

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

MICHAEL WORMACK, DEREK FRENCH,
and DONALD FRENCH,

Plaintiff-Intervenors,

v.

WILLIAMHOUSE OF PENNSYLVANIA, LLC,
a wholly owned subsidiary of
WILLIAMHOUSE, LLC.,

Defendant.

Civil Action No. 04-1460

Judge Cercone
Magistrate Judge Mitchell

CONSENT DECREE

Introduction

A. This action was instituted by the U.S. Equal Employment Opportunity Commission (“the EEOC” or “the Commission”) on September 22, 2004, against Williamhouse of Pennsylvania, LLC (“Williamhouse”) to enforce provisions of Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”). The Commission alleged that Williamhouse discriminated against Michael Wormack, Derek French and Donald French with regard to their salary and/or salary increases on the basis of race, African American. Williamhouse denies all of these allegations.

B. This Consent Decree is entered into by and shall be final and binding between the EEOC and Williamhouse, its parent company, affiliates, directors, officers, agents, successors and assigns.

C. The EEOC and Williamhouse agree to entry of this Consent Decree, which shall fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No. 04-1460. This Consent Decree shall not constitute either an adjudication of or finding on the merits of the complaint, shall not be construed as an admission by Williamhouse of any violation of Title VII, and is entered into by the parties to avoid the continued time and expense of litigation.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination and Non-Retaliation

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Williamhouse shall not unlawfully discriminate against its employees or applicants for employment on the basis of race, including but not limited to, by providing unequal salaries or salary increases.
3. Williamhouse shall not engage in any employment practices which retaliate in any manner against any person, including but not limited to Michael Wormack, Donald French, and Derek French, because of that person's opposition to any practice made an unlawful employment practice under Title VII or because that person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII.
4. Williamhouse shall not divulge, directly or indirectly, to any identifiable employer or potential employer of Michael Wormack, Donald French, and/or Derek French any of the facts or circumstances related to the claims of discrimination against Williamhouse in this case or any of the events relating to the participation of Michael Wormack, Donald French, and Derek French in the litigation of this action, unless compelled by law or by an order of a court of competent jurisdiction.

5. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Williamhouse under Title VII or the EEOC's authority to process or litigate any charge of discrimination now pending or filed in the future against Williamhouse.

Monetary Relief

6. Within ten (10) business days after receipt of a Release executed by Michael Wormack and the Court's entry of an order approving this Consent Decree, Williamhouse agrees to pay him monetary relief in the gross amount of Twenty-Seven Thousand Dollars and No Cents (\$27,000.00) in full settlement of the claims raised on his behalf against Williamhouse in the EEOC's Complaint. The check will be mailed to Mr. Wormack at an address to be provided by the EEOC and a copy within five business days thereafter to the attention of Mary M. Tiernan, Senior Trial Attorney, EEOC, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515. In order to receive this monetary relief, Wormack must execute a settlement agreement and release satisfactory in form to Williamhouse.

7. Within ten (10) business days after receipt of a Release executed by Donald French and the Court's entry of an order approving this Consent Decree, Williamhouse agrees to pay him monetary relief in the gross amount of Twelve Thousand Dollars and No Cents (\$12,000.00), in full settlement of the claims raised on his behalf against Williamhouse in the EEOC's Complaint. The check will be mailed to Donald French at an address to be provided by the EEOC and a copy within five business days thereafter to the attention of Mary M. Tiernan, Senior Trial Attorney, EEOC, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515. In order to receive this monetary relief, Donald French must execute a settlement agreement and release satisfactory in form to Williamhouse.

8. Within ten (10) business days after receipt of a Release executed by Derek French and the Court's entry of an order approving this Consent Decree, Williamhouse agrees to pay him monetary relief in the gross amount of Twelve Thousand Dollars and No Cents (\$12,000.00) and to increase his annual salary to \$39,000.00, in full settlement of the claims raised on his behalf against Williamhouse in the EEOC's Complaint. The check will be mailed to Derek French at an address to be provided by the EEOC and a copy within five business days thereafter to the attention of Mary M. Tiernan, Senior Trial Attorney, EEOC, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515. In order to receive this monetary relief, Derek French must execute a settlement agreement and release satisfactory in form to Williamhouse.

9. Within 10 days of receipt of the Releases described above from Michael Wormack, Donald French and Derek French, Williamhouse will pay attorneys fees and costs in the amount of Twenty-One Thousand Five Hundred Dollars and No Cents (\$21,500.00) to the law firm of Ogg, Cordes, Murphy & Ignelzi, attorneys for Plaintiff-Intervenors Michael Wormack, Donald French and Derek French. The check for attorneys' fees and costs will be mailed to Samuel J. Cordes, Esq., Ogg, Cordes, Murphy & Ignelzi, 245 Fort Pitt Boulevard, Pittsburgh, PA 15222.

Posting of Notice

10. Within 20 business days after entry of this Decree, Williamhouse shall post at its facility in Scottsdale, Pennsylvania, on all bulletin boards used by Williamhouse for communicating with employees, same-sized copies of the Notice attached as Exhibit 1 to this Decree. The Notice shall remain posted for two years from the date of entry of this Decree. Williamhouse shall provide to the attention of Mary M. Tiernan, Senior Trial Attorney, EEOC, 21 South Fifth Street Suite 400, Philadelphia, PA 19106-2515, a list of the locations and dates of posting within 40 days after entry

of this Decree. If posted copies become defaced, removed, marred or otherwise illegible, Williamhouse agrees to post a readable copy in the same manner as heretofore specified.

Non-Discrimination Policies and Complaint Procedures

11. Williamhouse's policy or policies against discrimination shall be drafted in plain and simple language. Williamhouse shall ensure that its policy or policies against discrimination meet the following minimum criteria:

(a) state that Williamhouse prohibits discrimination against employees on the basis of race;

(b) include a complaint procedure designed to encourage employees to come forward with complaints regarding violations of its policy or policies against discrimination, which shall meet the following minimum criteria: (i) provide effective mechanism(s) for reporting incidents of discrimination; (ii) provide that the complaints of discrimination can be made either in writing or verbally; (iii) identify employees in the Human Resources Department to whom an employee can make a complaint; (iv) encourage prompt reporting by employees; and (v) provide assurances that complainants shall not be subjected to retaliation;

(c) provide for prompt investigation of complaints of discrimination;

(d) provide for prompt communication to the complaining party of the results of the investigation and any remedial actions taken or proposed; and

(e) provide for discipline up to and including discharge of an employee or supervisor who violates Williamhouse's policy or policies against discrimination, and for increasingly severe discipline of repeat offenders.

12. Williamhouse shall distribute to all of its existing and newly-hired Scottsdale, Pennsylvania employees its policy or policies against discrimination within 90 days after entry of this Consent Decree.

13. Within 90 days after entry of this Consent Decree, Williamhouse shall advise Mary M. Tiernan, Senior Trial Attorney, EEOC's Philadelphia District Office, that its policy or policies against discrimination have been distributed to current Scottsdale employees and that new Scottsdale employees will receive these policies and an opportunity to acknowledge receipt. Williamhouse will retain copies of any acknowledgment of receipt form for an employee in the employee's personnel file.

14. Williamhouse shall annually for the duration of the Consent Decree distribute to its Scottsdale employees a copy of its policy or policies against discrimination.

Supervisor Accountability

15. Williamhouse shall promote supervisor accountability at its Scottsdale facility by the following conduct:

- (a) providing annual anti-discrimination training to all of its Scottsdale supervisory and managerial personnel as set forth in Paragraphs 16 and 17;
- (b) disciplining, up to and including discharge, any Scottsdale supervisor or manager who violates Williamhouse's policy or policies against discrimination;
- (c) imposing on all Scottsdale managers and supervisory personnel a duty to administer their work areas to ensure compliance with Williamhouse's policy or policies against discrimination; and

(d) requiring all Scottsdale managers and supervisors to report any incidents and/or complaints of discrimination of which they become aware to the Human Resources Department.

Training

16. Williamhouse shall provide training on the requirements of Title VII as follows:

(a) Williamhouse agrees to provide annual training sessions for all of its Scottsdale managers and supervisors, and to all Human Resources Department employees at its Scottsdale facility. The training will emphasize what constitutes unlawful discrimination in the workplace, how to keep the company free from such discrimination, and will summarize how to conduct a prompt and effective investigation into allegations, complaints or charges of discrimination; and

(b) Williamhouse shall first provide training in accordance with Paragraph 16(a) by no later than 120 calendar days after entry of this Consent Decree and also shall provide such training in calendar year 2008.

17. In addition to the training described in Paragraph 16 within 120 calendar days of the entry of the Consent Decree, Williamhouse shall provide training to all employees and supervisors in its Scottsdale Human Resources Department regarding how to conduct a prompt and effective investigation into allegations, complaints or charges of employment discrimination.

18. Williamhouse agrees at its expense to provide the EEOC with copies of all pamphlets, brochures, outlines or other written materials provided to attendees of training sessions provided in accordance with Paragraph 16 and 17.

19. Williamhouse shall certify to the EEOC in writing within 10 business days after the training sessions required by Paragraphs 16 and 17 have occurred that the training has taken place

and the personnel who attended. Such certification shall include: (i) the dates, location and duration of the training session; (ii) a copy of the registry of attendance, including the name and position of each person in attendance; and (iii) a listing of all managers, supervisors, and employees at Scottdale, Pennsylvania and in its Human Resources Department as of the date of the training.

Recordkeeping

20. For a period of two years following entry of this Decree, Williamhouse shall document and retain in a centralized file in its Scottdale, Pennsylvania Human Resources office records of each complaint of an incident of discrimination based on race by any employee at its facility in Scottdale, Pennsylvania, reflecting the date the complaint was made, who made it, what was alleged and the actions, if any, Williamhouse took to resolve the matter, and shall at its expense make such records available for inspection and copying by the EEOC.

21. Williamhouse shall make all documents or records referred to in Paragraph 20 available for inspection and copying within 10 business days after the EEOC so requests. In addition, Williamhouse shall make available for interview all persons in its employ whom the EEOC reasonably requests for purposes of verifying compliance with this Decree and shall permit a representative of the EEOC to enter Williamhouse's premises for such purposes on five business days' advance notice by the EEOC.

22. Nothing in this Decree shall be construed to limit any obligation Williamhouse otherwise may have to maintain records under Title VII or any other law or regulation. After expiration of this Consent Decree, records will be maintained by Williamhouse as required by law and Commission regulations.

Reporting

23. Williamhouse shall furnish to the EEOC the following written reports annually for a period of two years following entry of this Decree with the first report due twelve months after entry of the Decree and the final report due twenty-two (22) months after entry of the Decree. Each such report shall contain:

(a) a certification by Williamhouse that the Notice required to be posted by Paragraph 10 was posted during the twelve months preceding the report;

(b) a certification by Williamhouse that it has or will distribute the policy or policies against discrimination annually to Scottsdale employees, and that Williamhouse has disseminated the policy or policies against discrimination to all new Scottale employees hired within the twelve-month period preceding the report; and

(c) a certification that Williamhouse has complied with training requirements of this Consent Decree.

Dispute Resolution

24. In the event either party to this Decree believes the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within 20 days of the alleged non-compliance and afford the alleged non-complying party 20 business days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within 20 business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

25. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

26. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, parent company, affiliates, successors and assigns of Williamhouse in their capacities as representatives, agents, directors and officers of Williamhouse and not in their individual capacities. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event any individual is found in contempt for a violation of this Decree.

27. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No.04-1460.

28. This Consent Decree shall be filed in the United States District Court for the Western District of Pennsylvania and shall continue in effect for two years. During this time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate its purposes. Any application by any party to modify or vacate this Consent Decree during such period shall be made by motion to the Court on no less than 30 days' notice to the other party. Should any material disputes under this Decree remain unresolved after this two-year period, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Consent Decree) until such time as all disputes have been resolved.

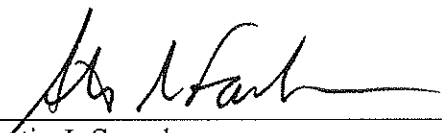
29. The Clerk of the District Court is hereby directed to send a file-stamped copy of this Consent Decree to counsel of record.

Ronald S. Cooper
General Counsel

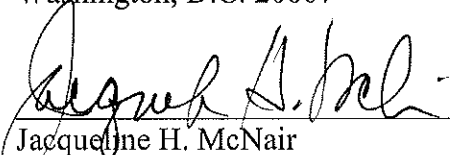
James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel

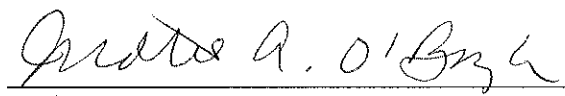
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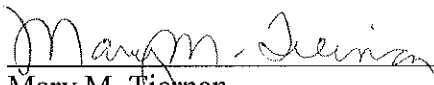
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SO ORDERED:

By the Court: _____
David S. Cercone
UNITED STATES DISTRICT JUDGE

Date: _____