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A. LUIS LUCERO, JR.
KATHRYN OLSON
NANCY MAISANO
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
909 FIRST AVENUE, SUITE 400
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U.S. DISTRICT COURT
FOR THE DISTRICT OF OREGON
SEATTLE, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

WINDMILL INNS OF AMERICA,
d/b/a WINDMILL INN OF ASHLAND,

Defendant.

CIVIL NO. 00-3106-CO
CONSENT DECREE AND ORDER
OF DISMISSAL

I. INTRODUCTION

1. This action originated with a charge of discrimination filed by Sandra Newkirk with the Equal Employment Opportunity Commission ("EEOC"), alleging violations of the Americans with Disabilities Act of 1990 ("ADA").
2. The EEOC investigated this charge and issued a Determination on October 22, 1999, finding reasonable cause to believe that Windmill Inns of America ("Windmill Inns") discriminated against Sandra Newkirk by denying her a position for which she had applied and by failing to reasonably accommodate her.
3. The EEOC filed this lawsuit in the United States District Court for the District of

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1 Oregon on September 28, 2000. Plaintiff alleged that Windmill Inns violated the ADA by
2 subjecting Newkirk to unlawful discriminatory practices.

3 4. Windmill Inns filed an Answer to EEOC's Complaint in which it denied plaintiff's
4 allegations of discrimination.

5 5. The Commission and Windmill Inns want to fully and finally conclude all claims
6 arising out of the above charge without the expenditure of further resources and expenses in
7 contested litigation. They agree that entry of this Consent Decree will be in the interest of the
8 parties and will further the objectives of the anti-discrimination provisions under the ADA.

9 **II. JURISDICTION AND VENUE**

10 6. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337,
11 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the
12 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by
13 reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §
14 2000e-5(f)(1) and (3) ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991,
15 42 U.S.C. § 1981A. The employment practices alleged to be unlawful in the EEOC's
16 Complaint filed herein occurred within the jurisdiction of the United States District Court for the
17 District of Oregon.

18 **III. NON-ADMISSION OF LIABILITY**

19 7. This Consent Decree is not an adjudication or finding on the merits of this case
20 and shall not be construed as an admission by Windmill Inns of a violation of the ADA or any
21 other provision of law.

22 **IV. PURPOSE OF THE AGREEMENT**

23 8. The parties have entered into this Consent Decree in order to achieve the
24 following purposes:

- 25 a. To assure the implementation of policies and procedures which prohibit
26 Windmill Inns from discriminating or retaliating against employees because of
27 their disability. Windmill Inns also agrees not to retaliate against any employee

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who complains about discrimination or participates in the investigation of a complaint.

b. To assure that Windmill Inns implements and promotes an anti-discrimination policy and complaint procedure to effectively prevent discrimination and to address and correct such alleged discrimination.

c. To avoid the time, expense and uncertainty of further litigation.

V. GENERAL PROVISIONS

9. This Consent Decree is intended to and does effectuate the full, final, and complete resolution of all allegations of unlawful employment practices and discrimination encompassed by the original discrimination charge, and the Complaint filed in EEOC v. Windmill Inns of American, Civil Case No: 00-3106-CO.

10. This Consent Decree constitutes the complete understanding between the EEOC and Windmill Inns with respect to matters herein. It is expressly agreed that if EEOC concludes that Windmill Inns has failed to comply with this Consent Decree, the Commission may bring an action in the United States District Court for the District of Oregon to enforce the Consent Decree as provided in paragraph 23 below.

VI. MONETARY RELIEF

11. In settlement of the EEOC's claims in this lawsuit, Windmill Inns agrees to pay Sandra Newkirk the sum of \$35,000 in compensatory damages for emotional distress. Windmill Inns agrees to send by certified mail a check directly to Sandra Newkirk in the amount of \$35,000 within thirty (30) days of the date of entry of this Consent Decree. At the same time, Windmill Inns agrees to mail or fax a copy of the check to EEOC. After receiving a copy of the check to Sandra Newkirk, EEOC will send a release signed by Sandra Newkirk to Windmill Inns within three days releasing Windmill Inns from all claims arising out of this lawsuit.

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1 **VII. INJUNCTIVE RELIEF**

2 **A. COMPLIANCE WITH THE ADA**

3 12. Windmill Inns reaffirms its commitment to comply with the ADA and other federal
4 anti-discrimination statutes. In furtherance of this commitment, Windmill Inns will comply with
5 the affirmative obligations of this Consent Decree. Windmill Inns agrees that it will not
6 discriminate against any employees because of their disability in any employment decisions.

7 13. Windmill Inns will not retaliate against any employee for making a charge of
8 discrimination or for testifying, assisting, or participating in any investigation, proceeding, or
9 hearing associated with this lawsuit.

10 14. In recognition of its obligations under the ADA, Windmill Inns will institute the
11 policies and practices set forth below.

12 **B. POLICY AGAINST DISCRIMINATION**

13 15. Windmill Inns shall adopt anti-discrimination policies, procedures and training
14 for employees, supervisors, and management personnel and provide equal employment
15 opportunities for all employees. Windmill Inns will evaluate and exercise reasonable care to
16 prevent and correct promptly the practices of its managers and supervisors in order to prevent
17 discrimination in employment under the ADA. Windmill Inns will exercise reasonable care to
18 ensure that its managers and supervisors understand its Equal Employment Opportunity
19 policies and how those policies define and identify what constitutes discrimination.

20 **C. TRAINING**

21 16. Windmill Inns will develop and present to its managers and supervisors a
22 minimum of two (2) hours of ADA training each year during the duration of this Consent
23 Decree. The cost of training shall be borne by the company.

24 17. The training will focus on conducting hiring and selecting practices, on
25 individualized assessments of employees with disabilities, on how to determine whether an
26 employee poses a substantial harm to himself or others, and what is reasonable
27 accommodation. The training will also include Windmill Inns' obligations under this Consent

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1 Decree. The first training shall take place within one hundred twenty (120) days after entry
2 of this consent decree.

3 18. Windmill Inns will retain a record of the training programs, including dates held
4 and persons who attended. A copy of these records and training materials shall be submitted
5 to the EEOC in accordance with section E below.

6 **D. INTERNAL GRIEVANCE PROCEDURE**

7 19. Windmill Inns will maintain an internal grievance procedure for applicants or
8 employees who believe they have been discriminated against. These procedures will also be
9 set forth in the written policy discussed in paragraph 15 above. For applicants, Windmill Inns'
10 employment applications will contain contact information for Windmill Inns' human resources
11 department to allow applicants access to the grievance procedure. Consistent with the terms
12 of the grievance procedure:

13 a. The employee relations or human resources department ("the
14 department") will investigate employee and applicant complaints.

15 b. The department will document the steps taken in the investigation of each
16 complaint, as well as any action taken as a result of the investigation and, if no
17 action is taken, the reasons for not taking corrective action.

18 c. The department shall inform the complainant of the outcome of the
19 investigation.

20 d. Within thirty (30) days after the end of each year for three years following
21 the date of entry of this decree, the company will mail to EEOC a copy of each
22 complaint of discrimination along with a summary of the resolution of each
23 complaint.

24 **E. REPORTING**

25 20. One year following the entry of this decree and every year thereafter for the
26 duration of the decree, Windmill Inns will report to the EEOC Seattle District Office. The report
27 will contain the following information:

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- 1 a. Certification of the completion of the minimum two (2) hours of training each
- 2 year, with a list of attendees, as provided in paragraph 18.
- 3 b. Certification that its EEO policy has been distributed to all current and newly
- 4 hired employees;
- 5 c. A list of any changes, modifications, revocations or revisions to its EEO policies
- 6 and procedures which concern or affect the subjects of discrimination based on
- 7 disability and reasonable accommodation; and
- 8 d. A summary of all complaints of disability-based discrimination, if any, which have
- 9 been lodged by any applicant or current or former employee of Windmill Inns
- 10 internally, through a grievance system, or with any governmental agency,
- 11 concerning employment practices, and the resolution of each complaint.

12 **F. POSTING**

13 21. The company will post a notice, attached as Exhibit 1 to this Consent Decree.

14 The notice shall be posted on a centrally located bulletin board for the duration of the Consent

15 Decree.

16 **VIII. ENFORCEMENT**

17 23. If the EEOC concludes that Windmill Inns has breached this agreement, it

18 may bring an action in the United States District Court for the District of Oregon to enforce

19 this Consent Decree. Before bringing an action for breach of the decree, the EEOC shall

20 first give Windmill Inns thirty (30) days' notice of the perceived breach. The EEOC and

21 Windmill Inns shall use that 30-day period for good faith efforts to resolve the matter.

22 **IX. RETENTION OF JURISDICTION**

23 24. The United States District Court for the District of Oregon shall retain

24 jurisdiction over this matter for the duration of the Consent Decree.

25 **X. DURATION AND TERMINATION**

26 25. This decree shall be in effect for three years plus ninety (90) days,

27 commencing with the date the decree is filed. If the EEOC petitions the court for breach of

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1 agreement, and the court finds Windmill Inns to be in violation of the terms of the Consent
2 Decree, the court may extend this Consent Decree for a reasonable period of time.

3 **XI. CONCLUSION**

4 26. The provisions of this consent decree are not binding on the parties until the
5 authorized representatives of each party sign and the court enters the Consent Decree in
6 the court.

7 The foregoing terms and conditions are agreed upon and stipulated to this 21st
8 day of November, 2001.

9
10 A. LUIS LUCERO, JR.
Regional Attorney

11 KATHRYN OLSON
Supervisory Trial Attorney

12 NANCY MAISANO
Trial Attorney

GWENDOLYN YOUNG REAMS
~~Acting Deputy~~ General Counsel
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14 BY: *A. Luis Lucero Jr.*

15 Equal Employment Opportunity Commission
16 Seattle District Office
909 First Avenue, Suite 400
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18 Attorneys for Plaintiff

19
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21 717 Murphy Road
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22 BY: *P. David Ingalls*

23 Attorneys for Defendant

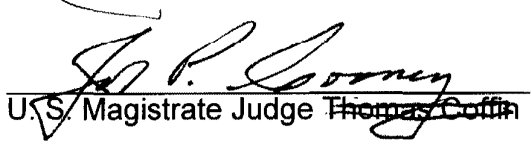
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ORDER APPROVING CONSENT DECREE AND DISMISSING ACTION

The Court having considered the foregoing stipulated agreement of the parties, HEREBY ORDERS THAT the foregoing settlement agreement is approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party. The Court retains jurisdiction of this matter solely for purposes of enforcing the Consent Decree approved herein.

DATED this 30 day of November, 2001.


U.S. Magistrate Judge ~~Thomas Coffin~~