

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

JUN 24 2003  
Michael N. Milby, Clerk

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Plaintiff,

v.

HARBISON-WALKER REFRACTORIES

Defendant.

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CIVIL ACTION NO. H-02-0640

JURY TRIAL DEMANDED

United States Courts  
Southern District of Texas  
ENTERED

JUL 01 2003

Michael N. Milby, Clerk of Court

**CONSENT DECREE**

Plaintiff, the United States Equal Employment Opportunity Commission ("Commission" or "EEOC") and Defendant, Harbison-Walker Refractories ("Defendant" or "Harbison-Walker"), agree to entry of this Consent Decree.

**I. Background and History of Proceedings**

A. Charging Party James Ponder filed a charge of discrimination with the Commission on December 7, 1998 alleging Defendant violated the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the "ADEA").

B. On February 21, 2002, after investigating the Charge and finding discrimination, the Commission commenced this action alleging that Defendant's conduct toward James Ponder ("Charging Party") during the course of his employment constituted discrimination on the basis of age in violation of Section 4(a)(1) of the ADEA, 29 U.S.C. §623 (a)(1).

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C. Defendant denied the allegations of discrimination on the basis of age.

D. The parties wish to avoid the risks, uncertainties and expenses of continued litigation. Accordingly, the parties have agreed to settle this lawsuit. Neither Defendant's consent to the entry of this decree nor any of the terms set forth in it shall constitute or be construed as an admission of any ADEA violation. Both parties agree that this Consent Decree is being entered into for the sole purpose of compromising disputed claims without the necessity for protracted litigation.

E. The Commission and Defendant stipulate to the concurrent jurisdiction of this Court and the United States Bankruptcy Court for the Western District of Pennsylvania and the satisfaction of all administrative prerequisites. The parties further waive the entry of findings of fact and conclusions of law on all issues.

IT IS ORDERED that:

1. This Consent Decree is entered in full and complete settlement of any and all claims arising out of or asserted in Civil Action No. H-02-0640 and the above-referenced Charge on behalf of Charging Party.
2. Defendant and all of its employees and affiliated companies agree they will not engage in any employment practices which discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's age and will not retaliate against any individual who has opposed any practice made an unlawful employment practice

under ADEA or who has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the ADEA.

3. Harbison-Walker represents that it has a program on the laws prohibiting employment discrimination. Annually, for three years from the entry of this Decree, Harbison-Walker agrees it will provide this training to all human resources professionals and management level and above employees.
4. Harbison-Walker agrees to conspicuously post in areas accessible to all employees EEO notices which advise employees of their rights under the federal laws prohibiting discrimination and containing an affirmative statement that it does not tolerate discrimination in the workplace and advising employees of the person(s) to contact in the event they believe they have been subjected to any type of discrimination.
5. Harbison-Walker agrees to pay to Ponder the sum THIRTY-FIVE THOUSAND AND NO/DOLLARS (\$35,000.00) less lawful deductions on the terms further set out in the settlement agreement between Harbison-Walker and Ponder in full and final settlement of the EEOC's lawsuit to provide monetary relief to James Ponder, subject to approval of the bankruptcy court. Defendant agrees that it will take all necessary steps to obtain immediate approval of the payment of this sum to James Ponder in the United States Bankruptcy Court for the Western District of Pennsylvania. Said sum shall be paid directly to James Ponder within 30 days after approval by the bankruptcy court and in accordance

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with the Agreement and General Release between Harbison-Walker and James Ponder. A copy of the check disbursed to James Ponder shall be mailed to the EEOC's undersigned counsel of record. If approval of the payment of the settlement sum is not obtained in the bankruptcy court, Defendant agrees that the EEOC may resume litigation of this action.

6. The EEOC agrees to withdraw claim number 3585 in the bankruptcy court (Bankruptcy Cause No. 02-21627) immediately upon the presentation of this Consent Decree by joint motion to enforce the consent decree filed with the U.S. District Court for the Southern of Texas (Cause No. H-02-0640) and upon presentation to the bankruptcy court for approval of the settlement agreement.
7. Each party to this action shall bear their own costs and attorney's fees.
8. This Consent Decree shall be binding on Defendant and all of Defendant's successors-in-interest, and Defendant will notify all such successors-in-interest of the existence and terms of this Consent Decree.
9. This Decree shall remain in effect for three years from the date of signing. During the period that this Decree shall remain in effect, the Courts shall retain jurisdiction to assure compliance with this Decree and to permit entry of such further orders or modifications as may be appropriate. The EEOC is specifically authorized to seek Court-ordered enforcement of this Decree in the event of a breach of any of the provisions herein.
10. Nothing in this Consent Decree shall be construed to preclude the

Commission from filing a separate action under ADEA or any other statute which the Commission enforces in the future for any alleged violations by Defendant not resolved by this Decree.

Signed this 27<sup>th</sup> day of June, 2003 at Houston, Texas.



Lee H. Rosenthal  
United State District Judge

AGREED AND CONSENTED TO:

ATTORNEY FOR PLAINTIFF  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

By: Kathy D. Boutchee

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