

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

C.A. No. 07cv1291

v.

CHAMPION WINDOW MANUFACTURING &
SUPPLY CO., LLC, d/b/a CHAMPION
WINDOW MFG., INC. and/or d/b/a CHAMPION
WINDOW OF PITTSBURGH,

Defendant.

CONSENT DECREE

Introduction

A. This action was instituted by the U.S. Equal Employment Opportunity Commission (“EEOC”) on November 15, 2007, against “Champion Window Manufacturing & Supply Co., LLC, d/b/a Champion Window Mfg., Inc., and/or d/b/a/ Champion Window of Pittsburgh” (collectively, the “Champion Window Companies”) to enforce provisions of Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”). The EEOC alleged that Champion Window Companies discriminated against Martell Waite (“Mr. Waite”) by allegedly subjecting him to disparate treatment on the basis of his race, African American, and retaliating against him for allegedly complaining about the disparate treatment.

B. Defendant Champion Window Company of Pittsburgh, LLC (“Champion Windows Pittsburgh”) denied the allegations of the complaint. Champion Windows of Pittsburgh

maintains that it is a separate and distinct legal entity from Champion Window Manufacturing and Supply Co., LLC and Champion Window Manufacturing, Inc.

C. This Consent Decree is entered into by and shall be final and binding between the EEOC and Champion Windows Pittsburgh, its directors, officers, agents, successors and assigns.

D. The EEOC and Champion Windows Pittsburgh agree to entry of this Consent Decree, which shall fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No. 07-1563 (W.D. PA), closed and consolidated at 07-1291 (W.D. PA). 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 Champion Windows Pittsburgh of any violation of Title VII.

Findings

E. 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 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 EEOC and Champion Windows Pittsburgh and over the subject matter of this action.

2. Champion Windows Pittsburgh shall not engage in discrimination against any employee on the basis of race in violation of Title VII.

3. Champion Windows Pittsburgh shall not engage in any employment practices which retaliate in any manner (as defined by Title VII and applicable law) against any person 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. Champion Windows Pittsburgh shall not divulge, directly or indirectly, to any identifiable employer or potential employer of Mr. Waite any of the facts or circumstances related to the claims of discrimination of Mr. Waite against Champion Windows Pittsburgh in this case or any of the events relating to the participation of Mr. Waite in the litigation of this action. Upon inquiry, Defendant shall be permitted to provide a neutral reference for Mr. Waite which may include dates of employment.

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

Monetary Relief

6. Champion Windows Pittsburgh agrees to pay total monetary relief to Martell Waite in the amount of one hundred thousand dollars and no/100 dollars (\$100,000.00), in full settlement of the claims raised on his behalf by the EEOC. In order to obtain settlement, Mr. Waite will be required to sign a release that will be submitted to him by Defendant.

7. Champion Windows Pittsburgh shall issue a check for the amount specified in paragraph 6 to Mr. Waite within ten (10) business days of Champion Windows Pittsburgh's receipt of the signed release from him, or the Court's entry of this Consent Decree, whichever is

later. The check will be mailed to Tiffany R. Waskowicz, Esquire, Ogg, Cordes, Murphy & Ignelzi, LLC, Riverview Place, 245 Fort Pitt Boulevard, Pittsburgh, PA 15222. Champion Windows Pittsburgh shall issue an IRS Form 1099.

8. Within five business days thereafter, a copy of said check will be sent to the attention of M. Jean Clickner, Senior Trial Attorney, EEOC, 1001 Liberty Ave., Suite 300, Pittsburgh, PA 15222.

Posting of Notice

9. Within 20 business days after entry of this Decree, Champion Windows Pittsburgh shall post at its facility, on all bulletin boards used for communicating with employees, same-sized copies of the Notice attached as Exhibit 1 to this Decree. The Notice shall remain posted for four (4) years from the date of entry of this Decree. If posted copies become defaced, removed, marred or otherwise illegible, Champion Windows Pittsburgh agrees to post a readable copy in the same manner as heretofore specified.

Non-Discrimination and Anti-Harassment Policies and Complaint Procedures

10. Champion Windows Pittsburgh shall ensure that its policy or policies against discrimination and retaliation and related complaint procedures meet the following minimum criteria:

(a) State that Champion Windows Pittsburgh: (i) prohibits discrimination against employees on the basis of race, national origin, sex, religion and color; (ii) prohibits retaliation against employees for opposing employment practices they reasonably believe are discriminatory or for participating in good faith 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 national origin, sex, race, 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 national origin, sex, race, religion or color in violation of Title VII;

(b) Include a complaint procedure designed to encourage employees to come forward with good faith complaints regarding violations of its policy or policies against discrimination, harassment and retaliation, which shall identify to whom an employee may forward a complaint and shall provide assurances that complainants shall not be subjected to retaliation;

(c) provide for prompt communication to the complaining party; and

(d) provide for discipline up to and including discharge of an employee or supervisor who violates Champion Windows Pittsburgh's policy or policies against discrimination, harassment and retaliation.

11. Champion Windows Pittsburgh 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.

12. Within 10 days after initially distributing its policy or policies against discrimination, Champion Windows Pittsburgh shall advise M. Jean Clickner, Senior Trial Attorney, EEOC's Pittsburgh Area Office, of the distribution. Ms. Clickner may contact Allison L. Feldstein, Attorney for Champion Windows Pittsburgh, regarding the status of the distribution.

Supervisor Accountability

13. Champion Windows Pittsburgh shall promote supervisor accountability by the following conduct:

(a) Providing annual anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraphs 14 and 15;

(b) Disciplining, up to and including discharge, any supervisor or manager who violates Champion Windows Pittsburgh's policy or policies against discrimination, harassment and retaliation; and,

(c) Requiring all managers and supervisors to report promptly any incidents and/or complaints of harassment and/or retaliation of which they become aware to Timothy Delaney, Division Manager.

Training

14. Champion Window shall provide training on the requirements of Title VII as follows:

(a) Champion Windows Pittsburgh agrees to provide annual training sessions for all of its managers and supervisors, and for all Human Resources Department employees. The training will cover 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) Champion Windows Pittsburgh shall first provide training in accordance with Paragraph 14(a) by no later than one hundred twenty (120) calendar days after entry of this Consent Decree and also shall provide such training annually for the duration of the Consent Decree.

15. In addition to the training described in Paragraph 14, within 120 calendar days of the entry of the Consent Decree, Champion Windows Pittsburgh shall provide training to all employees and supervisors in its Human Resources Department regarding how to conduct a prompt and effective investigation into allegations, complaints or charges of employment discrimination.

16. Champion Windows Pittsburgh shall obtain the EEOC's approval of its proposed trainer prior to each year's training sessions.

17. Champion Windows Pittsburgh 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.

18. Champion Windows Pittsburgh shall certify to the EEOC in writing within 10 business days after the training sessions required by Paragraphs 14 and 15 have occurred that the training has taken place and the personnel who attended.

Recordkeeping

19. Champion Windows Pittsburgh shall furnish to the EEOC the following written reports 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 certification by Champion Windows Pittsburgh that the Notice required to be posted by Paragraph 9 was posted during the six months preceding the report;
- (b) A certification by Champion Windows Pittsburgh that the policy or policies against harassment and retaliation were distributed to all employees as set forth in Paragraphs 10 and 11 of the Consent Decree within the 12 months preceding the report; and,
- (c) A certification that Champion Windows Pittsburgh has complied with the training requirements of Paragraph 12 of this Decree.

20. Nothing in this Decree shall be construed to limit any obligation Champion Windows Pittsburgh 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 Champion Windows Pittsburgh as required by law.

Dispute Resolution

21. 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

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

23. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Champion Windows Pittsburgh in their capacities as representatives, agents, directors and officers of Champion Windows Pittsburgh 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 party is found in contempt for a violation of this Decree.

24. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 07-1563 (W.D. PA), closed and consolidated at 07-1291 (W.D. PA). This Consent Decree shall be filed in the United States District Court for the Western 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, upon a party's timely application to the Court, the term of the Decree shall be extended for a reasonable period of time in which the disputes may be resolved.

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

Respectfully submitted,

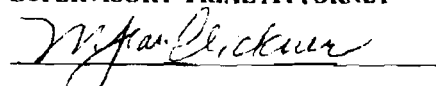
RONALD S. COOPER
GENERAL COUNSEL

JAMES L. LEE
DEPUTY GENERAL COUNSEL

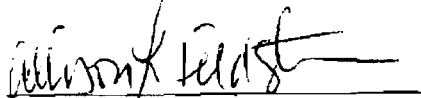
GWENDOLYN YOUNG REAMS
ASSOCIATE GENERAL COUNSEL
WASHINGTON, D.C. -- EEOC


JACQUELINE H. MCNAIR
REGIONAL ATTORNEY


JUDITH A. O'BOYLE
SUPERVISORY TRIAL ATTORNEY


M. JEAN CLICKNER
TRIAL ATTORNEY
PA. I.D. No. 42738
Pittsburgh Area Office
Liberty Center, Suite 300
1001 Liberty Avenue
Pittsburgh, PA 15222
(412) 644-6439

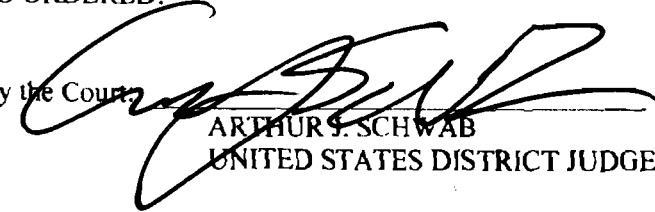
Counsel for Plaintiff EEOC



ALLISON L. FELDSTEIN
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Counsel for Defendant

SO ORDERED:

By the Court: 
ARTHUR S. SCHWAB
UNITED STATES DISTRICT JUDGE

Date: 30 May 2008

EXHIBIT A

NOTICE TO ALL EMPLOYEES OF CHAMPION WINDOW of PITTSBURGH

This Notice is posted pursuant to a Consent Decree entered by the federal court for the Western District of Pennsylvania in *EEOC v. Champion Window Manufacturing & Supply Co., LLC*. Civil Action 07-1563 (W.D. PA), closed and consolidated at 07-1291 (W.D. PA), resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC").

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 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.

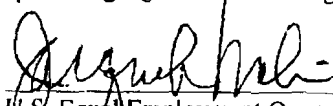
In its lawsuit, the EEOC alleged that Champion Windows Pittsburgh violated Title VII of the Civil Rights Act of 1964 ("Title VII"). Champion Windows Pittsburgh has denied these allegations.

To resolve the case, Champion Windows Pittsburgh and the EEOC have entered into a Consent Decree which provided, among other things, that: (1) Champion Window will not discriminate on any protected basis; (2) Champion Windows Pittsburgh 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; and (3) Champion Window will train all managers and supervisors and all employees and supervisors in its Human Resources Department regarding discrimination, harassment and retaliation, and regarding its policy prohibiting discrimination, and retaliation.

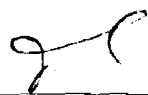
If you believe you have been discriminated against, you may contact Timothy Delaney at (412) 787-5300 or the Human Resources Department at 1-888-499-4933. Ext 4262.

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

This Notice must remain posted for four 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 19106 or at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.



U.S. Equal Employment Opportunity
Commission



Champion Windows Pittsburgh

DATED: 5/28/08

DATED: 5-19-08

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FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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COMMISSION,

Plaintiff,

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

Respectfully submitted,

RONALD S. COOPER
GENERAL COUNSEL

JAMES L. LEE
DEPUTY GENERAL COUNSEL

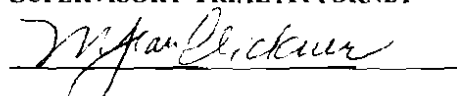
GWENDOLYN YOUNG REAMS
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JACQUELINE H. MCNAIR
REGIONAL ATTORNEY



JUDITH A. O'BOYLE
SUPERVISORY TRIAL ATTORNEY



M. JEAN CLICKNER
TRIAL ATTORNEY
PA. I.D. NO. 42738
Pittsburgh Area Office
Liberty Center, Suite 300
1001 Liberty Avenue
Pittsburgh, PA 15222
(412) 644-6439

Counsel for Plaintiff EEOC



ALLISON L. FELDSTEIN
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Counsel for Defendant

SO ORDERED:

By the Court: _____

ARTHUR J. SCHWAB
UNITED STATES DISTRICT JUDGE

Date: _____

EXHIBIT A

NOTICE TO ALL EMPLOYEES OF CHAMPION WINDOW of PITTSBURGH

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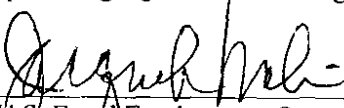
In its lawsuit, the EEOC alleged that Champion Windows Pittsburgh violated Title VII of the Civil Rights Act of 1964 ("Title VII"). Champion Windows Pittsburgh has denied these allegations.

To resolve the case, Champion Windows Pittsburgh and the EEOC have entered into a Consent Decree which provided, among other things, that: (1) Champion Window will not discriminate on any protected basis; (2) Champion Windows Pittsburgh 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; and (3) Champion Window will train all managers and supervisors and all employees and supervisors in its Human Resources Department regarding discrimination, harassment and retaliation, and regarding its policy prohibiting discrimination, and retaliation.

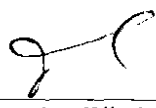
If you believe you have been discriminated against, you may contact Timothy Delaney at (412) 787-5300 or the Human Resources Department at 1-888-499-4933, Ext.4262.

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

This Notice must remain posted for four 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 19106 or at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.



U.S. Equal Employment Opportunity
Commission



Champion Windows Pittsburgh

DATED: 5/28/08

DATED: 5-19-08