

TMG

210

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION, *et al.*,)

Plaintiffs,)

v.)

CONECTIV, *et al.*,)

Defendants.)

C.A. NO. 2:05-cv-03389-TMG

FILED
MAY - 8 2008

CONSENT DECREE

MICHAEL E. HUNZ, Clerk
By *[Signature]* Dep. Clerk

A. This action was brought by the United States Equal Employment Opportunity Commission (“the EEOC” or “the Commission”) on July 1, 2005, against Defendant Bogan, Inc./Hake Group (“Bogan/Hake”) under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race (Black) and to provide appropriate relief to Charging Party Keith Riddick, and a class of similarly situated Black employees who were adversely affected by such practices.

In its lawsuit, the EEOC alleged that Defendant Bogan/Hake subjected Black employees to a hostile work environment based on race in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). EEOC further alleges that although Keith Riddick and class members complained about the racial harassment, Defendant Bogan/Hake failed to take prompt, effective, remedial measures to correct the racially hostile work environment. Defendant Bogan/Hake denies these allegations.

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B. This Consent Decree is entered into by and shall be final and binding between the EEOC and Defendant Bogan/Hake, their directors, officers, agents, successors and assigns.

C. The EEOC and Defendant Bogan/Hake agree to entry of this Consent Decree, which shall fully and finally resolve all claims the EEOC raised against Defendant Bogan/Hake in its Complaint in Civil Action No. 2:05-cv-3389-TMG. This Consent Decree shall not constitute either an adjudication of or finding on the merits of the complaint and shall not be construed as an admission by Defendant Bogan/Hake of any violation of Title VII.

Findings

D. Having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the parties, the Court finds: (1) it has jurisdiction over the parties and subject matter jurisdiction of this action; and (2) the terms of this Decree are fair, reasonable, equitable and just, and adequately protect the rights of the parties, class members and the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination and Non-Retaliation

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Defendant Bogan/Hake shall not engage in any employment practice which operates to harass individuals based on race in violation of Title VII. Specifically, Defendant Bogan/Hake shall not create, foster, or tolerate a hostile work environment based on race.
3. Defendant Bogan/Hake shall not engage in any employment practices which retaliate in any manner against any person, including but not limited to Keith Riddick, Jeffrey Campbell or any individual identified or named during this litigation and/or during the EEOC's investigation into

the charges filed by Keith Riddick as a claimant, potential claimant, or witness, because of that person's opposition to any practice made an unlawful employment practice under Title VII or because that person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII.

4. Defendant Bogan/Hake shall not divulge, directly or indirectly, to any identifiable employer or potential employer of Keith Riddick, Jeffrey Campbell, and any individual identified or named during the EEOC's investigation into the charges filed by Keith Riddick as a claimant, potential claimant, or witness, any of the facts or circumstances related to the claims of discrimination against Defendant Bogan/Hake in this case or any of the events relating to their participation in the EEOC's investigation or in the litigation of this action.

5. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant Bogan/Hake under Title VII or the EEOC's authority to process or litigate any charge of discrimination now pending, if any, or filed in the future against Defendants.

DURATION OF THE DECREE

6. The Decree shall be in effect for a period of four (4) years from the date it is entered by the Court.

MONETARY RELIEF

7. Defendant Bogan/Hake agrees to pay monetary relief in the total amount of four hundred and fifty thousand dollars (\$450,000.00), less applicable withholdings, to Keith Riddick and Jeffrey Campbell in full settlement of the claims raised against Defendant Bogan/Hake in the EEOC's Complaint. The monetary relief will be paid in the following manner: within 14 business

days after receipt of a Release executed by Keith Riddick and Jeffrey Campbell and the Court's entry of the Consent Decree, whichever date is later, Defendant Bogan/Hake will pay Keith Riddick and Jeffrey Campbell a total of four hundred and fifty thousand dollars (\$450,000.00), as set forth on Exhibit 1. If Defendant Bogan/Hake does not make payment in the manner set forth in this Paragraph, the Court will enter a judgment for the entire amount remaining due, plus attorneys fees, costs, and interest paid at the legal rate, compounded daily.

The check(s) will be mailed to Keith Riddick and Jeffrey Campbell c/o Joanne Rathgeber, Esq., Hill Wallack, LLP, 111 East Court Street, Doylestown, PA 18901. If there are any changes in address, the EEOC will provide notice by certified mail to counsel for Defendant Bogan/Hake. Defendant Bogan/Hake will mail a copy of each check, within ten (10) business days of mailing it to Keith Riddick and Jeffrey Campbell to the attention of Terrence R. Cook, Supervisory Trial Attorney, EEOC, 801 Market Street, Suite 1300, Philadelphia, PA 19107. In order to receive this monetary relief, Keith Riddick and Jeffrey Campbell must each execute a release satisfactory in form to Defendant Bogan/Hake and to Keith Riddick and Jeffrey Campbell.

NOTICE POSTING

8. Within 30 business days after entry of this Decree, Defendant Bogan/Hake shall post at its facilities, on all bulletin boards used by Defendant Bogan/Hake for communicating with employees regarding employment laws and regulations, same-sized copies of the Notice attached as Exhibit 2 to this Decree. The Notice shall remain posted for four (4) years from the date of entry of this Decree. Counsel for Defendant Bogan/Hake shall provide to the attention of Terrence R. Cook, Supervisory Trial Attorney, EEOC, 801 Market Street, Suite 1300, Philadelphia, PA 19107, a list of the location and date of each posting within 10 days of posting. If the posting becomes defaced,

removed, marred or otherwise illegible, Defendant Bogan/Hake agrees to post a readable copy in the same manner as heretofore specified.

**NON-DISCRIMINATION AND ANTI-HARASSMENT
POLICIES AND COMPLAINT PROCEDURES**

9. Defendant Bogan/Hake's policies against discrimination, harassment and retaliation and complaint procedures shall be drafted in plain and simple language, and be available in English and Spanish. Defendant Bogan/Hake shall ensure that its policy or policies against discrimination, harassment and retaliation and related complaint procedures meet the following minimum criteria:

(a) state that Defendant Bogan/Hake: (i) prohibits discrimination against employees on the basis of race, sex, national origin, religion and color, and prohibits retaliation in violation of Title VII; (ii) prohibits retaliation against employees for opposing employment practices they reasonably believe are discriminatory or for participating in an investigation by the EEOC or a state or local governmental agency of a charge of discrimination under Title VII; (iii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of race, sex, national origin, religion or color in violation of Title VII; and (iv) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to employees through acts such as physical/verbal abuse and derogatory comments based on race, sex, national origin, religion or color in violation of Title VII;

(b) include a complaint procedure designed to encourage employees to come forward with complaints regarding violations of its policy or policies against discrimination, harassment and retaliation, which shall meet the following minimum criteria: (i) provide effective mechanism(s) for reporting incidents of discrimination, harassment and retaliation; (ii) provide that the complaints

of discrimination, harassment and/or retaliation can be made either in writing or verbally; (iii) identify employees to whom an employee can make a complaint; (iv) provide a toll free number that will be available for employees to call to make a complaint of discrimination, harassment or retaliation during work hours or to leave a message after work hours; (v) encourage prompt reporting by employees; and (vi) provide assurances that complainants shall not be subjected to retaliation;

(c) provide for prompt investigation of complaints of harassment and/or retaliation;

(d) provide for prompt communication to the complaining party of the results of the investigation and any remedial actions taken or proposed; and

(e) provide for discipline up to and including discharge of an employee, supervisor or foreman who violates Defendant Bogan/Hake's policy or policies against discrimination, harassment and retaliation, and for increasingly severe discipline of repeat offenders.

(f) Defendant Bogan/Hake shall distribute to all of its employees, its policy or policies against discrimination, harassment and retaliation. This distribution will take place no later than 90 days after the entry of this Consent Decree. Acknowledgment of receipt forms will be made available. Defendant Bogan/Hake will retain copies of any acknowledgment of receipt form for an employee in the employee's personnel file.

10. Within 90 days after entry of this Consent Decree, Defendant Bogan/Hake shall advise Terrence R. Cook, Supervisory Trial Attorney, EEOC's Philadelphia District Office, that its policy or policies against discrimination, harassment and retaliation have been distributed to current employees and that all employees will receive these policies and have an opportunity to acknowledge receipt.

11. Defendant Bogan/Hake shall once annually for the duration of the Consent Decree send a copy of its policy or policies against discrimination, harassment and retaliation to each employee.

SUPERVISOR/FOREMAN ACCOUNTABILITY

12. Defendant Bogan/Hake shall promote supervisor/foreman accountability by the following conduct:

- (a) providing annual anti-discrimination training to all of its supervisory and managerial personnel, including foreman as set forth in Paragraph 13.
- (b) disciplining, up to and including discharge, any supervisor, manager or foreman who violates Defendant Bogan/Hake's policy or policies against discrimination, harassment and retaliation;
- (c) imposing on all managers, supervisory personnel and foreman a duty to administer their work areas to ensure compliance with Defendant Bogan/Hake's policy or policies against discrimination, harassment and retaliation; and
- (d) requiring all managers, supervisors or foremen to report any pattern of behavior and/or complaint of harassment and/or retaliation of which they become aware to Defendant Bogan/Hake's Corporate Office.

TRAINING

13. Defendant Bogan/Hake shall provide training on the requirements of Title VII as follows:

- (a) Defendant Bogan/Hake agrees to provide annual training sessions for all of its managers,

supervisors and foremen on employee rights and employer obligations under both Title VII and relevant state or local anti-discrimination laws, which training will emphasize what constitutes unlawful harassment and discrimination in the workplace, how to keep the company free from such discrimination, what constitutes unlawful retaliation and will summarize how to conduct a prompt and effective investigation into allegations, complaints or charges of discrimination;

(b) each training session will include a presentation or statement by a high-ranking Defendant Bogan/Hake official emphasizing its commitment to prevent discrimination and harassment;

(c) In addition to the training described in Paragraph 13 (a) within 150 calendar days of the entry of the Consent Decree, Defendant Bogan/Hake shall provide training to all employees on Defendant Bogan/Hake's respective policy on racial harassment in the workplace, a discussion of what conduct constitutes racial harassment and the complaint procedure to follow if racial harassment occurs. Training by video will be permitted in limited circumstances.

(d) Defendant Bogan/Hake shall first provide training in accordance with Paragraph 13 (a) and (c) no later than 150 calendar days after entry of this Consent Decree and also shall provide such training in calendar years 2008, 2009, 2010 and 2011.

(e) Defendant Bogan/Hake shall obtain the EEOC's approval of its proposed trainer prior to the first year's training session. The approval of the trainer will be effective for subsequent training sessions for the duration of the Consent Decree unless the EEOC determines that the prior training did not comport with the terms of this Consent Decree. Within 10 business days of notification by Defendant Bogan/Hake of the trainer's name and outline of the training session, EEOC will advise Defendant Bogan/Hake whether or not the trainer is approved. If the EEOC

denies approval of the trainer within the 10 business day period, the EEOC is required to provide Defendant Bogan/Hake with a detailed explanation for the rejection. If the EEOC fails to respond within the 10 business day period, Defendant Bogan/Hake can proceed with the trainer that it selected.

14. Defendant Bogan/Hake agrees at its expense to provide the EEOC with copies of all pamphlets, brochures, outlines or other written materials provided to attendees of training sessions.

15. Defendant Bogan/Hake shall certify to the EEOC in writing within 10 business days after the training sessions required by Paragraphs 13 (a) and (c) have occurred that the training has taken place and the personnel who attended. Such certification shall include: (i) the dates, location and duration of the training session; (ii) a copy of the registry of attendance, including the name and position of each person in attendance; and (iii) a listing of all managers and supervisors as of the date of the training.

RECORDKEEPING

16. For the duration of this Consent Decree, Defendant Bogan/Hake shall document and retain records of each complaint of an incident of discrimination or harassment, based on race and/or retaliation for filing a complaint of racial harassment by any employee, reflecting the date the complaint was made, who made it, what was alleged and the actions, if any, Defendant Bogan/Hake took to resolve the matter, and shall at its expense make such records available for inspection and copying by the EEOC.

17. Defendant Bogan/Hake shall make all documents or records referred to in Paragraph 16 available for inspection and copying within 10 business days after the EEOC so requests. In addition, Defendant Bogan/Hake shall make available for interview all persons in its employ whom

the EEOC reasonably requests for purposes of verifying compliance with this Decree and shall permit a representative of the EEOC to enter Defendant Bogan/Hake's premises for such purposes on five business days' advance notice by the EEOC.

18. Nothing in this Decree shall be construed to limit any obligation Defendant Bogan/Hake otherwise may have to maintain records under Title VII or any other law or regulation. After expiration of this Consent Decree, records will be maintained by Defendant Bogan/Hake as required by law and Commission regulations.

REPORTING

19. Defendant Bogan/Hake shall furnish to the EEOC the following written reports semi-annually for a period of four-years following entry of this Decree with the first report due six months after entry of the Decree and the final report due 48 months after entry of the Decree. Each such report shall contain:

(a) a summary of the information recorded by Defendant Bogan/Hake pursuant to Paragraph 16, if any such complaints were filed, and to include the name of the complainant, the allegation of the complaint and any action taken by Defendant Bogan/Hake in response;

(b) a certification by Defendant Bogan/Hake that the Notice required to be posted by Paragraph 8 was posted during the six months preceding the report;

(c) a certification by Defendant Bogan/Hake that it has or will distribute the policy or policies against discrimination, harassment and retaliation annually to employees, and that Defendant Bogan/Hake has disseminated the policy or policies against discrimination, harassment and retaliation to all new employees hired within the six-month period preceding the report;

(d) a certification that Defendant Bogan/Hake has complied with training requirements of this Consent Decree;

(e) a summary of any additional actions Defendant Bogan/Hake took to prevent discrimination, harassment and retaliation during the six-month period preceding the report.

DISPUTE RESOLUTION

20. In the event that either party to this Consent Decree believes that the other party has failed to comply with any provision of the Consent Decree, the complaining party shall notify the other party of the alleged non-compliance within ten (10) days of the alleged non-compliance, and shall afford the alleged non-complying party ten (10) business days to remedy the alleged non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complaining party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

MISCELLANEOUS PROVISIONS

21. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

22. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Defendant Bogan/Hake in their capacities as representatives, agents, directors and officers of Defendant Bogan/Hake and not in their individual capacities. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event any individual is found in contempt for a violation of this Decree.

23. This Consent Decree shall be filed in the United States District Court for the Eastern District of Pennsylvania and shall continue in effect for four (4) years. During this time, this Court

shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate its purposes. Any application by any party to modify or vacate this Consent Decree during such period shall be made by motion to the Court on no less than 30 days' notice to the other party. Should any material disputes under this Decree remain unresolved after this four-year period, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Consent Decree) until such time as all disputes have been resolved.

24. The Clerk of the District Court is hereby directed to send a file-stamped copy of this Consent Decree to counsel of record.

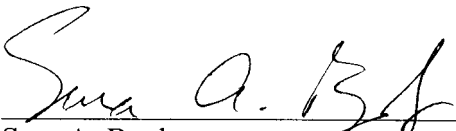
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COMMISSION
Philadelphia District Office
801 Market Street, Suite 1300
Philadelphia, PA 19107
(215) 440-2688
Counsel for Plaintiff EEOC

Dated:

SO ORDERED:

By the Court: Thomas M. Golden
THOMAS M. GOLDEN, U.S.D.J.

Date: 5/7/08

Exhibit 1

Allocation of Monetary Damages

<u>Claimant</u>	<u>Amount</u>
Keith Riddick	\$300,000.00
Jeffrey Campbell	\$150,000.00
<hr/>	
TOTAL	\$450,000.00

Exhibit 2

NOTICE TO ALL BOGAN/HAKE EMPLOYEES

This Notice is posted pursuant to a Consent Decree entered by the federal court for the Eastern District of Pennsylvania in EEOC v. Conectiv, et al, Civil Action Number 05-3389, resolving a lawsuit filed by the Equal Employment Opportunity Commission (“EEOC”) against Defendant Bogan/Hake.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended (“Title VII”), prohibits discrimination against employees and applicants for employment based upon race, national origin, sex, color or religion. Title VII further prohibits retaliation against employees or applicants who avail themselves of the rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

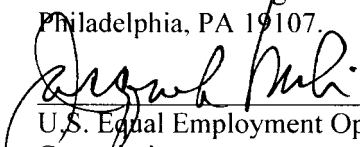
In its lawsuit, the EEOC alleged that Defendant Bogan/Hake subjected African-American employees to a hostile work environment based on race in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). Defendant Bogan/Hake denies these allegations.

This case has been resolved. Defendant Bogan/Hake will not retaliate against any person because he or she opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Settlement Agreement. Defendant Bogan/Hake will train its employees regarding racial harassment and Defendant Bogan/Hake’s policy prohibiting racial harassment. Defendant Bogan/Hake will pay monetary relief to the aggrieved individuals. Defendant Bogan/Hake will not discriminate on the basis of race, national origin, sex, color or religion or any protected category.

If you believe you have been discriminated against, you may contact the EEOC at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for four (4) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the: Regional Attorney, EEOC Philadelphia District Office, 801 Market Street, Suite 1300, Philadelphia, PA 19107.



U.S. Equal Employment Opportunity
Commission

Defendant Bogan/Hake

DATED: 5/2/08

DATED: _____