC. Empire will forward EEOC a copy of the check at the same time the check is sent.

7. Consistent with the law, Empire and its officers, managers, successors, assigns or agents shall not discriminate against employees on the basis of age or retaliate against any individual for asserting his or her rights under the ADEA, including participating or assisting in any way in the investigation or litigation of this matter.

8. The Decree, being entered with the consent of the EEOC and Empire, shall not constitute an adjudication or finding on the merits of the case. The execution and acceptance of this Decree by Empire is voluntary and does not constitute an admission of any fact or liability of any kind and may not be used as evidence for any purpose in any litigation except to enforce the Decree.

The parties have agreed to enter into this Decree to avoid the cost and expense of further litigation, and Empire continues to expressly deny any and all liability in connection with the matters alleged in the Complaint.

9. Each party shall bear his/its own attorneys' fees and costs incurred in this action.

10. This Decree constitutes the complete understanding among the parties. No modification or other promises or agreements shall be binding unless agreed to in writing and signed by these parties.

11. This Decree will remain in effect for three (3) years from the date of entry.

Dated: August 31, 2007
New York, NY

s/ Elizabeth Grossman
Elizabeth Grossman
Regional Attorney
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Case Closed

SO ORDERED.

Dated:  9/4/07
Central Islip, NY


U.S.D.J.