

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	
	:	
	:	
Plaintiff,	:	Case No. 05-CV-00461S(F)
vs.	:	
	:	
THERMAL FOAMS, INC.,	:	
	:	
Defendant.	:	
	:	

CONSENT DECREE

I. Introduction

1. The parties to this Consent Decree are plaintiff Equal Employment Opportunity Commission (hereafter "EEOC"), and defendant Thermal Foams, Inc. ("Thermal Foams").

2. The EEOC brought this action on June 30, 2005, pursuant to the Age Discrimination in Employment Act of 1967, as amended (hereafter "ADEA"), 29 U.S.C. §§ 621 *et. seq.*, as amended. The EEOC alleged that Thermal Foams discriminated against Diane Hartman, Alice Malone, Earlie Burton, James Thompson, and Thomas Johnson (hereafter "the claimants") by terminating them because of their age. Thermal Foams denies that there was or has been a violation of any law or regulation.

3. In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations with the assistance of a mediator pursuant to the Court's ADR program, the EEOC and Defendant (hereinafter "the parties") desire to conclude fully and finally settle all claims arising out of the above action. They enter into this Consent Decree to further the objectives of equal employment opportunity as set forth in the ADEA.

4. This Consent Decree is not an adjudication or finding on the merits of this case and shall not be construed or used as an admission of a violation by Defendant.

5. The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record herein, and the applicable law, and now approves the Consent Decree in its entirety.

Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

II. General Provisions

1. This Court has jurisdiction over the subject matter and the parties to this action.

2. This Consent Decree resolves all issues concerning alleged discrimination by Thermal Foams against claimants through the date of this Consent Decree which were raised in the Complaint filed by the EEOC in this case. This Consent Decree also resolves all issues that were raised in the Charges of Discrimination filed by Diane Hartman and Alice Malone with the EEOC against Thermal Foams (Charge ##165-2003-01035 and 165-2003-01038). EEOC also confirms that it terminated the processing of Charge # 165-2003-01067 and sent a notice of right to sue to that Charging Party on December 22, 2004.

3. The parties have agreed that this Decree may be entered into without Findings of Fact and Conclusions of Law having been made and entered by the Court.

4. This Consent Decree shall become effective upon its entry by the Court (the "effective date").

5. Each party shall bear its own costs and attorney fees, unless otherwise specified.

6. The EEOC and Defendant agree that this Consent Decree constitutes the complete agreement between them, and it supersedes all rights, obligations, negotiations, representations, and writings prior to the date of this Consent Decree. No waiver, modification, or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all parties to this Consent Decree, and approved or ordered by the Court.

7. The EEOC and Defendant agree that, pursuant to Section 7(c)(1) of the ADEA, 29 U.S.C. §626(c)(1), the right of claimants to bring an action under the ADEA for the violations alleged terminated upon the commencement of this action by the EEOC.

III. Injunctive Relief

1. Age Discrimination: Consistent with Section 4 of the ADEA, 29 U.S.C. §623, Defendant, its officers, agents, managers (including supervisory employees), successors and assigns, and all those in active concert or participation with them, shall not fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's age.

2. Retaliation: Defendants, their officers, agents, managers (including supervisory employees), successors and assigns, and all those in active concert or participation with them, shall not retaliate against any employee for exercising his or her rights under the ADEA.

IV. Monetary Relief

1. Thermal Foams agrees to pay a total of one hundred-thirty thousand and six hundred dollars (\$130,600) in consideration of the mutual promises herein. This sum shall be paid \$23,600 as wages, less all applicable withholdings, \$41,700 as benefit loss, and \$65,300 as liquidated damages, allocated as follows to the claimants within ten (10) days of the effective date:

Payee	Wages	Benefit	Liquidated Damages	Total
	W-2 with withholding	1099, with no withholding	1099, with no withholding	
Diane Hartman	\$9,000	\$16,500	\$25,500	\$51,000
Alice Malone	\$9,000	\$16,500	\$25,500	\$51,000

Thomas Johnson	\$2,000	\$3,000	\$5,000	\$10,000
James Thompson	\$2,000	\$3,000	\$5,000	\$10,000
Earl Burton	\$1,600	\$2,700	\$4,300	\$8,600

2. The parties acknowledge that (a) Thermal Foams will report these payments to the Internal Revenue Service and the claimants for the calendar year 2006, with the portion allocated to wages being reported on Forms W-2, less all applicable withholdings, and benefits and liquidated damages to be reported on Forms 1099, without withholding, which forms shall be filed on or before January 31, 2007, and (b) such amounts may be deducted by Thermal Foams on its federal and state income tax returns for 2006 as an ordinary and necessary business expense. Thermal Foams shall send each check along with appropriate tax forms by certified mail to each claimant at addresses that the EEOC shall supply to Thermal Foams on or prior to the effective date.

3. Thermal Foams shall simultaneously send copies of the checks and tax forms to:

Equal Employment Opportunity Commission
 Boston Area Office
 Attn: Mark Penzel
 JFK Federal Building, Room 475
 Boston, MA 02203-0506

All other notices required by this Decree to be sent to the EEOC shall also be sent to the above address.

V. Non-Monetary Relief

1. Thermal Foams shall adopt an Equal Employment Opportunity Policy within sixty (60) days of the effective date. This Policy will be subject to an evaluation for substantial compliance by the EEOC. In the event that the proposed policy is not acceptable to the EEOC,

the parties will confer in good faith and attempt to reach an agreement. Approval will not be unreasonably withheld. The policy shall include a detailed complaint procedure that includes a clear explanation of prohibited conduct, assurance that employees who make complaints of discrimination or provide information related to such complaints will be protected against retaliation; a clearly described complaint process that provides accessible avenues of complaint; assurance that the employer will protect the confidentiality of complaints to the extent possible; and a complaint process that provides a prompt, thorough, and impartial investigation, and assurance that Thermal Foams will take prompt and effective corrective action when it determines that discrimination has occurred.

2. This policy will specifically include a statement regarding Thermal Foam's responsibility to provide all persons equal employment opportunity in hiring, without regard to age. This policy will be included in any relevant policy or employee manuals and be distributed to employees by Thermal Foams.

3. Thermal Foams shall also provide a two (2) hour training session for Richard Probst and Dave Wopperer, who have hiring, termination, and/or interviewing authority, on the requirements of the ADEA, particularly as it concerns discrimination on the basis of age in hiring and terminations, and as it concerns retaliatory conduct. In addition, they shall receive an additional four hours of training concerning how to conduct a reduction in force in compliance with the ADEA. These training sessions will be completed within sixty (60) days of the effective date. Such training shall also be provided within thirty days to each employee of Thermal Foams given hiring, termination, or interviewing authority within the term of the Consent Decree.

4. Thermal Foams agrees to post and keep posted on the bulletin board outside Dave Wopperer's office the notice attached hereto as "Exhibit A" on its letterhead. The notice shall remain posted for the duration of the Consent Decree.

VI. Additional Reporting and Monitoring

1. Six months after the effective date, Thermal Foams will submit a report to the EEOC detailing its compliance with this Decree.

2. Thermal Foams shall also submit a final report to the EEOC thirty (30) days before the Consent Decree expires containing a statement verifying its compliance with the terms of the Consent Decree.

3. EEOC shall retain the right to monitor Thermal Foams' compliance with the terms of this Consent Decree until its expiration.

VII. Expiration of Consent Decree and Miscellaneous Provisions

1. No party shall contest the jurisdiction of the federal court to enforce this Consent Decree and its terms or the right of any party to this Consent Decree to bring an enforcement suit upon breach of any of the terms of this Consent Decree by any party. Breach of any terms of this Consent Decree shall be deemed a substantive breach of this Consent Decree. No breach under Sections V or VI shall be deemed to have occurred, and no party shall seek to enforce this Consent Decree claiming a breach, unless written notice of such breach or claimed breach is first given to the other party and thirty (30) days expires without the same having been cured; provided, however, that notice shall not be required when a delay in enforcement would cause material harm to the EEOC or the claimants. Nothing in this Consent Decree shall be construed to preclude either party from bringing proceedings to enforce this Consent Decree in the event that either party fails to perform the promises and representations contained herein.

2. This Consent Decree shall remain in effect for two years from the date it is approved by the Court.

3. This Consent Decree shall be binding upon Thermal Foams' purchasers, successors, and assigns.

SO ORDERED, ADJUDGED AND DECREED.

Signed this ____ day of _____, 2006

United States District Judge

APPROVED IN FORM AND CONTENT:

By Plaintiff,
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Elizabeth Grossman
Regional Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004-2112

By: /s/ Markus L. Penzel _____
Markus L. Penzel
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Boston Area Office
John F. Kennedy Federal Building,
Room 475
Boston, MA 02203-0506
(617) 565-3193
Markus.penzel@eeoc.gov

By Defendant, Thermal Foams, Inc.:

By: /s/ Randolph C. Oppenheimer _____
Randolph C. Oppenheimer, Esq.
KavinokyCook LLP
726 Exchange Street, Suite 800
Buffalo, NY 14210
716.845.6000
roppenheimer@kavinokycook.com

Exhibit A

NOTICE

1. This NOTICE to all employees of Thermal Foams, Inc., is being posted and provided as part of a Consent Decree between Thermal Foams, Inc., as Defendant and the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (“EEOC”).

2. Federal law requires that there be no discrimination against any employee or applicant for employment because of sex, race, national origin, color, age, disability, or religion with respect to hiring, compensation, promotion, discharge, or other terms, conditions, or privileges of employment. Federal law also prohibits retaliation against any person who opposes such discrimination or makes a charge, testifies, assists, or participates in any manner in any investigation, proceeding, or hearing relating to such discrimination.

3. Thermal Foams will not take any action against employees because they have exercised their rights under the law by filing charges or cooperating with the EEOC or by otherwise opposing employment practices made unlawful under federal law.

4. The EEOC maintains offices throughout the United States. Its toll-free telephone number is 1-800-669-4000. The Buffalo Local Office has jurisdiction over western New York and can be phoned at (716) 551-4441.

5. This NOTICE will remain posted until *2 YEARS FROM DATE OF SIGNATURE*.

SIGNED this ____ day of _____, 2006.

Owner and President