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EEOC and Tracy Myles v. Concrete Applied Construction Technologies Corp.

Judge Richard J. Arcara

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EEOC and Tracy Myles v. Concrete Applied Construction Technologies Corp.

Keywords

EEOC, Tracy Myles, Concrete Applied Construction Technologies Corp., 03 CV 0670A(F), Consent Decree, Disparate Treatment, Hiring, Race, African American or Black, Construction, Employment Law, Title VII

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

-----X
EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :
 :
 Plaintiff, : **Civ. No.: 03 CV 0670A(F)**
 :
 and :
 :
TRACY MYLES, :
 :
 Plaintiff-Intervenor :
 :
 v. :
 :
CONCRETE APPLIED CONSTRUCTION :
TECHNOLOGIES CORP., d/b/a/ CATCO :
CONSTRUCTION CO., :
 :
 Defendant. :
-----X

CONSENT DECREE

The Parties to this Consent Decree are the Equal Employment Opportunity Commission (“EEOC”), Tracy Myles, and Concrete Applied Construction Technologies Corp., d/b/a/ CATCO Construction Co. (named in the EEOC’s Complaint as “CATCO Construction Co.”) (“CATCO”). This cause of action was initiated on September 10, 2003, by the EEOC alleging that CATCO engaged in unlawful employment practices on the basis of race, in violation of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* (“Title VII”). The EEOC alleged that CATCO discriminated against Tracy Myles because of his race, Black, by not hiring him as an Operating Engineer. On May 6, 2004, Mr. Myles filed an Intervenor’s Complaint alleging that CATCO had engaged in unlawful employment practices on the basis of race, in violation of Title VII and the New York State Human Rights Law §296 *et seq.* (“NYSHRL”), by not hiring him as an Operating Engineer.

The EEOC, Mr. Myles, and CATCO (the "Parties") hereto 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 or assigns.

The entry of this Consent Decree does not constitute any admissions by CATCO of the allegations made by the EEOC or Mr. Myles or that CATCO has otherwise violated state or federal law.

In consideration of the mutual promises and agreements contained in this Decree, the sufficiency of which is hereby acknowledged, the Parties agree as follows, the Court finds appropriate, and is therefore **ORDERED, ADJUDGED AND DECREED THAT:**

I. PREFATORY MATTERS

1. This Decree resolves all matters related to Civil Action 03-CV-070A(F), now pending in the United States District Court for the Western District of New York. The Court having held that there are triable issues of fact, the Parties agree that this Decree may be entered into without any additional findings of fact and/or conclusions of law being made and entered by the Court. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all Parties to this Consent Decree and approved or ordered by the Court.

2. This Consent Decree resolves all issues raised in EEOC Charge Number 165-2002-00476 and all issues that were raised in the Complaints filed by the EEOC and Mr. Myles in this action, 03-CV-670A(F) (W.D.N.Y.). The Decree does not resolve any other charge of discrimination currently pending before the EEOC against CATCO, or any charge that may be filed in the future against CATCO.

3. The Parties agree and the Court finds that this Court has jurisdiction over the subject matter of this action and the Parties to this action, that venue is proper, and that 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.

4. This Decree is issued with the consent of the Parties. This Consent Decree constitutes the complete agreement between the EEOC, Mr. Myles and CATCO 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, approved by all Parties to this Decree and approved or ordered by the Court.

II. MONETARY RELIEF AND ATTORNEY'S FEES

5. In settlement of this dispute, CATCO shall pay to Tracy Myles the gross sum of One Hundred Thousand Dollars (\$100,000), as set forth in a separate Settlement Agreement signed by Mr. Myles and CATCO.

6. In addition to the sums discussed in Paragraph 5, in settlement of this matter, CATCO will also pay the law firm of Bartlo, Hettler & Weiss a total of Fifty Thousand Dollars (\$50,000) as attorney's fees.

7. CATCO will make the payments required by Paragraphs 5 and 6 within fourteen (14) days after (i) receiving notice of the Court's entry of this Consent Decree and (ii) receiving an executed copy of a separate Settlement Agreement signed by Mr. Myles and CATCO. The payment will be paid in accordance with said Settlement Agreement. CATCO will, at the same time it makes said payments, mail to counsel for the EEOC in the instant lawsuit, by United States Postal Service, certified mail, return receipt requested, copies of the checks and check stubs, which shall show the applicable deductions.

III. OTHER RELIEF

8. As of ten (10) days after the effective date of this Consent Decree, CATCO is enjoined from utilizing word-of-mouth recommendations as part of its hiring process, will only hire employees based on the written criteria set forth in Exhibit A hereto, and will adopt the EEO policy set forth as Exhibit B hereto will become CATCO's EEO Policy.

9. Within ten (10) days following the effective date of this Consent Decree, CATCO agrees to post a remedial Notice in conspicuous places where it posts employment notices for its employees in the form attached as Exhibit C. The notice shall remain posted for the duration of the Decree.

10. CATCO and its managers, officers, agents, successors, or assigns will not discriminate against any individual because of the individual's race, or retaliate against any individual for participating in this matter in any way, for assisting or providing information to the EEOC, or for asserting his or her rights under Title VII.

11. Within three (3) months of the entry of this Decree, CATCO's owners and superintendents shall be required to attend an intensive training program, approved by the EEOC, of at least four (4) hours regarding the equal employment opportunity rights and responsibilities, with a focus on race discrimination, to be conducted by Bond, Schoeneck & King, PLLC. Individuals taking said training will sign a log identifying their names, job title, and date of training; a copy of the log will be provided to the EEOC no later than thirty (30) days after said training.

12. On an annual basis after the completion of the training set forth in Paragraph 11, CATCO's owners and superintendents shall be required to attend an intensive training program

approved by the EEOC of at least two (2) hours regarding equal employment opportunity rights and responsibilities, with a focus on race discrimination, to be conducted by Bond, Schoeneck & King, PLLC. Individuals taking said training will sign a log identifying their names, job title, and date of training; a copy of the log will be provided to the EEOC no later than thirty (30) days after said training.

13. CATCO shall ensure that EEO posters pertaining to laws prohibiting discrimination are posted in accordance with 29 C.F.R. 1601.30.

IV. MISCELLANEOUS PROVISIONS

14. The effective date of this Decree shall be its date of entry as an order of the Court.

15. This Decree shall remain in effect for two (2) years from the date it is signed by the Court.

16. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that CATCO fails to perform the promises and representations contained herein. The Court shall retain jurisdiction over any such enforcement proceedings during the duration of this Consent Decree.

17. Except as otherwise set forth in this Decree, the Parties agree to bear their own attorneys' fees and costs associated with this case.

SO ORDERED, ADJUDGED AND DECREED this _____ day of _____,
2007.

Dated: October 29, 2007

CONCRETE APPLIED CONSTRUCTION
TECHNOLOGIES CORP., d/b/a CATCO
CONSTRUCTION CO.

By: /s/ Michael Salvatore
Michael Salvatore, President

By: /s/ Tracy Myles
Tracy Myles

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

By: /s/ Elizabeth Grossman
Elizabeth Grossman, Regional Attorney

By: /s/ Michael O'Brien
Michael O'Brien, Counsel

EXHIBIT A

HIRING POLICY

CATCO's hiring policy is as follows:

1. In the first instance, the Company will give hiring preference to former employees.
2. The Company may also utilize the union hall to supply its employment needs in accordance with the terms of its collective bargaining agreements.
3. Should the Company decide to hire employees from sources other than those in paragraphs 1 or 2 above, the Company will consider the active applications on file.
4. On or about February 1 and June 1 of each year, the Company will publish an ad in the Buffalo News encouraging skilled craftsmen to apply. The applications will be considered active for ninety (90) calendar days. The Company will provide and accept applications on a continuous basis whether or not openings exist.
5. It is understood that to be considered a qualified applicant, the applicant must be a member in good standing of the craft union for which the applicant is applying.
6. CATCO may request any type of references as part of the application, and use them, or their absence, as part of the hiring process. If the Company uses references it will document them.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

CATCO is an equal employment opportunity employer. It is the policy of the Company to provide employees with a work environment which encourages efficient, productive and creative work. The Company will not tolerate any discrimination, or verbal or physical conduct by any employee or non-employee which harasses, disrupts or interferes with the work performance of other employees or which creates an intimidating, offensive or hostile work environment. This policy applies to all Company employees, including managerial and supervisory employees.

It is the intent of the Company to comply with all applicable laws prohibiting discrimination based on race, color, religion, sex, sexual orientation, age, disability, national origin, marital status, or veteran or military status, or any other characteristic protected by law. Employees are cautioned to consider their behavior and comments from the perspective of anyone who might be offended by them. Any employee who is found after appropriate investigation to have engaged in discrimination or in harassment of any kind of another employee will be subject to appropriate corrective action, up to and including separation of employment.

The Company will make all employment decisions, including but not limited to decisions relating to recruiting, hiring, training, promotions, transfers, wages and benefits, discipline, discharge and layoff, without regard to race, color, religion, sex, sexual orientation, age, disability, national origin, marital status, or veteran or military status, or any other characteristic protected by law. In furtherance of its commitment to equal employment opportunity for all employees and prospective employees, the Company has adopted this Policy.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office

6 Fountain Plaza, Suite 350
Buffalo, NY 14202
National Contact Center: (800) 669-4000
National Contact Center TTY: (800) 669-6820
Buffalo Status Line: (866) 408-8075
Buffalo Direct Dial: (716) 551-4442
TTY (716) 551-5923
FAX (716) 551-4387

NOTICE TO EMPLOYEES OF CATCO CONSTRUCTION CO.

This notice is being posted pursuant to a Consent Decree entered into between CATCO Construction Company and the United States Equal Employment Opportunity Commission (EEOC), in resolution of Case No. 03-CV-670 filed in the Western District of New York. In that lawsuit, the EEOC alleged that CATCO violated Title VII of the Civil Rights Act of 1964, as amended, by not hiring African-Americans as Operating Engineers.

As part of the Consent Decree, CATCO is enjoined from discrimination against any individual because of his or her race in any and all aspects of the employment relationship, such as pay, promotion, assignments, hours, and any other terms, conditions or privileges of employment.

As part of the Consent Decree and as a matter of federal law, CATCO is also prohibited from retaliating against any individual because the individual complains of discrimination by CATCO, cooperates with the government's investigation of a charge of discrimination against CATCO, participates as a witness or potential witness in this or other lawsuits against CATCO, or otherwise exercises his or her rights to object to discrimination by CATCO.

Should you have any complaints of discrimination, you may contact the

Equal Employment Opportunity Commission
6 Fountain Plaza, Suite 350
Buffalo, New York 14202
(800) 669-4000

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

This notice must remain posted until two years from the date of posting and may not be altered, defaced or covered by any other material.