

CLOSED

JUL 25-2000

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**ELIAS BROS. RESTAURANTS, INC., d/b/a/
BIG BOY RESTAURANT, WESTLAND,**

Defendant,

AMY BOWMAN,

Intervening Plaintiff,

v.

**ELIAS BROS. RESTAURANTS, INC., d//b/a
BIG BOY RESTAURANT, WESTLAND,**

Defendant.

**CIVIL ACTION NO.
98-CV-74231-DT**

**Hon. Bernard A. Friedman
United States District Judge**

**JUL 25 1 24 PM '00
CLERK
DISTRICT COURT
EAST. DIST. MICH.
DETROIT**

FILED

**Adele Rapport (P44833)
Robert K. Dawkins (P38289)
Tammy C. Klein (P60256)
Equal Employment Opportunity Commission
477 Michigan Avenue, Room 865
Detroit, MI 48226
(313) 226-6701**

**Matthew Turner (P48706)
26000 W. Twelve Mile Rd.
Southfield, MI 48034
(248) 355-1727**

**Geno D. Salomone (P36342)
Cummings, McClorey, Davis & Acho, P.L.C.
33900 Schoolcraft
Livonia, MI 48150
(734) 261-2400/**

CONSENT DECREE

72

1. Plaintiff, the United States Equal Employment Opportunity Commission ("the Commission"), commenced this action on September 30, 1998, in the United States District Court for the Eastern District of Michigan, Southern Division, alleging that the Defendant ("Big Boy Restaurant, Westland"), engaged in unlawful employment practices against Amy Bowman by discriminating against her on the basis of her disability, epilepsy, in violation of Title I of the Americans with Disabilities Act of 1990 ("ADA") and Title I of the Civil Rights Act of 1991.

2. As a result of settlement discussions, the Commission and the Big Boy Restaurant, Westland have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of any and all claims alleged against the Big Boy Restaurant, Westland or which might have been alleged against the Big Boy Restaurant, Westland in the Complaint. Big Boy Restaurant, Westland denies any allegations of wrong doing by the Commission.

STIPULATED FACTS

3. The parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Michigan, Southern Division, over the subject matter and the parties to this case for the purpose of entering this Consent Decree and, if necessary, for enforcing this Consent Decree.

4. Venue is appropriate in the Eastern District of Michigan, Southern Division. For purposes of this Consent Decree and any proceedings related to this Consent Decree only, the Big Boy Restaurant, Westland agrees that all statutory conditions precedent to the institution of this lawsuit against the Big Boy Restaurant, Westland have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Consent Decree and based on the pleadings, records, and stipulations of the parties, the Court finds the following:

a. The Court has jurisdiction over the subject matter of the action and the parties to this action.

b. The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of the Big Boy Restaurant, Westland and the Commission are protected adequately by this Consent Decree.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

NON-ADMISSION

6. This Consent Decree, being entered with the consent of the Commission and the Big Boy Restaurant, Westland, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by the Big Boy Restaurant, Westland of any violation of ADA or any other law, rule or regulation dealing with or in connection with equal employment opportunities. Similarly, consent to performance under this Consent Decree by the Commission does not constitute an admission that any claim asserted by it in this lawsuit was not valid or that any defense of the Big Boy Restaurant, Westland was valid.

NON-DISCRIMINATION

7. The Big Boy Restaurant, Westland, its officers, agents, employees, successors, assigns and all persons in active concert or participation with them or any of them shall comply with the provisions of the ADA, 42 USC § 12101 et seq., with regard to discrimination against qualified individuals with disabilities.

NON-RETALIATION

8. The Big Boy Restaurant, Westland shall not take any action against any person which constitutes intimidation, retaliation, harassment or interference with the exercise of such person's rights under ADA because of the filing of Charge No. 230-97-0205 with the Commission, which forms the basis for the present case, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case under ADA.

MONETARY COMPENSATION

9. The Big Boy Restaurant, Westland shall, within fourteen days of entry of this Consent Decree pay Amy Bowman thirty thousand dollars (\$30,000). Payment shall be mailed directly to Matthew Turner, Turner & Turner P.C., 26000 W. Twelve Mile Rd. Southfield, Michigan 48034. A copy of the check shall be mailed to Adele Rapport, Regional Attorney, 477 Michigan Avenue, Suite 865, Detroit, Michigan 48226. The Commission shall have the right to monitor compliance with this paragraph through inspection of all documents relating to said disbursement, including but not limited to, a copy of the check, check stub, return receipt, letters, and any other documents evincing payment hereunder.

TRAINING AND/OR EDUCATIONAL PROGRAMS

10. The Big Boy Restaurant, Westland shall provide training regarding the ADA and the federal anti-discrimination laws prohibition against harassment, to all current employees, officers, executives, managers and supervisory personnel and shall provide such training to all subsequently hired employees, officers, executives, managers and supervisory personnel within six (6) months of hire through training/seminars. The training shall include an emphasis on the ADA, diversity in the workplace, information about the EEOC and the right to file a charge of discrimination and training about the federal anti-discrimination laws prohibition against

harassment. Furthermore, Big Boy Restaurant, Westland shall provide training on its harassment policies and grievance mechanisms.

11. The training of current employees, officers, executives, managers and supervisory personnel shall be completed within one year after the entry of this Consent Decree. Training of subsequently hired employees, officers, executives, managers and supervisors shall continue throughout the term of this Decree. Attendees shall be required to sign an attendance sheet and the Big Boy Restaurant, Westland shall provide the attendance sheet, a list of topics covered and the identity of the trainer to the EEOC.

12. The Big Boy Restaurant, Westland shall revise its current harassment policy to include a zero tolerance statement and shall include specific references to prohibitions against harassment based on other protected categories including disability, race, national origin, sex and religion. The policy shall include a grievance mechanism for reporting harassment. It shall also identify and include a provision that harassment by a supervisor may be reported to an owner, or officer of the Big Boy Restaurant, Westland. This provision shall include the address and telephone numbers of the officers, owners and supervisors of the Westland Big Boy. A copy of the harassment policies and grievance mechanisms shall be provided to all existing and subsequently hired employees and individuals included in paragraph eleven (11) above.

POSTING OF NOTICE

13. Big Boy Restaurant, Westland further agrees to post a copy of the Notice attached as Attachment A.

DURATION

14. This Consent Decree shall remain in effect for eighteen (18) months.

REPORTING

15. Six months after entry of this judgment and on the anniversary of the entry of this judgment, the Big Boy Restaurant, Westland shall submit to the Commission a report of the steps it has taken to comply with this judgment and shall provide of a copy of the harassment policy adopted pursuant to paragraph thirteen (13) of this Consent Decree. The Big Boy Restaurant, Westland's report pursuant to this paragraph shall also include information about the training provided pursuant to paragraphs 11-13 and shall be submitted to: Adele Rapport, Regional Attorney, EEOC, Detroit District Office, 477 Michigan Avenue, Suite 865, Patrick V. McNamara Building, Detroit, Michigan 48226. The reporting obligations under this paragraph shall continue throughout the term of this Decree.

DISPUTE RESOLUTION AND COMPLIANCE

16. The Court shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce this Consent Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Consent Decree. The parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court, and shall be required to give notice to each other ten (10) days before moving for such review. All parties may conduct expedited discovery under the Federal Rules of Civil Procedure for purposes of determining compliance with this Consent Decree or defending against a claim of non-compliance, with fifteen (15) business days notice for depositions, entry to premises and access to documents and, with fifteen (15) business days for responses to written discovery.

MISCELLANEOUS

17. Except as expressly provided herein, all parties shall bear their own costs and expenses of litigation, including attorney fees.

18. This Consent Decree constitutes the entry of final judgment, within the meaning of Rule 54 of the Federal Rules of Civil Procedure, on all claims asserted in or which might have been asserted in this action. This court retains jurisdiction over this matter, however, for the purpose of entering appropriate orders interpreting and enforcing this Consent Decree.

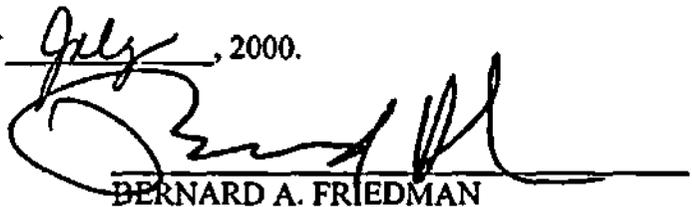
19. If any provision(s) of this Consent Decree is found to be unlawful, only the specific provision(s) in question shall be affected and the other provisions will remain in full force and effect.

20. The terms of this Consent Decree are and shall be binding upon the present and future owners and successors of the Big Boy Restaurant, Westland.

21. This Consent Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by authorized representatives of the Big Boy Restaurant, Westland and the Commission.

22. When this Consent Decree requires or permits the submission by the Big Boy Restaurant, Westland of any documents to the Commission, if not otherwise indicated in the Decree, they shall be mailed by certified mail to: Adele Rapport, Regional Attorney, EEOC, Detroit District Office, 477 Michigan Avenue, Suite 865, Patrick V. McNamara Building, Detroit, Michigan 48226.

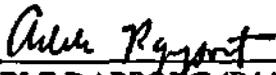
SO ORDERED this the 25th day of July, 2000.


BERNARD A. FRIEDMAN

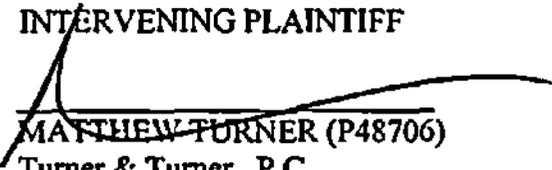
United States District Judge

WE HEREBY CONSENT:

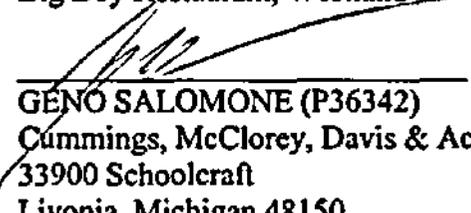
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION


ADELE RAPPOPORT (P44833)
Regional Attorney
477 Michigan Avenue, Suite 865
Detroit, Michigan 48226
Telephone: (313) 226-6701

INTERVENING PLAINTIFF


MATTHEW TURNER (P48706)
Turner & Turner, P.C.
26000W. Twelve Mile Rd.
Southfield, Michigan 48034
Telephone: (248) 355-1757

Big Boy Restaurant, Westland


GENO SALOMONE (P36342)
Cummings, McClorey, Davis & Aho, P.L.C.
33900 Schoolcraft
Livonia, Michigan 48150
Telephone: (734) 261-2400

ATTACHMENT A

NOTICE

This notice is being posted to inform you of your rights guaranteed by federal law under The Americans With Disabilities Act, 42 USC § 12101 *et seq.* ("ADA") that prohibit discrimination against any qualified individual on the basis of disability with regard to any term or condition of employment including hiring, layoff, recall, promotion, discharge, pay and fringe benefits or in retaliation for the opposition to unlawful employment practices.

The United States Equal Employment Opportunity Commission is the federal agency which investigates charges of unlawful employment discrimination and, if necessary, brings lawsuits in federal court to enforce the provisions of the ADA.

Big Boy Restaurant, Westland supports and will comply with this federal law in all respects and will not take any action against any employees because they have exercised their rights under this law.