

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
AUSTIN DIVISION
2003 MAR -5 AM 9:32

WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE
BY: SK
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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

BLC of Texas - II, L.P.,

Defendant.

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§ Civil Action No. A02CA627SS

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, BLC of Texas - II, L.P. ("BLC"). This Consent Decree resolves the allegations raised by the EEOC in the above-referenced Civil Action No. A02CA627SS. The EEOC initiated this lawsuit under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of religion, and to provide appropriate relief to Jessica C. Johnson-Shankle who allegedly was adversely affected by such practices. The EEOC alleged that BLC subjected Jessica C. Johnson-Shankle to discrimination when BLC failed to hire her and accommodate her because of her religion, Muslim.

The EEOC and BLC wish to settle this action, without the necessity of further litigation, pursuant to the terms delineated in this Decree.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

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

Complaint states claims, which, if proved, would authorize this Court to grant relief against BLC pursuant to Title VII;

2. This Decree is the result of conciliation and compromise between BLC and EEOC of the disputed claims raised in the EEOC's Complaint in this case, and completely resolves all such claims. The EEOC waives further litigation of all issues raised in the above-referenced complaint. The EEOC expressly reserves its right, however, to process and litigate any other charges which are pending (although EEOC acknowledges that, as of the date this Decree is filed with the Court, no charge has been filed with the San Antonio District Office) or may in the future be filed against BLC;

3. This Agreement shall not be considered as either a finding of, or evidence of, any violation(s) by BLC of Title VII or of any other federal or state statute, regulation, or common law obligation respecting employment discrimination; accordingly, this Agreement shall not be admissible as evidence against BLC in any proceeding or any forum other than in proceedings brought by either BLC or EEOC to enforce the terms of this Agreement; and

4. The duration of this Decree shall be eighteen (18) months from the date of its filing with the Court. This Court shall retain jurisdiction of this action for the duration of this Decree and may enter such other and further relief as it deems appropriate to ensure implementation and enforcement of its provisions. Any violation of the Decree by BLC, its agents or assigns, shall toll the running of this eighteen-month period as of the date of the violation. If the Court subsequently determines that this Decree was violated, the eighteen-month period shall recommence and continue from the date of entry of an Order finding such a violation or until such time as ordered by the Court. Should the Court find this Decree was not violated, the eighteen-month period shall recommence, retroactive to the date of the filing of this Decree with the Court.

INJUNCTIVE PROVISIONS

5. Defendant BLC is enjoined, during the term of this Decree, from discriminating against any applicant or employee on the basis of religion in violation of Title VII, including, but not limited to:

- (a) refusing to hire an individual because of his/her religion;
- (b) failing to make reasonable accommodation to an otherwise qualified applicant or employee because of his/her religion; provided, however, that nothing herein is intended to impose on BLC a requirement to give preference to any applicant or employee because of his/her religion; and
- (c) denying employment opportunities to an otherwise qualified job applicant or employee based on the individual's religion or based on the need to provide a reasonable accommodation to such individual's religious beliefs or practices.

6. Within sixty (60) days after the entry of this Decree, BLC shall create or modify and implement, as part of its Equal Employment Opportunity, Dress Code and/or Harassment Policies, a written statement of non-discrimination that meets the following criteria:

- (a) Contains provisions stating that BLC prohibits discrimination against applicants and employees because of their good faith and sincere religious beliefs or practices, and shall make reasonable accommodation to an otherwise qualified job applicants' or employees' good faith and sincere religious beliefs or practices; and
- (b) Provides for appropriate discipline of employees who violate these policies,

including provisions relating to religious discrimination, up to and including discharge.

7. Within sixty (60) days after the entry of this Decree, BLC shall create or modify, and shall implement a written complaint procedure that provides guidance to assist employees on how to complain of violations of the religious non-discrimination provisions of its policies. This complaint procedure shall provide the following:

- (a) Simple, convenient, and reliable mechanisms for reporting incidents of religious discrimination;
- (b) Prompt investigation of religious discrimination complaints;
- (c) Prompt communication to the complaining employee of the results of the investigation and any remedial actions taken or proposed;
- (d) Prompt and appropriate remedial action designed to resolve substantiated complaints and to deter future incidents of religious discrimination; and
- (e) Assurances that complaining employees shall not be subjected to any retaliation for having made a good faith complaint of religious discrimination.

8. Within sixty (60) days after the entry of this Decree, BLC shall communicate in writing its Equal Employment Opportunity, Dress Code and Harassment Policies, including the religious non-discrimination provisions set forth in Paragraph 6 above, to all of its employees.

TRAINING

9. Within ninety (90) days after the entry of this Decree, and once annually during the term of this Decree, BLC shall, at its own cost, provide training on the law under Title VII, which shall specifically include information regarding Title VII's prohibition of religious discrimination, and examples of conduct and employment practices which discriminate on the basis of religion. This training shall substantially follow the form described in **Exhibit A** hereto, and shall be provided to all management employees of BLC, who will be required to sign an acknowledgment indicating attendance.

POSTING OF NOTICE

10. BLC shall post a notice within ten (10) days of the entry of this Decree regarding its practices, policies, and intent not to discriminate against any employee in violation of Title VII. Such notice shall be as set forth in **Exhibit B**, which is attached to this Decree. A copy of **Exhibit B** shall be posted at BLC's Austin, Texas facility and on all employee bulletin boards at such facility. This notice shall remain posted for the duration of this Decree. BLC shall certify to the EEOC in writing within ten (10) business days after the posting of the Notice that the Notice has been properly posted.

MONETARY RELIEF

11. BLC, in full and final settlement of this dispute, shall pay to Jessica C. Johnson-Shankle, the sum of Fifteen Thousand Dollars (\$15,000.00). This shall be accomplished as follows: A check made payable to "Jessica C. Johnson-Shankle" shall be mailed to Ms. Johnson-Shankle at 7601 Rialto Blvd. #1712, Austin, Texas 78735, within 14 days after this Decree has been entered by the Court, or within eight days of receipt by BLC of a release of claims in the form attached

hereto at Exhibit C, signed by Ms. Johnson-Shankle, whichever is later. A copy of the settlement check and any accompanying transmittal documents shall be forwarded to Robert B. Harwin, Regional Attorney, San Antonio District Office, United States Equal Employment Opportunity Commission, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

MISCELLANEOUS PROVISIONS

12. Nothing contained in this Decree shall be construed to limit any obligation BLC may otherwise have to maintain records under Title VII or any other statute.

13. The terms of this Decree shall be binding upon BLC, and its successors and assigns, as to the issues resolved herein.

14. The parties to this Decree shall bear their own costs and attorneys' fees incurred in this action. The parties further agree that pursuant to Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k), there is no "prevailing party" in this action or proceeding.

The Clerk shall furnish a copy hereof to each attorney of record.

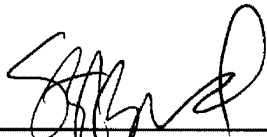
SO ORDERED.

Signed this 4th day of March, 2003.


SAM SPARKS
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

GWENDOLYN YOUNG REAMS
Associate General Counsel



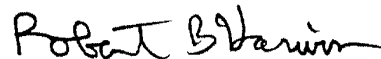
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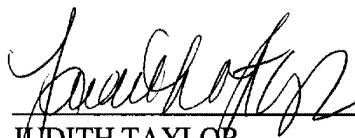
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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78229-3555
Telephone: (210) 281-7679
Telecopier: (210) 281-7669

ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"

Consent Decree

EXHIBIT A

The following training will be provided to individuals employed at BLC of Texas - II, L.P.'s Heritage at Gaines Ranch Facility in Austin, Texas within ninety (90) days after the entry of the Consent Decree (to which this document is attached as Exhibit B) and once annually thereafter during the term of the Decree:

- A. "Promoting a Respectful Workplace: Respect in the Workplace & Harassment Awareness Training."

This one-hour session, to be led by William P. Blouin (Brookdale Living Community's Director of Human Services), will provide training to all employees on understanding and adhering to the components of a respectful workplace. Employees will be encouraged to appreciate diversity, accept differences, and treat each other equally. Prohibited discrimination and harassment will be defined and explained, with reference to the applicable laws, including Title VII, the Equal Pay Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Title VII's prohibition of religious discrimination will be specifically discussed, with examples of conduct and employment practices that discriminate on the basis of religion being explored. Group discussion on dealing with potential scenarios will be facilitated through the use of a video entitled, "You Call That Respect?" Employees will be given detailed information on what to do if they believe they are being discriminated against or harassed, including who to contact and what the investigation into the complaint will entail. A quiz will be given at the beginning of the training, with the questions discussed at the conclusion in order to reinforce the information learned. All employees will receive copies of the slide presentation made during the training, and will be asked to sign a form acknowledging attendance at the training.

- B. "Diversity: the FAIR Way"

This one-hour session, to be led by William P. Blouin (Brookdale Living Community's Director of Human Services) and provided to all managers, will explore the concept of diversity in detail. The realities of a diverse workplace and the problem of discrimination will be addressed, and managers will be encouraged to recognize, understand, value and utilize the various ways in which people differ. Specific examples of prohibited discrimination, including religious discrimination, will be provided. Managers will be trained on how to avoid engaging in discrimination through use of the "FAIR" Way, which involves providing *Feedback* on expectations and how they are being met; supplying *Assistance* to enable employees to work to their fullest potential; ensuring the *Inclusion* of everyone, and giving *Respect* to all.

EXHIBIT “B”

Consent Decree

NOTICE TO ALL EMPLOYEES

BLC OF TEXAS - II, L.P. IS FIRMLY COMMITTED TO MAKING EMPLOYMENT DECISIONS ACCORDING TO LEGITIMATE CRITERIA WITHOUT REGARD TO AN EMPLOYEE'S OR APPLICANT'S RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, OR HAVING ENGAGED IN ACTIVITY PROTECTED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED. THIS POLICY APPLIES TO ALL EMPLOYMENT DECISIONS, INCLUDING RECRUITMENT, RETENTION, PROMOTION, TRANSFER, LAYOFF AND/OR TERMINATION, AND ALL OTHER TERMS AND CONDITIONS OF EMPLOYMENT. BLC OF TEXAS - II, L.P. WILL NOT TOLERATE DISCRIMINATION OF ITS EMPLOYEES BASED ON AN EMPLOYEE'S RELIGION OR BECAUSE AN EMPLOYEE FAILS TO CONFORM TO A RELIGIOUS BELIEF OR PRACTICE, AND FURTHER WILL NOT TOLERATE RETALIATION AGAINST AN EMPLOYEE WHO OBJECTS OR OPPOSES FORCED CONFORMITY WITH ANY RELIGIOUS BELIEFS OR PRACTICES.

IF YOU BELIEVE YOU ARE BEING DISCRIMINATED AGAINST IN ANY TERM OR CONDITION OF YOUR EMPLOYMENT BECAUSE OF YOUR RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY; OR THAT YOU ARE BEING SUBJECTED TO HARASSMENT BECAUSE OF YOUR RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE OR DISABILITY; OR THAT YOU ARE BEING RETALIATED AGAINST BECAUSE OF HAVING ENGAGED IN TITLE VII-PROTECTED ACTIVITY, YOU ARE ENCOURAGED TO COMPLAIN TO THE COMPANY, AND YOU MAY SEEK ASSISTANCE FROM THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 5410 FREDERICKSBURG ROAD, SUITE 200, SAN ANTONIO, TEXAS 78229-3555, (210) 281-7600

OR 1-800-669-4000.

NO RETALIATORY ACTION MAY BE TAKEN AGAINST YOU FOR SEEKING ASSISTANCE, FILING A CHARGE, OR COMMUNICATING WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

EEOC ENFORCES TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, WHICH PROHIBITS EMPLOYMENT DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN; THE AGE DISCRIMINATION IN EMPLOYMENT ACT; THE EQUAL PAY ACT; PROHIBITIONS AGAINST DISCRIMINATION AFFECTING INDIVIDUALS WITH DISABILITIES IN THE FEDERAL SECTOR; SECTIONS OF THE CIVIL RIGHTS ACT OF 1991; AND TITLE I OF THE AMERICANS WITH DISABILITIES ACT, WHICH PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN THE PRIVATE SECTOR AND STATE AND LOCAL GOVERNMENTS.

EXHIBIT “C”

Consent Decree

RELEASE AGREEMENT

This Release Agreement (the "Agreement") is entered into this 25th day of February, 2003, by and between BLC of Texas - II, L.P., and its officers, employees, directors, agents, attorneys, personal representatives, predecessors, successors, and assigns (hereinafter collectively referred to as "BLC") and Jessica C. Johnson-Shankle (hereinafter "Johnson-Shankle").

BLC and Johnson-Shankle agree and promise as follows:

1. In consideration for Johnson-Shankle's promises and representations contained herein, BLC agrees to pay Johnson-Shankle Fifteen Thousand Dollars (\$15,000.00), which payment is made for alleged nonpecuniary injuries, and not as employee compensation. BLC will make the payment described in this paragraph by delivering to Johnson-Shankle a check made payable to Johnson-Shankle in the amount specified above. The check shall be delivered to Johnson-Shankle either within 14 days after the Consent Decree to which this Agreement has been attached as Exhibit C has been entered by the Court, or within eight days of receipt by BLC of a fully executed original of this Agreement and an I.R.S. Form W-9 signed by Ms. Johnson-Shankle, whichever is later.

2. BLC will issue to Johnson-Shankle an I.R.S. Form 1099 relating to the payment described in Paragraph 1. Johnson-Shankle shall be responsible for paying any taxes, interest, penalties or other amounts due on the payment set forth in Paragraph 1, and shall indemnify BLC and hold it harmless for any taxes, interest, penalties, or other amounts which BLC becomes required to pay as a result of not withholding any taxes or other amounts from that payment, provided however, that, if it is ever determined that BLC failed to pay the employer's share of social security and/or medicare taxes relating to any part of the payment made in Paragraph 1, it shall

remain liable for that share of the social security and/or medicare taxes (but not any interest or penalties thereon).

3. Johnson-Shankle hereby waives and releases BLC from, and agrees not to sue it for, any claims or causes of action which Johnson-Shankle may, as of the date of this Agreement, have against BLC for any claim arising out of or related to her application for employment with BLC, which formed the basis of the Charge of Discrimination filed by Johnson-Shankle and/or was asserted as a claim, cause of action, or demand in the matter captioned *Equal Employment Opportunity Commission v. BLC of Texas - II, L.P.*, Civil Action No. A02CA627SS.

4. It is agreed that neither this Agreement, nor the obligations undertaken by BLC hereunder, constitute, or shall be construed as, an admission of any wrongdoing of any kind by BLC. This Agreement is entered into solely to resolve this matter, avoid litigation, and end all controversies between Johnson-Shankle and BLC.

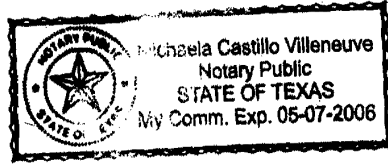
5. This instrument constitutes and contains the entire agreement and understanding between the parties concerning the subject matter of this Agreement, and supercedes all prior negotiations, proposed agreements, and understandings, if any, between the parties.

BY SIGNING BELOW, JOHNSON-SHANKLE ACKNOWLEDGES THAT SHE HAS THOROUGHLY READ THIS AGREEMENT. SHE ALSO ACKNOWLEDGES THAT SHE HAS FREELY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT WITHOUT COERCION OF ANY KIND, AND THAT SHE FULLY UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT.


Jessica C. Johnson-Shankle

02-18-03
Date

The undersigned hereby certifies that Jessica C. Johnson-Shankle appeared before me and, under oath, stated that she has freely and voluntarily entered into this Agreement without coercion of any kind, that she fully understands all of the provisions of this Agreement, and that all of the representations, warranties, and other statements made by her, or to which she agreed, are true.



Michaela Castillo Villeneuve

Notary Public

05/07/06

My Commission Expires

Accepted for BLC of Texas - II, L.P.:

By: *[Signature]*

Title: Attorney for BLC of Texas - II, L.P.

Date: 2/25/03