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EEOC v. Houston Fast Foods d/b/a Popeye's

Judge Melinda Harmon

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EEOC v. Houston Fast Foods d/b/a Popeye's

Keywords

EEOC, Houston Fast Foods d/b/a Popeye's, 4:06-cv-03061, Consent Decree, Disparate Treatment, Disparate Impact, Retaliation, Sexual Harassment, Subjective Decision Making, Sex, Hospitality, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

HOUSTON FAST FOODS d/b/a POPEYE'S
Defendant.

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CIVIL ACTION NO. 4:06-cv-
03061

JURY TRIAL DEMANDED

CONSENT DECREE

The Equal Employment Opportunity Commission ("Commission," "Plaintiff" or "EEOC") has alleged that HOUSTON FAST FOODS d/b/a POPEYE'S (hereafter "Defendant") is liable for sex harassment and retaliation, in violation of Title VII of the Civil Rights Act of 1964, and Title I of the Civil Rights Act of 1991 (hereafter "Title VII"). Defendant has answered and denies these allegations.

The parties wish to avoid the risks, uncertainties and expenses of continued litigation. Accordingly, the parties have agreed to settle this lawsuit, as set forth in the Release Agreements and this Consent Decree. The parties agree that this Consent Decree is being entered into for the purpose of compromising disputed claims without the necessity for protracted litigation. This Consent Decree is not an admission of wrongdoing or an adjudication or finding on the merits of the case.

The Commission and the Defendant stipulate to the jurisdiction of the Court and to satisfaction of all administrative prerequisites. The parties further waive hearing and entry

of findings of fact and conclusions of law on all issues.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

This Consent Decree is entered in full and complete settlement of any and all claims arising out of or contained in this lawsuit, Civil Action No. 4:06-cv-03061, and in EEOC Charge Nos. 330-2005-03445 and 330-2006-0972.

AFFIRMATIVE OBLIGATIONS

1. Defendant agrees it will not engage in any employment practices which violate Title VII by discriminating against any employee because of his or her sex in violation of Title VII and/or by unlawfully retaliating against any individual because of his or her complaints of discrimination, or because he or she opposed any practice made an unlawful employment practice by Title VII, or because he or she opposed a practice which he or she reasonably believed to be unlawful under Title VII, or because he or she filed a Charge of Discrimination with the EEOC and/or any local, state or federal fair employment practices agency, or provided testimony or evidence related to this lawsuit or to the investigation of EEOC Charge Nos. 330-2005-03445 or 330-2006-0972.
2. Defendant will assess whether or not it sufficiently investigated and disciplined Anwar J. "James" Iqbal and any other staff implicated in harassing staff, failing to notice harassment or respond to complaints of harassment, and/or attempting to discourage staff from making complaints about perceived harassment and/or retaliation.
3. Defendant will never employ James Iqbal and agrees that no positive job reference

will ever be given for him, and that Defendant will advise any person or organization that seeks any form of recommendation from Defendant concerning Mr. Iqbal's employment record of the following: "Mr. Iqbal was accused of sexual harassment and retaliation against employees he supervised. The EEOC investigated and found the allegations had merit. The EEOC filed a lawsuit against Houston Fast Foods, Inc. based on its findings." Defendant will take appropriate steps, including annotating any relevant corporate records and/or designating a specific person to respond to reference requests on Mr. Iqbal, to facilitate the foregoing. During the effective period of this Decree, Defendant will report to the Commission within ten days thereof any inquiries that have been made to it regarding Mr. Iqbal's employment and its response to said inquiries. This report shall provide the name of the person or entity making the inquiry, the date of the inquiry, the name of the employee of Defendant who responded to the inquiry, and a summary of the information provided to the inquirer.

TRAINING

4. Annually, for three years from the entry of this Decree, Defendant will provide, using either an attorney or an independent experienced training person or group, a training program on employment discrimination, including Title VII, to all of Defendant's managers and supervisors. The training shall include specific instruction regarding sexual harassment, including same-sex sexual harassment, and instruction on avoiding unlawful retaliation against employees who complain about conduct which they believe to be discrimination based on sex or any other

discrimination made unlawful by Title VII. The training shall also include familiarizing trainees with the EEOC website and EEOC guidance regarding sex discrimination and retaliation, including the Youth @ Work initiative. The first training shall be completed no later than January 31, 2007, or within four months from the date the Consent Decree is entered ("effective date"), whichever date is later. The training shall include but not be limited to oral presentations and written materials that summarize a) Commission guidance on retaliation, sex harassment, and youth at work initiatives; b) the holdings of Supreme Court decisions concerning sex harassment and retaliation, noting the impact these decisions have had on 5th circuit case law; the broadened scope of conduct that may be deemed violative of Title VII's anti-retaliatory provisions; c) the terms of this Consent Decree, the allegations of the underlying charges, the findings of the Letters of Determination; d) the adverse consequences for the manager who was accused as the harasser in the instant matter; e) announcing the establishment of specific reporting and investigation protocols for any instance of alleged suspected harassment and/or retaliation, and reiteration of extant protocols unaffected by the new policies; f) reiteration of the supervisory and managerial responsibilities required by the foregoing policies as well as the employment consequences for any supervisory or managerial staff who do not comply with those policies; and g) provision of written materials that make reference to the resources available on the Commission's website.

5. The owners will be advised as to the content of the foregoing training and will be provided with all accompanying written materials and copies of any videotapes made, if they do not attend the training in person.
6. Within ten (10) days after the completion of the training, the EEOC shall be provided with a statement listing the date on which the training was completed; the names and signatures of all attendees, their job titles, the location at which they work; all topics in the training presentation outline that were covered, the schedule of the training event, the names and credentials of the trainers and the plan to assure that all supervisors and managers who did not attend the full training session would attend a subsequent equivalent training event within the next two months. The foregoing requirements are known as the "ten day reporting expectation." Within ten days after each subsequent training event, both for those who did not attend any earlier scheduled event, and for the annual refresher training events, the ten day reporting expectation will be followed. A similar report shall be provided to the Commission regarding the dissemination of the foregoing information to the Defendant's ownership.
7. At Defendant's option, a videotape and the presence of a facilitator may be utilized to provide the subsequent equivalent training but not the subsequent annual training events required by this Decree.

POLICIES AND PROCEDURES

8. Defendant will develop a plan to implement the Youth @ Work Initiative in the

management of its restaurants, the recruitment of staff, and their orientation and training.

9. Consistent with the other provisions of this Decree, Defendant will maintain a written equal employment opportunity policy which sets forth the requirements of federal laws against employment discrimination and specifically those provisions which make sex discrimination, including sexual harassment, unlawful and which make it unlawful to retaliate against any current or former employee because he opposed any practice made unlawful by Title VII, or because he opposed a practice which he reasonably believed to be unlawful under Title VII, or because he filed a Charge of Discrimination with the EEOC or otherwise made a complaint of discrimination. The policy maintained will set forth the concepts embodied by the following statement:

HOUSTON FAST FOODS d/b/a POPEYE'S is firmly committed to developing and maintaining a zero-tolerance policy concerning sex discrimination, sexual harassment and retaliation against individuals who report discrimination or harassment in the company's workplace; to swiftly and firmly respond to any acts of sex discrimination, sexual harassment or retaliation of which the company becomes aware; to implementing discipline that is designed to strongly deter future acts of sex discrimination, sexual harassment or retaliation; to eradicating any vestiges of a work environment that is sexually hostile to individuals; and to actively monitoring its workplace in order to ensure tolerance, respect and dignity for all people and to assuring no retaliation against those who complain of harassment in good faith.

10. Within two months of the effective date of the Consent Decree, Defendant will provide the Commission with its proposed anti-harassment and anti-retaliation procedures (hereafter "harassment and retaliation policies"), its plan for implementing the Commission's youth at work initiative. The plan must address the

Commission's concern that managers not be permitted to discourage the hiring and promotion of female applicants and employees as a consequence of those managers' desire to decrease intergender conflict or otherwise.

11. The Commission will promptly review these policies and the youth at work plan .

12. Defendant will appoint a manager as its liaison to facilitate prompt, frequent and informal contact with Commission staff assigned to assist it in developing a harassment and retaliation policy and youth at work plan acceptable to the Commission. The Commission will not unreasonably withhold its approval of the foregoing policy and plan.

POSTING REQUIREMENT

13. Defendant agrees that within ten days after entry of this Decree it will conspicuously post the attached notice (Exhibit "A") in an area accessible to all employees at each of Defendant's facilities for a period of three years from the date the Decree is signed.

MONITORING

14. Defendant agrees that the EEOC, at its option, and upon reasonable agreed terms, may send up to two representatives (and an intern) of the EEOC to attend any or all training events mandated by this Decree.

15. Defendant agrees that upon reasonable notice from the Commission but not less than three (3) days from said notice, Defendant shall allow the Commission to inspect its premises for compliance with this Decree or because of a complaint from

an employee. The EEOC has the option of whether or not to conduct this annual monitoring inspection of Defendant's premises.

RELIEF

16. Defendant will provide a written apology to Amy Pratt and Christie Ratliff at the same time it provides the checks for the settlement amount payable to each.
17. Defendant agrees to make payments to Amy Pratt, Christie Ratliff and the class of female employees and former employees identified by the Commission as set forth below.
18. The payments to Ms. Pratt, her attorney and Ms. Ratliff shall be made as specified further in the Release Agreements.
 - a) Defendant agrees to pay Amy Pratt the gross amount of \$48,000 (FORTY EIGHT THOUSAND DOLLARS), \$10,000 of which is characterized as wages from which applicable legal deductions will be withheld and which will be reported on IRS form W-2, and the remainder of which is characterized as payment for non-wage compensatory damages, attorney fees, and expenses and will be reported on IRS form 1099. This non-wage portion will be paid in the form of a single check in the amount of \$38,000, payable to Amy Pratt and her attorney Jo Miller, a Professional Legal Corporation. This wage portion will be paid in the form of a single check in the amount of \$10,000, less appropriate deductions, payable to Amy Pratt.
 - b) Defendant agrees to pay Christie Ratliff the gross amount of \$38,000 (THIRTY

EIGHT THOUSAND DOLLARS), \$10,000 of which is characterized as wages from which applicable legal deductions will be withheld and which will be reported on IRS form W-2, and the remainder of which is characterized as payment for non-wage compensatory damages and will be reported on IRS form 1099.

- c) A copy of the checks for these amounts shall be sent concurrently to the Commission at the following address: Equal Employment Opportunity Commission, attention: James Sacher, 1919 Smith Street, 7th Floor, Houston, Texas 77002. Within two weeks of receiving notification that each check has been presented for payment and paid, Defendant shall verify that fact to the EEOC. Additionally, copies of the IRS reporting forms shall be provided to the EEOC when available, but no later than January 31, 2007.

19. Defendant shall provide a settlement fund for the class of females identified by the Commission in the amount of \$40,000 (FORTY THOUSAND DOLLARS). The settlement fund will be disbursed by Defendant as directed by the Commission regarding payees and payment amounts. Payments will be made after claimants execute a Release Agreement. Payments from this fund will be characterized as non-wage compensatory damages and will be reported on IRS form 1099.

20. All qualified claimants are entitled to receive full notification of all terms of the Decree and all protections afforded thereunder to the named charging parties. The determination that a claimant is qualified will be unilaterally made by the

Commission's legal representative and is unreviewable as is the determination regarding what portion of the settlement fund is distributed to each qualified claimant. In the event that a claimant is deemed qualified but for some reason does not accept the proffered settlement, at its discretion, the Commission may instruct Defendant to distribute that claimant or claimant's putative share to the remaining qualified claimant or claimants as per the Commission's instructions.

21. During a preparatory period in which the Commission will review information to further identify current and/or former female employees who were sexually harassed by Mr. Iqbal, at its expense, Defendant will provide personnel and related records at the Commission's request. Though most of these documents will concern potential qualified claimants for the harassment class fund, other documents may be requested as their contents may otherwise facilitate the identification, selection and location of qualified claimants.
22. By opening an escrow account within ten days after the effective date, placing the class settlement funds in its attorney's trust account, or giving other undertakings acceptable to the Commission, Defendant shall assure the payment of these funds during the preparatory period and thereafter.
23. In the event that less than two current or former female employee claimants are declared qualified by the Commission, Defendants may recoup Fifteen Thousand Dollars (\$15,000) of the total settlement fund so long as all such recoupment is donated by Defendant, within one year of recoupment, to a designated charity or

charities deemed acceptable to the Commission's legal representative. Such donation of funds must be accompanied by a written acknowledgment reading: "This donation is the result of Houston Fast Foods, Inc.'s agreement with the United States Equal Employment Opportunity Commission to resolve a lawsuit and is part of the terms of settlement of that lawsuit."

24. Defendant agrees to segregate in separate, confidential folders all documents related to the Charges of Discrimination filed by Ms. Pratt and Ms. Ratliff and the Commission's lawsuit. These documents shall not be part of their respective personnel files. Further, Defendant agrees not to disclose their Charges of Discrimination, the Commission's lawsuit, or this Consent Decree entered in the Commission's lawsuit to any potential employer of either Ms. Pratt or Ms. Ratliff.
25. Defendant agrees to provide prospective employers of Amy Pratt and Christie Ratliff and all other female former or current employees a job reference, upon request, including but not limited to name, dates of employment, last position held, and will state that the fact that no further information is provided does not reflect negatively on the employee or former employee but is consistent with Defendant's policy or practice concerning job references. Defendant understands and agrees that the charging parties are entitled to provide any prospective employers with the letters of apology being provided to them.

PRESS RELEASE

26. An announcement of the settlement embodied in this Decree will be issued.

REPORTING REQUIREMENT

27. Six (6) months from the date of entry of this Decree, eighteen (20) months from the date of entry of this Decree, and again at thirty four (34) months from the date of entry of this Decree, Defendant shall provide to the Houston District Office of the EEOC a report on its efforts to comply with the terms of the Decree and its plan to overcome any impediments to the Decree's full enforcement.
28. The accuracy of the contents of each report required by this Decree must be certified by its author(s), which shall include at least one of Defendant's officers. Each such report shall provide an account of compliance activity, and shall reference such efforts as to each separate paragraph of this Decree. These reports should be directed to the attention of the Regional Attorney, Jim Sacher, or his designee or successor. In the event that the Commission does not provide a written acknowledgement of its receipt of any of the periodic reports, Defendant shall contact the Commission to assure receipt of each such report.

MISCELLANEOUS

29. This Decree shall remain in effect for three years from the effective date.
30. During the period that this Decree shall remain in effect, the Court shall retain jurisdiction to assure compliance with this Consent Decree and to permit entry of such further orders or modifications as may be appropriate. The EEOC is specifically authorized to seek Court-ordered enforcement of this Consent Decree in the event of a breach of any provisions herein but it shall provide Defendant with

notice (addressed to Eve Barrie Masinter, McGlinchey Stafford PLLC, 643 Magazine St. New Orleans, LA 70130 and to Buddy Butler, Houston Fast Foods, Inc., 3343 Metairie Road, #6, Metairie, LA 70001) of any concerns and an opportunity to cure the concern within fifteen days of notice thereof before resorting to the court enforcement remedy. The exceptions to the prior notice undertaking include failure to make payments as set forth herein and/or to provide requested information regarding any transfer in interest or ownership of HOUSTON FAST FOODS d/b/a POPEYE'S.


31. By signing this Consent Decree, the parties agree to not file any appeal seeking to be relieved of any or all of the terms of the Consent Decree.
32. This Consent Decree is final and binding on all parties to this action, including all principals, agents and successors in interest to Defendant, as well as any person acting in concert with them. Defendant has a duty to so notify all such successors in interest of their responsibilities in this regard, and must immediately (but no later than fourteen (14) days) advise the Commission in the event that a successor in interest exists.
33. Nothing in this Consent Decree shall be construed to preclude the Commission from filing a separate action under Title VII or any other statute which the Commission enforces in the future for any alleged violations by Defendant not resolved by this Consent Decree so long as neither of the Charges referenced herein is the jurisdictional basis for that separate suit and so long as the suit allegations do not

arise out of the facts and circumstances surrounding the putative class members brought and resolved by this Consent Decree.

34. Each signatory certifies that he or she is authorized to execute this document on behalf of the party or parties whom he or she represents. This Decree may be signed in Counterparts.

35. Except as provided herein, the parties shall bear their own costs and attorney fees.

Signed this 4th day of October, 2006 at Houston, Texas.


~~David Littner~~ Melinda Harmon
United States District Judge

AGREED, CONSENTED TO AND ENTRY REQUESTED BY:

ATTORNEY FOR PLAINTIFF
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION:

By: s/Aimee McFerren*
Aimee McFerren
Kentucky Bar No. 89912
Southern District No. 36953
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1919 Smith Street, 7th Floor
Houston, Texas 77002-8049
(713) 209-3390
Fax: (713) 209-3402

*signed by permission

ATTORNEY FOR AMY PRATT:

By: s/Jo Miller*
Jo Miller
Texas Bar No. 00791268
Southern District No. 20385
The Parsonage at 505 North Main
Carriage House
Conroe, TX 77301
(936) 539-4400
Fax: (936) 539-4409

* signed by permission

ATTORNEY FOR DEFENDANT:

By: s/Stephanie G. John
Stephanie G. John
State Bar No. 24034506
Federal ID No. 30000
McGlinchey Stafford, PLLC
1001 McKinney, Suite 1500
Houston, Texas 77002
Telephone: 713-520-1900
Facsimile: 713-520-1025

CONSENT DECREE EXHIBIT A



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Houston District Office**

Mickey Leland Federal Building
1919 Smith Street, 7th Floor
Houston, TX 77002-8049
(713) 209-3320
TTY (713) 209-3439
FAX (713) 209-3381

**NOTICE TO THE EMPLOYEES OF
HOUSTON FAST FOODS, INC. d/b/a POPEYE'S CHICKEN**

**THIS NOTICE IS POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE
EEOC AND POPEYE'S REGARDING SEXUAL HARASSMENT AND RETALIATION
IN THE WORK PLACE.**

1. Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's sex, race, color, religion, national origin, age or disability with respect to compensation, hiring or other terms, conditions or privileges of employment.
2. POPEYE'S supports and will comply with such Federal law in all respects and will not take any action against employees because they have exercised their rights under the law by filing charges with the Equal Employment Opportunity Commission (EEOC), providing information to the EEOC, and/or receiving compensation for the settlement of any employment discrimination claim.
3. Sex discrimination, including sexual harassment and retaliation, is expressly prohibited and constitutes an unlawful discriminatory employment practice.
4. POPEYE'S prohibits sex discrimination, including sexual harassment and retaliation, and will not tolerate sex discrimination, sexual harassment or retaliation against any employee who reports discrimination or harassment in the company's workplace.
5. Any employee who believes she has been the target of sex discrimination, sexual harassment and/or retaliation is advised to report this action promptly to _____.

SIGNED this _____ day of _____, 2006.

Title

This OFFICIAL NOTICE shall remain posted for ____ full years from date of signing.