

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	Civil Action No.
Plaintiff,)	04-2730 MA P
)	
v.)	
)	
CLEVELAND CONSTRUCTION, INC.,)	
)	
Defendant.)	

CONSENT DECREE

Introduction

For purposes of settlement and compromise only, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay, and burden of further litigation.

Plaintiff, Equal Employment Opportunity Commission (hereinafter the "Commission"), has instituted this action on behalf of Charging Parties Oliver Johnson, Eric Calhoun, Robert Evans, and Class Members Eric Jackson, Calvin Wright, and Terry Radcliff, African American individuals. The Commission alleged that Defendant Cleveland Construction, Inc. (CCI) terminated the employment of a class of African American employees (Oliver Johnson, Eric Calhoun, Robert Evans, Eric Jackson, Terry Radcliff, and Calvin Wright) because of their race and replaced them with Hispanic employees, all in violation of Title VII of the Civil Rights Act of 1964 (hereinafter "Title VII"). The Commission amended its complaint on October 21, 2005, to add an allegation that Defendant failed to maintain documents used

during the job application process as required by Section 709(c) of Title VII, 42 U.S.C. §2000e-8(c), 29 C.F.R. §1602.14.

The Defendant has consistently denied and continues to deny that it engaged in any unlawful employment practices as alleged by the Commission or that it otherwise violated Title VII.

In the event this proposed Consent Decree is not approved or does not become final, then it shall not be admissible in evidence in any subsequent proceeding in this action. Further, this Consent Decree shall not be admissible in any other action now pending or which may be filed in the future.

This Consent Decree constitutes the complete and exclusive agreement between the parties with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing and signed by both parties. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Consent Decree.

The Court has reviewed the terms of the proposed Consent Decree in light of the applicable laws and regulations and the statements and representations of counsel for all parties, and hereby approves the Consent Decree.

I. JURISDICTION

The United States District Court for the Western District of Tennessee, Western Division, has jurisdiction over the parties and subject matter of this litigation.

II. GENERAL PROVISIONS

This Consent Decree, being entered with the consent of the parties for purposes of settlement, shall not constitute an adjudication on the merits of this lawsuit and shall not be construed as an admission by Defendant of any violation of Title VII or any executive order, law, rule or regulation dealing with or in connection with discrimination in employment.

III. SCOPE AND DURATION OF AGREEMENT

A. By entering into this Consent Decree, the parties do not intend to resolve any charges of discrimination currently pending before the Commission other than Charge No. 250-2004-00239, filed by Oliver Johnson; Charge No. 250-2004-00697, filed by Eric Calhoun; and Charge No. 250-2004-00698, filed by Robert Evans, that created the procedural foundation for the complaint in this case.

B. This Consent Decree constitutes the complete and exclusive agreement between the Commission and Defendant, with respect to the matters referred to herein and arising out of Charge No. 250-2004-00239, Charge No. 250-2004-00697, and Charge No. 250-2004-00698. Notwithstanding any provisions contained in the Consent Decree, this agreement shall not be considered in any manner to be dispositive of any other charges now pending before any office of the Commission, or other lawsuits, if any, pending against Defendant Cleveland Construction, Inc., other than this lawsuit and the abovementioned charges.

C. This Agreement shall remain in effect for a period of one (1) year. Thereafter, this case shall be dismissed by the Court with prejudice.

IV. NON-DISCRIMINATION PROVISION

Defendant reiterates its obligation and commitment not to engage in any employment practice which has the purpose or effect of discriminating against any individual on the basis of race as prohibited by Title VII of the Civil Rights Act of 1964, as amended.

V. NON-RETALIATION PROVISION

Defendant reiterates its obligation and commitment not to take any retaliatory measure, against any employee, former employee or applicant for opposing practices made unlawful under Title VII of the Civil Rights Act of 1964, as amended, or for making a charge or complaint to the EEOC, testifying, assisting or participating in any manner in any investigation, proceeding or hearing under Title VII of the Civil Rights Act of 1964, as amended.

VI. POLICY PROHIBITING HARASSMENT

Defendant shall maintain a policy prohibiting racial discrimination at CCI. Within thirty days after receiving a copy of this Decree entered by the Court, Defendant will instruct each management and supervisory employee to read and sign a copy of this policy, and each will be given a copy of the policy. Within sixty (60) days after this requirement has been complied with, Defendant will submit a report to Darin Tuggle, Trial Attorney for the EEOC, at the address indicated below, confirming that this requirement has been met. Thereafter, during the term of this agreement, whenever a new management or supervisory employee is hired, he or she will be required to read and sign a copy of this policy and will be given a copy of the policy.

VII. TRAINING

Defendant shall provide employment-discrimination awareness training to all supervisory and management personnel on Defendant's current project at the Morgan County Correctional Facility in Wartburg, Tennessee according to the following terms:

(a) The training session will include at least two (2) hours of instruction.

(b) The training will include the following topics: what constitutes racial discrimination; how to prevent, identify and remedy racial discrimination; what constitutes retaliation in violation of Title VII; Defendant's policy against racial harassment and retaliation; implementation of Defendant's policy against racial harassment, including procedures and responsibilities for reporting, investigating and remedying conduct an employee believes may constitute racial harassment; and record keeping requirements of 42 U.S.C. 2000e-8(c).

(c) Within ninety (90) days after execution of this Consent Decree by the parties, Defendant shall submit to the Commission the date of the proposed training session and a detailed outline of the proposed training.

(d) The training session will be conducted within six (6) months after the date of the entry of this Consent Decree by the Court.

(e) Defendant within thirty (30) days of the herein described training session will advise Darin Tuggle of EEOC of the names and titles of the attendees at the training.

VIII. POSTING AND POLICIES

It is the practice of the Commission to require, as part of a Consent Decree

resolving cases under Title VII, the posting of a notice at an employer's facility for an extended period of time containing the terms of the settlement. In this case, CCI no longer has a jobsite in Memphis, Tennessee due to the completion of the FedEx Forum Project. Since Defendant does not have a jobsite currently operating in the Memphis area, the Commission is not requesting that a notice be posted.

IX. RELIEF

Defendant will pay a total of Ninety Three Thousand Eight Hundred Seventy-Five Dollars (\$93,875.00) in full settlement of the claims of Oliver Johnson, Eric Calhoun, Robert Evans, Eric Jackson, Terry Radcliff, and Calvin Wright, in accordance with instructions from the Commission concerning how much each person will be paid. Payment will be made as compensatory damages and back pay. Payments made as back pay will be less standard deductions. The Commission will notify the Defendant within five (5) days after entry of the consent decree by letter of the amount of monetary relief that will be paid to each individual. Payment then will be made to the three Charging Parties and the three Class Members by Defendant by cashier's checks or business checks within fifteen (15) days of such notification by the Commission. Copies of the checks will be mailed at the same time to Darin Tuggle at the Memphis District Office.

X. EXPUNGEMENT

The Defendant shall expunge from the personnel files of Oliver Johnson, Eric Calhoun, Robert Evans, Eric Jackson, Terry Radcliff, and Calvin Wright any reference to the charges of discrimination and this litigation.

XI. NEUTRAL REFERENCE

Defendant agrees to give a neutral reference to any potential employers of Oliver Johnson, Eric Calhoun, Robert Evans, Calvin Wright, Terry Radcliff, and Eric Jackson, who request a job reference. Any such neutral reference shall be identical to the form shown in Exhibit 1. No mention of the EEOC charges of discrimination or this action will be made as part of the neutral reference.

XII. RECORD KEEPING

Defendant reiterates its obligation and commitment to comply with the record keeping requirements of the statute including maintaining all application materials as required by 42 U.S.C. §2000e-8(c).

XIII. COSTS

Each party shall bear that party's own costs, attorneys' fees, and expenses.

S/ SAMUEL H. MAYS, JR.
U.S. DISTRICT JUDGE

DATE: October 2, 2006

FOR DEFENDANT:

s/ James D. Ludwig (by permission DBT)

JAMES D. LUDWIG
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s/ Jeff Weintraub (by permission DBT)

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EXHIBIT 1

NEUTRAL REFERENCE

To Whom It May Concern:

This letter is in response to your inquiry regarding the employment of _____ while employed at Cleveland Construction, Inc.

_____ worked at Cleveland Construction., Inc. as a _____ from _____ through _____. Company policy does not permit us to give out any more information concerning _____'s employment.

Very truly yours,

Cleveland Construction, Inc.