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EEOC v. The Vanguard Group, Inc.

Judge Gene E.K. Pratter

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EEOC v. The Vanguard Group, Inc.

Keywords

EEOC, The Vanguard Group Inc., 04-4126, Consent Decree, Retaliation, Termination, Race, Financial Services, Employment Law, Title VII

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

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION, <i>et al.</i> ,)	
)	
Plaintiff,)	
)	Case No. 04-4126
v.)	
)	
THE VANGUARD GROUP, INC.)	
)	
Defendant.)	

CONSENT DECREE

Introduction

A. This action was instituted by the U.S. Equal Employment Opportunity Commission (“EEOC”) on December 20, 2005, under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct alleged unlawful employment practices on the basis of retaliation and to provide appropriate relief to Intervener Raymond Ross (“Mr. Ross”), who claims he was adversely affected by such practices while employed by Defendant The Vanguard Group, Inc. (“Vanguard”), and to enjoin Vanguard from engaging in retaliation and any other employment practice which discriminates on the basis of retaliation. EEOC alleges that following Mr. Ross’ complaints of race discrimination, Vanguard subjected him to a series of adverse employment actions culminating in his termination. As a result of Vanguard’s alleged retaliatory conduct, Mr. Ross claims to have suffered damages, including wage losses and emotional distress damages. Vanguard denies all of these allegations.

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

C. The EEOC and Vanguard agree to entry of this Consent Decree, which shall fully and finally resolve with prejudice all claims the EEOC raised in its Complaint in Civil Action No. 04-4126. 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 Vanguard of any violation of Title VII.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Retaliation

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Vanguard shall not engage in any employment practices which retaliate in any manner against any person, including but not limited to Mr. Ross, 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 otherwise required by law, Vanguard shall not divulge, directly or indirectly, to any identifiable employer or potential employer of Mr. Ross any of the facts or circumstances related to his claims of discrimination against Vanguard in this case or any of the events relating to the participation of Mr. Ross 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 Vanguard under Title VII or the EEOC's authority to process or litigate any charge of discrimination now pending or filed in the future against Vanguard.

Monetary Relief

5. Within ten (10) business days after Vanguard's receipt of a Settlement Agreement and General Release executed by Mr. Ross ("Ross Agreement") and the Court's entry of an order approving this Consent Decree, Vanguard agrees to pay Mr. Ross monetary relief to be allocated as set forth in the Ross Agreement in the amount of five hundred thousand dollars (\$500,000.00), less all lawful deductions, in full settlement of the claims raised in Civil Action No. 04-4126 against Vanguard. The settlement checks will be mailed to Mr. Ross' counsel Alan Epstein, Esq.,

Seven Penn Center, 1635 Market St., 7th Floor, Philadelphia, PA 19103, and a copy will thereafter be mailed within five (5) business days thereafter to the attention of Terrence R. Cook, Supervisory Trial Attorney, EEOC, 21 South Fifth Street, Suite 400, Philadelphia, PA 19106-2515. In order to receive this monetary relief, Mr. Ross must execute a release satisfactory in form to Vanguard and to Mr. Ross.

Posting of Notice

6. Within twenty (20) business days after entry of this Consent Decree, Vanguard shall post at the location where Mr. Ross last worked at Vanguard's corporate headquarters same-sized copies of the Notice attached as Exhibit 1 to this Consent Decree. The Notice shall remain posted for two (2) years from the date of entry of this Decree. Vanguard shall provide to the attention of Terrence R. Cook, Supervisory Trial Attorney, EEOC, 21 South Fifth Street Suite 400, Philadelphia, PA 19106-2515, the location and date of posting within forty (40) business days after entry of this Consent Decree. If posted copies become defaced, removed, marred or otherwise illegible, Vanguard agrees to post a readable copy in the same manner as heretofore specified.

Non-Discrimination and Non-Retaliation Policies and Complaint Procedures

7. Vanguard's policies against discrimination and retaliation and its related complaint procedures shall be drafted in plain and simple language. Vanguard will ensure that its policies against discrimination and retaliation and its related complaint procedures meet the following minimum criteria:

- (a) state that Vanguard: (i) prohibits discrimination against employees on the basis of race, national origin, sex, religion and color, and prohibits retaliation in violation of Title VII; (ii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of race, national origin, sex, religion or color in violation of

Title VII; and (iii) 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 race, national origin, sex, religion or color in violation of Title VII;

(b) include a complaint procedure designed to encourage employees to come forward with complaints regarding violations of its policies against discrimination and retaliation, which shall meet the following minimum criteria: (i) provide effective mechanism(s) for reporting incidents of discrimination and retaliation; (ii) provide that the complaints of discrimination 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; (iv) encourage prompt reporting by employees; and (v) provide assurances that complainants shall not be subjected to retaliation;

(c) provide for prompt investigation of complaints of discrimination and/or retaliation;

(d) provide for prompt communication to the complaining party of the results of the investigation; and

(e) provide for discipline up to and including discharge of an employee or supervisor who violates Vanguard's policies against discrimination and retaliation.

8. Vanguard shall distribute to all of its newly-hired employees and will make available to its current employees its policies against discrimination and retaliation.

9. Within ninety (90) calendar days after entry of this Consent Decree, Vanguard shall advise Terrence R. Cook, Supervisory Trial Attorney, EEOC's Philadelphia District Office, that its policies against discrimination and retaliation have been made available to current employees and that newly-hired employees will receive these policies and be given an opportunity to acknowledge receipt.

Training

10. Vanguard shall provide training on the requirements of Title VII as follows:
 - (a) Vanguard agrees to provide training for all of its managers and supervisors by a trainer or vendor approved by the EEOC to provide training on employee rights and employer obligations under Title VII. The training will emphasize what constitutes unlawful discrimination and retaliation in the workplace, how to keep the company free from such discrimination and retaliation, and what constitutes unlawful retaliation;
 - (b) Vanguard shall provide training in accordance with Paragraph 10(a) by no later than ninety (90) calendar days after entry of this Consent Decree.
11. In addition to the training described in Paragraph 10, within one hundred and twenty (120) calendar days of the entry of the Consent Decree, Vanguard shall provide training to all Employee Relations employees in its Human Resources Department regarding how to conduct a prompt and effective investigation into allegations, complaints or charges of unlawful discrimination and/or retaliation.
12. Vanguard agrees at its expense to provide the EEOC with one (1) copy of all pamphlets, brochures, outlines or other materials provided to attendees of the training sessions described in Paragraphs 10 and 11.
13. Vanguard shall certify to the EEOC in writing within ninety (90) calendar days after the completion of the training required by Paragraphs 10 and 11 that the training has taken place and shall identify the personnel who attended.

Recordkeeping

14. For a period of two (2) years following entry of this Consent Decree, Vanguard shall document and retain in its Human Resources Department records of each complaint of an incident of unlawful retaliation by any employee, reflecting the date the complaint was made, who made it, what was alleged and the actions, if any, Vanguard took to resolve the matter, and shall at its expense make such records available for inspection and copying by the EEOC.

15. For a period of two (2) years following entry of this Consent Decree, Vanguard shall make all documents or records referred to in Paragraph 14 available for inspection and copying within ten (10) business days after the EEOC so requests.

16. Nothing in this Consent Decree shall be construed to limit any obligation Vanguard 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 Vanguard as required by law and Commission regulations.

Reporting

17. Vanguard shall furnish to the EEOC the following written reports annually for a period of two (2) years following entry of this Consent Decree with the first report due six (6) months after entry of the Consent Decree and the final report due twenty-four (24) months after entry of the Consent Decree. Each such report shall contain:

- (a) a summary of the information recorded by Vanguard pursuant to Paragraph 14.
- (b) a certification by Vanguard that the Notice required to be posted by Paragraph 6 was posted during the six (6) months preceding the report;
- (c) a certification by Vanguard that it has or will distribute the policy or policies against unlawful discrimination and retaliation to employees, and that Vanguard has

disseminated the policy or policies against unlawful discrimination and retaliation to all new employees hired within the six (6)-month period preceding the report; and

(d) a certification that Vanguard has complied with training requirements of this Consent Decree.

Dispute Resolution

18. In the event either party to this Consent Decree believes the other party has failed to comply with any provision(s) of the Consent Decree, the complaining party shall notify the other party of the alleged non-compliance within twenty (20) business days of the alleged non-compliance and afford the alleged non-complying party twenty (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 twenty (20) business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

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

20. The terms of this Consent Decree are and shall be binding upon the present and future representatives, agents, directors, officers, affiliates, successors and assigns of Vanguard in their capacities as representatives, agents, directors and officers of Vanguard 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 Consent Decree.

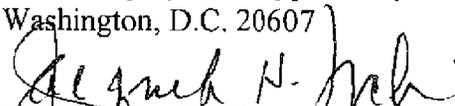
21. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 04-4126.

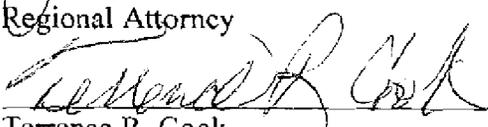
22. This Consent Decree shall be filed in the United States District Court for the Eastern District of Pennsylvania and shall continue in effect for two (2) years. During this time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Consent 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 thirty (30) calendar days' notice to the other party. Should any material disputes under this Consent Decree remain unresolved after this two-year period, the term of the Consent 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.

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

Ronald S. Cooper
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel
Equal Employment Opportunity Commission
Washington, D.C. 20607


Jacqueline H. McNair
Regional Attorney


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Joseph J. Costello, Esquire
MORGAN, LEWIS & BOCKIUS, LLP
1701 Market Street
Philadelphia, PA 19103
*Counsel for Defendant
The Vanguard Group, Inc.*

SO ORDERED:

By the Court: _____
Gene E.K. Pratter, U.S.D.J.

Date: _____

EXHIBIT 1

NOTICE TO ALL EMPLOYEES OF THE VANGUARD GROUP, INC.,

This Notice is posted pursuant to a Consent Decree entered by the federal court for the Eastern District of Pennsylvania in EEOC v. The Vanguard Group, Inc. of Pennsylvania, LLC, Civil Action Number 04-4126, resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against The Vanguard Group, Inc. ("Vanguard")

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 race, national origin, sex, 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.

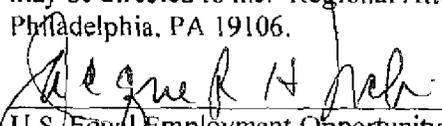
In its lawsuit, the EEOC alleged that Vanguard terminated an employee in retaliation for his complaint of discrimination, in violation of Title VII.

To resolve the case, Vanguard and the EEOC have entered into a Consent Decree which provided, among other things, that: (1) Vanguard pay monetary relief to the aggrieved individual; (2) Vanguard shall not discriminate on the basis of retaliation in the future; (3) Vanguard shall 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) Vanguard will train all managers, supervisors, and employees regarding discrimination and retaliation, and regarding its policy prohibiting discrimination and retaliation.

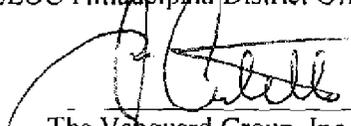
If you believe you have been discriminated against, you may contact the EEOC at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.

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

This Notice must remain posted for two (2) 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, 21 South 5th Street, Philadelphia, PA 19106.


U.S. Equal Employment Opportunity
Commission

DATED: _____


The Vanguard Group, Inc.

DATED: 2/28/08