

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

Civil Action No. 05-04773 (PSD)

WHEELS OF WELLNESS)

Defendant.)

CONSENT DECREE

Introduction

A. This action was instituted by the U.S. Equal Employment Opportunity Commission ("the EEOC" or "the Commission") on September 6, 2005, against Wheels of Wellness to enforce provisions of Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"). The Commission alleged that Wheels of Wellness, Inc. ("Wheels of Wellness") discriminated against Michelle Brunson as well as a class of female employees who worked at Wheels of Wellness' Philadelphia, PA facility, when they were subjected to sexually explicit, insulting and derogatory comments and conduct from one of their supervisors, which created a sexually hostile and offensive work environment based on their sex, female. The Commission also alleged that Wheels of Wellness failed to undertake prompt, effective, remedial action to stop the offensive and discriminatory conduct. Further, the Commission maintained that as a result of the sexually hostile work environment, the class of female employees suffered emotional distress and damages. Wheels of Wellness denies these allegations and maintains that,

at all times, it ensured that a non-discriminatory work environment existed at the Philadelphia facility, and contends that it effectively enforced its policies against unlawful harassment.

B. This Consent Decree is entered into by and shall be final and binding between the EEOC and Wheels of Wellness, its directors, officers, agents, successors and assigns.

C. The Commission and Wheels of Wellness agree to the entry of this Consent Decree, which shall fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No. 05-CV-4773 (PSD). 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 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 of 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. Wheels of Wellness agrees that it will provide workplaces free from sexual harassment, and agrees not to discriminate on the basis of sex in violation of Title VII.
2. Wheels of Wellness agrees that it will not engage in any employment practices which retaliate against any person, including but not limited to Michelle Brunson ("Ms. Brunson"), Renee Bey ("Ms. Bey"), Cheryl Coates ("Ms. Coates"), Traci Johnson ("Ms.

Johnson”), Rochelle Albert (“Ms. Albert”), and Latonia Creighton Smith (“Ms. Smith”), 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.

3. Unless required to do so by law, Wheels of Wellness shall not divulge, to any employer or potential employer of the women listed in Paragraph 2, the facts or circumstances set forth in the EEOC’s complaint against Wheels of Wellness in this case or the participation of Ms. Brunson, Ms. Bey, Ms. Coates, Ms. Johnson, Ms. Albert and/or Ms. Smith to this Consent Decree in the litigation of this action.

4. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Wheels of Wellness under Title VII or the EEOC’s authority to process or litigate any charge of discrimination now pending or filed in the future against Wheels of Wellness except for any act of discrimination relating, regarding or referring to Ms. Brunson, Ms. Bey, Ms. Coates, Ms. Johnson, Ms. Albert and/or Ms. Smith.

Monetary Relief

5. Within 14 business days after receipt of the General Release executed by Ms. Brunson, and the Commission’s Release, a copy of which is attached hereto as Exhibit 1 executed respectively by Ms. Bey, Ms. Coates, Ms. Johnson, Ms. Albert and Ms. Smith and of the filing of this Consent Decree in full settlement of the claims against Defendant which were raised in the Commission’s Complaint, Defendant Wheels of Wellness agrees to pay monetary relief in the total amount of \$60,200 as follows:

- a. Ms. Brunson: \$30,200;

- b. Ms. Bey: \$6,000;
- c. Ms. Coates: \$6,000;
- d. Ms. Johnson: \$6,000;
- e. Ms. Albert: \$6,000; and
- f. Ms. Smith: \$6,000.

Within five business days thereafter, a copy of the foregoing checks will be mailed to the attention of Rachel M. Smith, Trial Attorney, EEOC, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515. Late payment of the check will be subject to the accrual of interest on the unpaid amount, calculated pursuant to 28 U.S.C. § 1961. The checks will be mailed to the foregoing persons at the addresses provided by the EEOC, and for purposes of timeliness, payments are considered made on the date the checks are mailed to the addresses provided by the EEOC.

Posting of Notice

6. Within 30 business days after entry of this Decree, Wheels of Wellness shall post a Notice, a copy of which is attached hereto as Exhibit 2, at Wheels of Wellness' Philadelphia, PA facility on all bulletin boards, used by Wheels of Wellness for communicating with employees, same-sized copies of the Notice. The Notice shall remain posted for three (3) years from the date of this Consent Decree. Wheels of Wellness will forward the location and dates of posting within 30 days after entry of this Decree to Rachel M. Smith, Trial Attorney, EEOC, 21 South Fifth Street Suite 400, Philadelphia, PA 19106-2515. If posted copies become defaced, removed, marred or otherwise illegible, Wheels of Wellness agrees to post a readable copy in the same manner as heretofore specified.

Non-Discrimination and Anti-Harassment Policies and Complaint Procedures

7. Wheels of Wellness' policy against discrimination, harassment and retaliation and complaint procedures shall be drafted in plain and simple language. Wheels of Wellness shall ensure that its policy or policies against discrimination, harassment, and related complaint procedures meet the following minimum criteria:

(a) State that Wheels of Wellness: (i) prohibits discrimination against employees on the basis of sex, 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 sex, 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 sex, in violation of Title VII;

(b) Includes a complaint procedure intended 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 in the Human Resources Department to whom an employee can make a complaint; and (iv) provide assurances that complainants shall not be subjected to retaliation;

- (c) Provide for prompt investigation of complaints of harassment;
- (d) Provide for prompt communication to the complaining party at the cessation of the investigation, as long as the complaining party is employed by Wheels of Wellness at that time; and;
- (e) Provide for discipline up to and including discharge of an employee or supervisor who violates Defendants' policy or policies against discrimination and/or harassment, and for increasingly severe discipline of repeat offenders.

8. Wheels of Wellness shall distribute to all of its employees and newly-hired employees, its policy or policies against discrimination, harassment and retaliation within 90 days after entry of this Consent Decree.

9. Within 90 days after entry of this Consent Decree, Wheels of Wellness shall advise Rachel M. Smith, Trial Attorney, EEOC's Philadelphia District Office, that its policy or policies against discrimination and harassment have been distributed to current employees, including temporary employees, and that new employees, including temporary employees, will receive these policies and an opportunity to acknowledge receipt. The distribution of the policies shall be to all employees working at Wheels of Wellness' Philadelphia, PA facility. Defendant will retain copies of any acknowledgment of receipt form for an employee in the employee's personnel file.

10. Wheels of Wellness shall annually for the duration of the Consent Decree provide a copy of its policy or policies against discrimination, harassment and retaliation to each employee.

Supervisor Accountability

11. Wheels of Wellness shall promote supervisor accountability by the following conduct:

- (a) Providing anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraph 12;
- (b) Disciplining, up to and including discharge, any supervisor or manager who violates Wheels of Wellness' policy or policies against discrimination, harassment and retaliation; and
- (c) Imposing on all managers and supervisory personnel a duty to administer their work areas to ensure compliance with Wheels of Wellness' policy against discrimination, harassment and retaliation; and
- (d) Requiring all managers and supervisors to report any incidents and/or complaints of harassment and/or retaliation of which they become aware to the Human Resources Department, or officials designated to accept such complaints.

Training

12. Wheels of Wellness shall provide training on the requirements of Title VII as follows:

- (a) Wheels of Wellness agrees to provide training sessions for all of its managers and supervisors, and for all Human Resources Department employees responsible for responding to Title VII complaints made by employees of Wheels of Wellness at Wheels of Wellness' Philadelphia, PA facility. Wheels of Wellness will advise the Commission of the identity and qualifications of the trainer, and the date(s) of the expected training.

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

(b) Defendant shall first provide training in accordance with Paragraph 12(a) no later than 180 calendar days after entry of this Consent Decree. A second training will take place before the expiration of the Consent Decree.

13. Wheels of Wellness 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.

14. Wheels of Wellness shall certify to the EEOC in writing within 20 business days after the training sessions required by Paragraph 12 has 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, supervisors, or human resource officials in attendance who are responsible for responding to Title VII complaints made against Wheels of Wellness.

Dispute Resolution

15. In the event either party to this Decree believes the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of

the alleged non-compliance within 20 days of the alleged non-compliance and afford the alleged non-complying party 20 business days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within 20 business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

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

17. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Wheels of Wellness in their capacities as representatives, agents, directors and officers of Wheels of Wellness 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.

18. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 05-4773 (PSD).

19. This Consent Decree shall be filed in the United States District Court for the Eastern District of Pennsylvania and shall continue in effect for three (3) 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 eighteen-month period, the terms 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.

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

21. If Defendant Wheels of Wellness ceases operations or no longer has any employees, it will not have to comply with any of the terms of the ongoing training, posting and notification requirements of this agreement unless it re-opens operations or employs employees within three (3) years after the entry of this consent decree.

22. On the third anniversary of this Consent Decree, the above captioned matter will be dismissed with prejudice.

For Plaintiff EEOC:

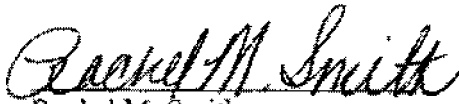
For Defendant Wheels of Wellness

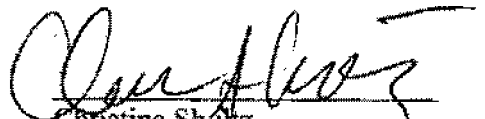
James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel
Washington, D.C.
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Jacqueline H. McNair
Regional Attorney


Judith A. O'Boyle
Supervisory Trial Attorney


Rachel M. Smith
Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION


Christine Shultz
Susanin, Widman & Brennan, P.C.
Suite 240, Executive Terrace
455 South Gulf Road
King of Prussia, PA 19406-3119
(610) 337-4531

Philadelphia District Office
21 S. 5th Street, Suite 400
Philadelphia, PA 19106
(215) 440-2642

By the Court: _____

PAUL S. DIAMOND
UNITED STATES DISTRICT JUDGE

Date: _____

EXHIBIT 2

NOTICE TO ALL WHEELS OF WELLNESS EMPLOYEES

This Notice is posted pursuant to a Consent Decree entered by the federal court for the Eastern District of Pennsylvania in EEOC v. Wheels of Wellness, Civil Action Number 05-CV-4773 (PSD), resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Wheels of Wellness.

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 national origin, sex, race, color or religion. Title VII further prohibits retaliation against employees or applicants who avail themselves of their 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 Wheels of Wellness subjected employees to harassment based on sex in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Wheels of Wellness denies these allegations.

To resolve the case, Wheels of Wellness and the EEOC have entered into a Consent Decree which provided, among other things, that: (1) Wheels of Wellness pay monetary relief to several former employees; (2) Wheels of Wellness agrees that it will not discriminate on the basis of sex in the future; (3) Wheels of Wellness 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 Consent Decree; and (4) Wheels of Wellness will train all managers and supervisors its facility and officials in its Human Resources Department with responsibility for responding to Title VII complaints regarding sexual harassment and retaliation, and regarding its policy prohibiting discrimination, harassment and retaliation.

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 three 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: Supervisory Trial Attorney, EEOC Philadelphia District Office, 21 South 5th Street, Philadelphia, PA 19106.


U.S. Equal Employment Opportunity
Commission

Wheels of Wellness

DATED: 1/29/06

DATED: _____