

Robinson, J

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

AMERTAC HOLDING, INC. AND)
AMERICAN TACK & HARDWARE CO., INC.,)

Defendants.)

CIVIL ACTION NO.
03 CV 6128 (SR)

ELISA TAYLOR and SHANA VAN DUNK,)

Plaintiffs-Intervenors,)

v.)

AMERTAC HOLDING, INC. AND)
AMERICAN TACK & HARDWARE CO., INC.,)
RICHARD FRANT AND JOHN DISTEFANO,)

Defendants.)

CONSENT DECREE

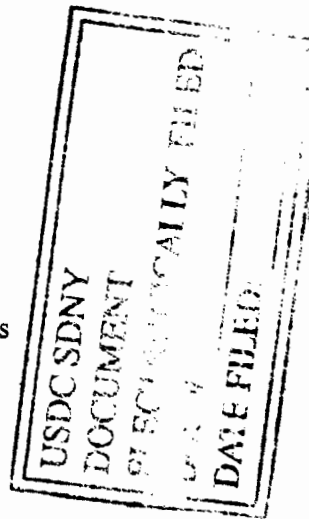
PART I

GENERAL PROVISIONS

Section 101 Introduction

Plaintiff Equal Employment Opportunity Commission ("EEOC"), Plaintiff-Intervenors Taylor and Van Dunk ("Intervenors") and Defendants Amertac Holding, Inc. and American Tack & Hardware Co., Inc., ("Defendants"), have agreed to resolve this action by the terms of this Consent Decree ("Decree") as set forth below.

On August 14, 2003, EEOC brought this action under Title VII of the Civil Rights Act of 1964, to correct unlawful employment practices on the basis of sex and to provide



appropriate relief to Elisa Taylor, Shana Van Dunk and a class of females, who were adversely affected by such practices. As alleged in EEOC's complaint, Elisa Taylor, Shana Van Dunk and a class of females were subjected to sexual harassment and retaliation by Defendants.

Section 102 Purpose of the Decree

A. The parties, defined as EEOC, Intervenor and Defendants, desire to settle this action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and their successors, assigns, subsidiaries, affiliates, and any other corporation or other entity into which Defendants may merge or with which Defendants may consolidate. Defendants shall provide notice and a copy of this Decree to any successors, assigns, subsidiaries, affiliates, and any other corporation or other entity into which Defendants may merge or with which they may consolidate.

B. The Decree resolves all issues relating to the allegations in EEOC's Complaint and Shana Van Dunk's EEOC Charge of Discrimination number 160-2003-00355 and Elisa Taylor's EEOC Charge of Discrimination number 160-2002-01286, which served as the jurisdictional prerequisite in this case, and constitutes a complete and final resolution of all claims of sex discrimination under Title VII made by the EEOC in this lawsuit, The Decree does not resolve any charge of discrimination currently pending before EEOC, or any charge that may be filed in the future, other than the charges listed above. EEOC reserves all rights to proceed regarding matters not covered in this Decree. The Decree and a separately executed General Release and Settlement Agreement also resolve all issues relating to the allegations in the Intervenor's complaint.

C. The terms of this Decree represent the full and complete agreement of EEOC and Defendants. In addition there is an executed General Release and Settlement

Agreement between Intervenors and Defendants. The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

D. The parties understand and agree that this Decree and the payment and any other benefits or requirements provided under it are made in settlement and compromise of disputed claims and nothing in this Decree is to be construed as an admission by Defendants as to the merits of any claims asserted in EEOC's complaint or by Intervenors.

Section 103 Prohibited Conduct and Injunction to Not Discriminate

A. Defendants, their managers, officers, agents, successors, and assigns hereby are enjoined from discriminating against any individual because of the individual's sex, from sexual harassment, and/or from retaliation against any individual because that individual is a beneficiary of this Decree, has filed a complaint, or has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter.

B. Nothing in this Decree shall be construed to limit or reduce Defendants' obligation to comply with the statutes enforced by EEOC: Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*; Title I of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, and the Equal Pay Act, 29 U.S.C. §206(d).

Section 104 Consent to Jurisdiction

A. EEOC and Defendants agree that this Court has jurisdiction over the subject matter of this litigation and the parties for the duration of this Decree, that venue is proper, and all administrative prerequisites have been met. No party shall contest the

validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.

B. The Court shall retain jurisdiction over this action for the duration of the Decree for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein.

Section 105 Implementation of the Decree

EEOC and Defendants agree to take all steps that may be necessary to fully effectuate the terms of this Decree.

Section 106 Amendments to the Decree

By mutual consent of the parties, this Decree may be amended in the interests of justice and fairness and to facilitate execution of the Decree's provisions. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree, and approved or ordered by the Court, except that the parties may mutually agree to modify the procedures in Sections 202 and 203 without approval of the Court or as otherwise indicated herein.

Section 107 Duration of the Decree

A. The Decree shall remain in effect for three (3) years from the final approval date of the Decree. The effective date of the Decree shall be the date it is signed by and receives final approval from the Court. The Decree shall not expire against any signatory while any enforcement action is pending against that signatory.

Section 108 Severability

If one or more provisions of this Decree are rendered unlawful or unenforceable as

a result of a legislative act or a decision by a court of competent jurisdiction, the following shall apply to insure that the Decree continues to effectuate the intent of the parties. The provisions of this Decree which are not rendered unlawful, unenforceable or incapable of performance as a result of such legislative act or court decision, shall remain in full force and effect, and the parties' responsibilities shall not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Decree would be undermined.

Section 109 Breach of Decree

A. No party shall contest the jurisdiction of the Court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Breach of any term of this Decree shall be deemed to be a substantial breach of this Decree. Nothing in this Decree shall be construed to preclude the EEOC from bringing proceedings to enforce this Decree in the event that Defendants fail to perform any of the promises and representations contained herein.

B. If the Commission in good faith believes that Defendants have not complied with the terms of this Decree, the Commission will provide written notice of the alleged breach to Defendants' counsel of record Leslie A. Lajewski Coughlin Duffy LLP 350 Mount Kemble Avenue Morristown, NJ 07962 and by facsimile at 973-267-6442. The Commission will not petition the Court for enforcement of the Decree for at least thirty (30) days after providing the written notice. The thirty (30) day period will be used by the parties for good faith efforts to resolve any dispute. The Commission need not confer with Defendants or wait the (30) thirty days if it in good faith believes the public interest is immediately impacted by the alleged breach.

Section 110 Notices

Except as otherwise provided for in this Decree, all notifications, reports and communications to the parties required under this Decree shall be made in writing and shall be sufficient as hand-delivered, faxed or sent by certified, registered or overnight mail to the following persons (or their designated successors):

For EEOC: Louis Graziano
Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, NY 10004
Fax: 212.336.3623
Louis.Graziano@EEOC.gov

For Defendants: Leslie A. Lajewski
Coughlin Duffy LLP
350 Mount Kemble Avenue
Morristown, NJ 07962
Fax: 973.267.6442
Llajewski@coughlinduffy.com

Any party may change such addresses by written notice to the other parties that set forth a new address for this purpose. Notwithstanding the provisions for notification contained in this paragraph, the parties may, after agreement memorialized in writing, send each other such notifications, reports and communications by email.

PART II

SYSTEMIC RELIEF

Section 201 Posting and Distribution of Notices

A. Posting of Notice of Resolution

Within ten business (10) days of the approval date of this Decree, Defendants shall conspicuously post and maintain a "Notice of Resolution" regarding this lawsuit (attached as Exhibit A), in all prominent places where employee notices are posted at Defendants'

domestic locations. This Notice shall remain posted for the duration of the decree.

B. Provision of Notice and Memo to Employees

Within ten business (10) days of the approval date of this Decree, Defendants shall provide a copy of the Notice of Resolution (Exhibit A) and a memo setting forth the requirements of Title VII (attached as Exhibit B), to all of Defendants' employees.

C. Posting of EEO Posters

Defendants will post EEO posters in places visually accessible to applicants and employees of Defendants as required by federal regulations. Defendants shall notify EEOC in writing within ten business (10) days that they have continued their practice of posting EEO posters pursuant to this Section.

Section 202 Non-Discrimination Policy and Complaint Procedures

A. Required Content of Non-Discrimination Policies and Procedures

Defendants shall adopt the anti-discrimination policy and complaint procedure ("Policies and Procedures"), attached hereto as Exhibit C, which has been reviewed and approved by EEOC.

B. EEOC Approval of Non-Discrimination Policies and Procedures

Under no circumstances shall EEOC, by commenting or electing not to comment on Defendants' Policies and Procedures, be deemed to have waived its right to investigate or litigate any alleged violation of federal law enforced by EEOC, related to or resulting from the implementation of any such policy.

C. Issuance of Policies and Procedures

Defendants shall provide each employee with a copy of Exhibit C within ten

business (10) days of the final approval date of the Decree. The Policies and Procedures shall be issued with a letter signed by Charles Peifer, Chairman of the Board, affirming Defendants' commitment to maintaining a work environment free of discrimination. Defendants shall include their updated Policies and Procedures in their Employee Handbook and shall make it available on any company website that makes other human resources information or policies available to employees. Defendants shall provide all new employees with copies of the Policies and Procedures within ten business (10) days of the commencement of their employment.

Section 203 Training

A. Initial Training

1. Approval by EEOC

Defendants will provide training programs for (a) non-supervisory employees, (b) supervisory and management employees, and (c) human resource employees. Each training program will include the following: (a) a detailed agenda with proposed training materials, (b) curricula vitae(s) for the individual(s) who will conduct the training, (c) a plan to ensure that all employees receive the required training. The training programs will be conducted by Francine Esposito of Day Pitney LLP. The agenda for the training programs, attached hereto as Exhibit D, has been reviewed and approved by EEOC.

2. Content of the Initial Training

The initial training shall review the rights and responsibilities of employees under federal anti-discrimination laws and how such laws define unlawful discrimination. The training shall include examples of unlawful conduct. The training also will cover Defendants' anti-discrimination policies and procedures with particular emphasis on the

internal complaint, investigation and remediation process and an employee's right to file with EEOC and state or local agencies.

3. Scheduling Duration and Confirmation of Training

Within sixty (60) days of the date of entry of this Decree, Defendants shall complete all initial training programs. All non-supervisory employees, supervisory and management employees, and human resource employees, shall attend the appropriate initial training session. The training shall be three (3) hours in duration. All employees attending any training session shall print and sign their full names on an attendance sheet. Defendants shall maintain all such attendance sheets. Within ten business (10) days of any training session, Defendants shall provide EEOC with a certification from the trainer confirming that the training has been performed in accordance with this Decree, identifying the group to whom such training has been provided, providing the total number of attendees at such training, identifying the total number of attendees absent, if any, and providing the date of the planned make-up training session.

B. Annual Training

1. Annual Training for Non-supervisory Employees

During each anniversary month of the entry of this Decree, Defendants will provide all non-supervisory employees with at least two (2) hours of EEO training as described in Section 203 A, above.

2. Annual Training for Management and Supervisory Employees

During each anniversary month of the entry of this Decree, Defendants will provide all supervisory and management employees with at least three (3) hours of EEO training as described below in Section 203 A, above.

3. Annual Training for Human Resources Employees

During each anniversary month of the entry of this Decree Defendants will provide all human resource employees with at least six (6) hours of EEO training as described below in Section 203 A, above.

C. Training for New Employees

Defendants shall provide two (2) hours of training for all new non-supervisory employees, three (3) hours of training for all new management/supervisory employees, and six (6) hours of training for all new human resource employees within thirty (30) days of the commencement of their employment. The training shall meet the requirements in Section 203 A, above, with the exception that the training may be performed by Defendants' Human Resources representative.

D. Pre-Training Notification Requirement

At least thirty (30) days prior to the Initial and Annual trainings required under this Section, Defendants will provide EEOC notice of the date, time and location of the scheduled training.

Section 204 Monitoring and Reporting

A. Monitoring by EEOC

In addition to the other monitoring provisions contained in the Decree, in response to a request by EEOC, Defendants shall, within ten (10) business days, provide for inspection and copying any records reasonably related to the Decree.

For the duration of this Decree, every year at the anniversary of the effective date of the Decree, Defendants shall provide a written report to the EEOC with information

regarding any verbal or written complaints of discrimination from employees or applicants which were received during the preceding three months. The report shall include a summary of the complaint and location of conduct complained of, a list of each step taken by Defendants during the investigation, the results of any investigation of the complaint, and any remedial action taken by Defendants. The report shall include all open complaints and all complaints closed or resolved within the prior year.

Section 206 Compliance with Record-keeping Requirements

A. Record Retention

Defendants agree to maintain such records as are necessary to demonstrate its compliance with the Decree and 29 C.F.R. § 1602 et seq. and to verify that the information submitted pursuant to the Decree is accurate.

PART III

MONETARY AND OTHER RELIEF FOR CLAIMANTS

Section 301 Monetary and Other Relief

A. Monetary Payment

Defendants shall pay a total of THREE HUNDRED AND TWENTY FIVE THOUSAND DOLLARS (\$325,000.00") to the claimants as set forth in the attached Exhibit E. Defendants shall prepare and tender the checks in accordance with the provisions set forth below.

B. Distribution of Award

1. Within ten business (10) days of the receipt of a Release of Claims, Defendants shall send an award check to each Claimant in the approved amount, as designated by EEOC and listed in Exhibit E . Defendants shall issue each Claimant a

1099 Form in relation to such payment.

2. Defendants shall send by certified mail with return receipt requested, the appropriate award check. Defendants shall also provide copies of said check, any accompanying document, and the certified mail receipt to the Commission.

C. Attorneys Fees and Costs

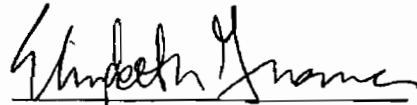
Each party shall bear its/their own attorney fees and costs incurred in this action.

SIGNATURES

Each signatory to this Decree represents that each is fully authorized to execute this Decree and to bind the parties on whose behalf each signs.

APPROVED IN FORM AND CONTENT:

By Plaintiff EEOC:



Elizabeth Grossman
Regional Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York, 10004
Fax: 212.336.3623
Elizabeth.Grossman@EEOC.gov

For Elisa Taylor and Shana Van Dunk:




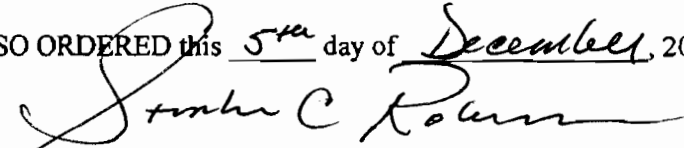
Parisi G. Filippatos
60 East 42nd Street, Suite 4600
New York, New York 10165
Fax: 212-682-0091
pgf@filippatoslaw.com

For Ameritac Holding and
American Tack & Hardware Co., Inc:



Leslie A. Lajewski
Coughlin Duffy LLP
350 Mount Kemble Avenue
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Llajewski@coughlinduffy.com


SO ORDERED this 5th day of December, 2008.


United States District Judge
Hon. Stephen C. Robinson