

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

ROSEMARY BAKER et. al.,

Plaintiff Intervenors,

v.

**JERRY ERWIN ASSOCIATES (JEA)
SENIOR LIVING d/b/a PINEHURST
ALZHEIMER’S SPECIAL CARE CENTER
AND TYLER GROUP, LTD.**

Defendants.

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**CIVIL ACTION NO.
6:05-CV-162**

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and between the Plaintiff, Equal Employment Opportunity Commission (“EEOC”), the Plaintiff Intervenors, Rosemary Baker, Mattie Bowser, Teresa Bowser, Deaquinita Clark, Hazel Dixon, Vernell Evans, Tammy Hartsfield, Aquanette Mims, Voncella Street, Phyllis Temple, Sherry Warlick, Linda Warren, Tijuana Watson and Tiffany Watson, and the Defendant, Jerry Erwin Associates (JEA) Senior Living d/b/a Pinehurst Alzheimer’s Special Care Center and Tyler Group Ltd., in the United States District Court for the Eastern District of Texas, Tyler Division, with regard to the EEOC’s First Amended Complaint and Plaintiff Intervenors’ First Amended Complaint, (“the Complaints”), in Civil Action No. 6:05-CV-162. This Complaint was based upon Charges of Discrimination filed by the Plaintiff Intervenors against the Defendant JEA.

The Plaintiff EEOC's First Amended Complaint and the Plaintiff Intervenors' First Amended Complaint allege that the Defendants violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, when it subjected the Plaintiff Intervenors to a hostile work environment and disparate treatment because of their race, and when it constructively discharged Tiquana Watson and terminated Deaquinita Clark in retaliation for her complaints of discrimination. The Plaintiff Intervenors First Amended Complaint includes claims of race discrimination under 42 U.S.C. Section 1981.

The Defendant JEA has filed an Answer denying that it harassed or discriminated against Plaintiff Intervenors or violated their legal rights in any way.

The EEOC, Plaintiff Intervenors and the Defendants agree to compromise and settle the differences embodied in the Complaints, and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree ("Consent Decree"). It is understood and agreed that this Consent Decree is in compromise of disputed claims, and that this Consent Decree shall not in any way be construed as an admission by Defendants of a violation of any federal, state, or local statute, law or regulation, or a violation of any right of the aggrieved individuals or any other person.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues raised in EEOC Charge Nos. 310-2003-07569, 310-2003-07570, 310-2003-07571, 310-2003-07572, 310-2003-07573, 310-2003-07574, 310-2003-07575, 310-2003-07576, 310-2003-07578, 310-2003-07579, 310-2003-07580, 310-2003-07582, 310-2003-07583, 310-2003-07584. This Decree further resolves all issues that were raised

or could have been raised in the Complaints filed by the EEOC and the Plaintiff Intervenors in this civil action. The EEOC waives further claims and/or litigation on all issues that it raised or could have raised in the above-referenced Charges and Complaints. The EEOC does not waive processing or litigating charges other than the above-referenced Charges.

2. Defendants agree that they shall conduct all employment practices in a manner which does not subject any employee to racial harassment in violation of Title VII of the Civil Rights Act and Title I of the Civil Rights Act of 1991.

3. Defendants and their officers, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from engaging in any policy or practice that is intended to or is known to them to have the effect of harassing or intimidating any employee on the basis of his/her race and/or creating, facilitating or permitting the existence of a work environment that is racially hostile to its employees.

4. Plaintiff EEOC and Plaintiff Intervenors agree that in the event of any violation or alleged or suspected violation of Defendant's obligations under the terms of this Consent Decree, Plaintiff EEOC will notify Defendant JEA immediately in writing of any such violation or alleged or suspected violation. The EEOC and Defendants agree that they will meet and confer about such violation or alleged or suspected violation in an effort to resolve the matter without court action for a period of sixty (60) days of the Defendant's receipt of the written notice. Plaintiff EEOC and Plaintiff Intervenors agree that they will not file any legal proceeding including but not limited to a motion for contempt of this Consent Decree, unless the EEOC has determined that even after conferring, the Defendants have failed to adequately address the

concern or alleged or suspected violation, and is thus in noncompliance with the terms of this decree.

5. Defendants agrees to post the Notice appended hereto as "Attachment A" on the employee bulletin board(s) in prominent and conspicuous locations at the Pinehurst Alzheimer Special Care Center and all other Tyler Group Ltd. facilities within ten (10) days after entry of this Consent Decree. Defendants will report to the EEOC that they have complied with this requirement within fourteen (14) days after posting the Notice. This Notice shall remain posted during the two-year pendency of this Consent Decree.

6. The Notice shall also inform employees where to report violations of Defendants' policy against harassment, the name of the designated company official to whom they should report said violations, along with the address and telephone number of the Dallas District Office of the EEOC. The notice shall remain posted for the duration of this Consent Decree. In the event that the persons and/or departments to whom individuals should make complaints alleging racial harassment, race-based discrimination and/or retaliation change during the term of the Consent Decree such that the information contained in the notice is no longer accurate, Defendants shall immediately prepare and post a revised notice that contains the correct information. Defendants shall promptly thereafter forward a copy of the revised notice to the EEOC.

7. Defendants agree to conduct training once a year for all of its employees and managers at the Pinehurst Alzheimer's Special Care Center and all other Tyler Group Ltd. facilities in Texas, advising them of the requirements and prohibitions of Title VII of the Civil Rights Act of 1964. The training will inform the employees of the complaint procedure for individuals who believe they have experienced discrimination. The training will also advise the

employees of the consequences of violating Title VII. The training will also include a specific discussion or instruction relating to the issue of racial harassment and a racially hostile work environment. The training shall be at least two hours in duration. Defendants agree to give written notice to the EEOC within fourteen (14) days after each training session, providing the following information: (a) the date and location of the training; (b) the list of employees attending; (c) the name of the person providing the training; and (d) the substance of the training.

8. Defendants agree they shall impose substantial discipline--up to and including termination, suspension without pay or demotion--upon any supervisor or manager who engages in racial discrimination or race-based harassment or permits any such conduct to occur in his or her work area or among employees under his or her supervision, or who retaliates against any person who complains or participates in any investigation or proceeding concerning any such conduct. Defendants shall communicate this policy to all of their supervisors and managers.

9. Defendants agrees that they shall continue to advise all managers and supervisors of their duty to actively monitor their work areas to ensure employees' compliance with the company's policy against racial harassment, and to report any incidents and/or complaints of racial discrimination, race-based harassment and/or retaliation of which they become aware to the persons charged with handling such complaints.

10. Defendants agree that they shall include "commitment to equal employment opportunity" as a criterion for qualification for supervisory positions.

11. Defendants agree that, in response to any request for references for any of the Plaintiff Intervenors that are directed to the Administrator of the Pinehurst facility, Defendants will merely confirm the dates of employment and position held of the individual in question.

12. Defendants agree to pay One Hundred and Seventy Thousand Dollars and No Cents (\$170,000) to resolve all claims for damages to the Plaintiff Intervenors. This payment is made in recognition of Plaintiff Intervenors' claims for emotional distress and punitive damages and not for any alleged lost pay. The aggrieved individuals shall be responsible for any tax liability arising out of the payment and shall indemnify and hold Defendants harmless therefrom.

13. Within seven (7) days of the entry of this Consent Decree, Defendants will issue a check, made payable to each Plaintiff Intervenor and her counsel, Stuckey, Garrigan & Castetter Law Offices, in the amount of \$12,142.85 each. The checks will be sent to Alex Castetter with a copy of the checks sent to EEOC Supervisory Trial Attorney Suzanne M. Anderson, 207 S. Houston Street, Third Floor, Dallas, Texas 75202.

14. Defendants agree to provide each of the Plaintiff Intervenors with a neutral letter of reference, providing the dates of her employment, the last position held and the last salary earned.

15. Defendants agree to forward to the EEOC copies of all complaints alleging discrimination on the basis of race or retaliation against the Defendants, including any notes or other written documentation evidencing Defendant's investigation of the complaints and the remedial action taken, if any, during the 2-year term of this Consent Decree.

16. Defendants agrees to report to the EEOC within fourteen (14) days of entry of this Consent Decree regarding its compliance with the agreements set forth in paragraphs 5 through 13, above. Defendants shall report to the EEOC regarding training as specifically outlined in paragraph No. 7.

17. All reports to the EEOC required by this Decree shall be sent to Suzanne M.

Anderson, Supervisory Trial Attorney, EEOC, 207 S. Houston, Third Floor, Dallas, Texas

75202. 18. If Defendants fail to tender payment or otherwise fails to timely comply with the terms of paragraphs 12 -13, above, Defendants shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts from date of non-compliance; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendants.

19. Neither the EEOC, the Plaintiff Intervenors nor the Defendants shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of any party to the Consent Decree to bring an enforcement action upon breach of any term of this Consent Decree by either such party, except to the extent that any party has failed to comply with the provisions in Paragraph 4 of this Decree. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that Defendants fail to perform the promises and representations contained herein, violation or alleged or suspected violation, except to the extent that any party has failed to comply with the provisions in Paragraph 4 of this Decree. The EEOC shall determine whether Defendant has complied with the terms of this Consent Decree and shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court. Prior to seeking judicial action, the EEOC must first notify the Defendant and follow the procedures set forth in Paragraph 4 of this Decree.

20. The term of this Decree shall be for two (2) years.

21. The parties to this Consent Decree agree to bear their own costs and attorney's fees associated with the above-referenced Complaint.

SO ORDERED, ADJUDGED AND DECREED this _____ day of _____,
2005.

U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

FOR THE PLAINTIFF EEOC

FOR THE DEFENDANTS:

/s/ Robert A. Canino
ROBERT A. CANINO
Regional Attorney
Oklahoma Bar No. 011782

/s/ Suzanne M. Anderson
SUZANNE M. ANDERSON
Supervisory Trial Attorney
Texas Bar No. 14009470

U.S. EEOC
207 S. Houston
Dallas, Texas 75202
(214) 253-2740
(214) 253-2749 fax
suzanne.anderson@eoc.gov

/s/ Patrick J. Maher
PATRICK J. MAHER
Attorney-in-charge
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777 Main Street, Suite 3800
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Pmaher@shannongracey.com

FOR THE PLAINTIFF INTERVENORS:

/s/ Alex A. Castetter
ALEX A. CASTETTER
Texas Bar No. 00783808

Stuckey, Garrigan & Castetter
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P.O. Box 631902
Nacogdoches, Texas 75963-1902
(936)560-6020
(936) 560-9578 fax
aaestugar@cox-internet.com



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
(214) 253-2721

NOTICE TO ALL EMPLOYEES

This NOTICE is being posted pursuant to a Consent Decree entered in the case of EEOC and Rosemary Baker et. al. v. Jerry Erwin Associates (JEA) Senior Living Center et. al., Civil Action No. 6:05-CV-162. This NOTICE will be conspicuously posted for a period of two (2) years at this facility and in all places where employment notices are posted. It must not be altered, defaced, or covered by any other material.

POLICY: Discrimination of any kind can and often will detract from employees' job performance, discourage employees from remaining on the job, keep employees from advancing in their careers and lower overall employee morale and productivity. It is the policy of JEA Senior Living Center that discrimination on the basis of race, national origin, sex, age, or religion is unacceptable and will not be condoned. **This is a zero tolerance policy.**

PURPOSE: It is the purpose of this policy to reaffirm and amplify the position of Title VII of the Civil Rights Act of 1964, as amended, and the Equal Employment Opportunity Commission's guidelines on discrimination on the basis of race, national origin, sex, age, and religion and to reiterate JEA Senior Living Center's policy on discrimination.

SCOPE: This policy extends to all employees of JEA Senior Living Center, both management, non-management, and temporary/probationary.

DEFINITION: Discrimination occurs when an employment decision is made on the basis of race, national origin, sex, age, or religion, rather than on legitimate factors. Put another way, discrimination occurs when an employer rejects a member of one group in favor of a member of another group consisting of persons of a different race, national origin, sex, age, or religion. Thus, if an employer refuses to hire or promote an applicant because of his or her race, national origin, sex, age, or religion, and, in his place, hires or promotes a person of a different on the basis of race, national origin, sex, age, or religion, then that employer violates Title VII. Discrimination is often a result of stereotypes. In some cases, those stereotypes extend to all members of a disfavored group. If race, national origin, sex, age, or religion plays a role in the employment decision-making process, the employment decision is illegal discrimination. Some examples of discrimination are:

- * Refusing to hire a particular race, national origin, sex, age, or religion;
- * Refusing to hire an applicant because they are married to someone of a disfavored race, national origin, sex, age, or religion;
- * Paying employees of different races, national origins, sex, ages, or religions differently for performing the same job;
- * Treating employees of one race, national origin, sex, age, or religion better than employees of another race, national origin, sex, age, or religion;
- * Giving members of one race, national origin, sex, age, or religion a better chance at advancement than members of another race;
- * Using racial slurs in the workplace.
- * Allowing racial, sexist, agist, or religious graffiti to exist on the premises.

This list is in no means exhaustive. There are other forms of discrimination.

RESPONSIBILITY: Each level of management is responsible for ensuring that all personnel policies, procedure, and activities are in full compliance with applicable federal, state, and local equal employment laws, statutes, rules, and regulations regarding racial discrimination. All employees are expected to read, understand, and follow JEA Senior Living Center's policy against discrimination.

REPORTING PROCEDURES: Any employee who believes that he or she has been subjected to discrimination based on that person's race, national origin, sex, age, or religion is expected to report the conduct as soon as possible to either that person's immediate supervisor, any supervisor or manager with JEA Senior Living Center or to the Human Resources Department. The Human Resources Department may be contacted at JEA Senior Living, 12115 NE 99th Street, Suite 1800, Vancouver, Washington, 98682-0011 or by telephone at 360-254-9442. All such reports should be addressed to Jerry Erwin or James Culmore. Supervisors and managers who are informed of an alleged incident of racial discrimination must immediately notify the Human Resources Department. JEA Senior Living Centers will maintain a written log of all complaints of racial discrimination. This log will include the results of all investigations into claims of race discrimination.

A person either alternatively, or in addition to reporting such an allegation to company officials, may contact the U.S. Equal Employment Opportunity Commission for the purposes of filing a charge of employment discrimination. The address and telephone number of the U.S. EEOC office is 207 South Houston, Dallas, Texas 75202; (214) 253-2700. Information about your rights and how to file a charge is available on the Internet at www.eeoc.gov.

INVESTIGATION OF COMPLAINTS: A complete investigation of each complaint will be undertaken immediately by the Human Resources Department. The investigation may include interviews of all employees and supervisors at the facility, the inspection of documents, including personnel records, and full inspection of the premises.

PUNISHMENT FOR VIOLATION: Employees engaged in illegal discrimination, including supervisors and managers, can expect serious disciplinary action. After appropriate investigation, any employee, whether management or non-management, who has been found to have discriminated against another employee will be subject to appropriate sanctions, depending on the circumstances, from a written warning in his or her personnel file up to and including termination of employment.

RETALIATION: There shall be no retaliation against any employee because that person has opposed what they believe to be unlawful employment practices, including racial discrimination; or has filed a charge of discrimination, or has given testimony, assistance, or has participated in any manner in any investigation, proceeding or hearing under Title VII of the Civil Rights Act of 1964. Autonation, Inc. will not punish you for reporting racial discrimination simply because you have made a complaint under the above guidelines.

PROTECTION OF PRIVACY: The question of whether a particular action or incident constitutes

racial discrimination requires a determination based on all available facts. JEA Senior Living Center will therefore make a concerted effort to protect the privacy of all personnel. Confidential information will be shared on a need-to-know basis to complete the investigation and to deal appropriately with the situation.

EXCEPTIONS: There are no exceptions to this policy.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE. THIS NOTICE WILL BE POSTED FOR A PERIOD OF TWO YEARS.

Date

JEA Senior Living Center

12/13/05

Date

/s/ Robert A. Canino

Robert A. Canino, Regional Attorney
Dallas District Office, EEOC