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EEOC and Charles Hickman v. Commercial Coating Services, Inc.

Judge Keith P. Ellison

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EEOC and Charles Hickman v. Commercial Coating Services, Inc.

Keywords

EEOC, Charles Hickman, Commercial Coating Services, Inc., H-03-3894, Consent Decree, Hostile Work Environment, Constructive Discharge, Race, African American or Black, Manufacturing, Employment Law, Title VII

this action should be finally resolved by entry of this Consent Decree.

The parties stipulate to the jurisdiction of the Court and waive a hearing and the entry of findings of fact and conclusions of law.

This Consent Decree is entered in full and complete settlement of any and all claims arising out of or contained in EEOC Charge No. 330-A3-00614, and Civil Action No. H-03-3984. The Consent Decree constitutes a complete resolution of all claims that were made or could have been made by the Commission against Defendant in this action.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

INJUNCTIVE RELIEF

1. Defendant Commercial Coating Service, Inc. ("Defendant"), and all persons acting in concert with it are permanently enjoined from engaging in race discrimination under Title VII.
2. Defendant is permanently enjoined from making employment decisions on the basis of race.
3. Defendant is permanently enjoined from discriminating against and/or harassing any employee on the basis of race.
4. Defendant is permanently enjoined from engaging in or being a party to any action, policy or practice that has the effect of harassing or intimidating any employee on the basis of race.
5. Defendant is permanently enjoined from creating, facilitating or permitting the existence of a work environment that is hostile to any employee through acts such as physical and/or verbal abuse and derogatory comments, on the basis of race.
6. Defendant is permanently enjoined from discriminating or retaliating in any manner against any individual because he or she has made a charge, testified, assisted, or participated in any manner in the investigation by the Commission or court proceeding in connection with this case.

7. Defendant is permanently enjoined from revealing any information about Charles Hickman to any third parties who are potential employers, potential customers, or other individuals who could facilitate or influence employment opportunities, except for the date of hire, separation, job title, compensation and a recommendation letter that shall honestly detail Mr. Hickman's work performance and his work ethic. A copy of any recommendation letter shall be sent to the EEOC within fourteen (14) days of its creation. Defendant shall not reference Mr. Hickman's charge of discrimination, this lawsuit or this Consent Decree. Defendant shall report compliance under this section.

8. Defendant shall segregate all documents related to charges of discrimination filed by Charles Hickman and the Commission's lawsuit in separate confidential folders. These documents shall not be a part of Mr. Hickman's personnel file. Defendant shall report compliance under this section.

9. Defendant shall discipline the supervisors and foremen who were aware of or who allegedly perpetrated race discrimination against Charles Hickman and who failed to take effective corrective action. Defendant shall report compliance under this section.

10. Defendant shall not hire or offer employment to John Wrublewski, Nathan Hutchinson, Oscar Badillo or Adolfo Romo. Defendant shall report compliance under this section.

11. John Wrublewski, Nathan Hutchinson, Oscar Badillo or Adolfo Romo not be allowed to remain on Defendant's premises. Defendant shall report compliance under this section.

12. Defendant shall not provide any information about John Wrublewski, Nathan Hutchinson, Oscar Badillo or Adolfo Romo to prospective employers other than dates of hire, separation, job title and compensation. Within fourteen (14) days of the execution of this Consent Decree, Defendant shall create and forward to the EEOC a written statement that Defendant shall

use in responding to any inquiry by prospective employers. Defendant shall report compliance under this section.

13. In the event of a subpoena or a request to provide testimony, the Company in its official capacity shall give truthful testimony to a parole board reviewing John Wrublewski's application. In that event, the Company will cause a manager, supervisor or foreman to give truthful testimony to a parole board reviewing an application filed by Wrublewski. In the event that any employee of Defendant's gives any testimony to a parole board reviewing an application by Mr. Wrublewski, Defendant shall notify the Commission within ten (10) days of learning of the impending testimony. Defendant shall report compliance under this section.

14. Defendant shall inform the EEOC within ten (10) days of any inquiry made by any law enforcement agency regarding John Wrublewski and/or Nathan Hutchinson. Defendant shall report compliance under this section.

15. Defendant shall make good faith efforts to recruit qualified black applicants. Defendant shall produce to the EEOC, annually, its racial breakdown of current employees and date of hire. Defendant shall report how it improved its recruitment of black applicants.

RELIEF

16. Defendant has settled all claims made by Charles Hickman by and through the Settlement Agreement and Mutual Release of all Claims and has paid or will pay \$1,000,000.00 as referenced therein.

17. Defendant's President or Chief Executive Officer shall make a written apology to Charles Hickman within fourteen (14) days of the entry of this Decree. Defendant shall report compliance under this section.

18. Defendant shall notify all its supervisors and managers of the terms of this Decree

and of any settlement between Defendant and Charles Hickman. The Company shall not disparage the settlements or Decree.

COMPLAINT PROCEDURES

19. Complaint Procedures. Defendant shall maintain a complaint procedure that is designed to encourage employees to come forward with complaints regarding race discrimination (including racial or race harassment) and retaliation regardless of the position held by the alleged harasser. Defendant's complaint procedure shall provide the following: (i) simple, convenient, confidential and reliable mechanisms for reporting incidents of race discrimination; (ii) prompt investigation of complaints of race discrimination and/or retaliation; (iii) written findings of the results of any investigation of a discrimination complaint and the remedial actions proposed, if any; (iv) an effective means of promptly communicating to the complaining party, in writing, the results of the investigation and the remedial actions taken or proposed, or not taken; (v) appropriate remedial action to resolve the complaint and to deter future incidents of race discrimination and/or retaliation; (vi) assurances that complainants shall not be subjected to intimidation, harassment and/or retaliation; and (vii) the name and telephone number of the EEOC's District Office. Defendant shall report compliance under this section.

20. Defendant shall forward all verbal and/or written complaints of race discrimination and retaliation complaints to the Commission within five (5) to seven (7) business days of receiving them. Defendant shall report compliance under this section.

RACIAL HARASSMENT POLICY

21. Harassment Policy. Within ninety (90) days from the entry of this Decree, Defendant shall adopt a race harassment policy that meets the following criteria:
States that Defendant: (i) prohibits discrimination against any employee on the basis of race 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 in violation of Title VII; (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 any employee through acts such as physical and/or verbal abuse and derogatory comments based on race in violation of Title VII; (iv) defines and provides examples of race harassment; (v) provides for prompt investigation of race harassment complaints and for prompt action, which is appropriate and effective, to remedy the discrimination; (vi) imposes a duty on all Defendant's officers, managers, and supervisory personnel to actively monitor all work areas to ensure compliance with Defendant's race harassment policy; (vii) encourages all Defendant employees to report any incident and/or complaint of race harassment of which they become aware to the person(s) responsible for handling such complaints; (viii) provides that upon the conclusion of Defendant's investigation, the results of the investigation and the remedial actions taken or proposed will be promptly communicated in writing to the complaining party; (ix) provides for substantial and progressive discipline for violating Defendant's race harassment policy up to and including discharge; (x) requires that all employees report incidents of race harassment to the person(s) identified by Defendant to be the person(s) charged with the responsibility for investigating discrimination complaints; and (xi) provides that Defendant's race harassment policy and complaint procedures be drafted in plain and simple English and Spanish.

TRAINING

22. Defendant shall provide live, in-person Equal Employment Opportunity ("EEO") training to its managers and employees regarding employment discrimination, including, but not limited to the illegality of race harassment, race-based employment decisions and retaliation. All participants shall be required to sign a registry upon completion of the training. The training shall

be conducted within ninety (90) days of the entry of this Decree, and shall be conducted annually at or near the anniversary of the first session. The training shall be videotaped while it is being conducted. The training shall be conducted in English and in Spanish.

23. The training portion on race harassment shall (i) explain that race harassment is unlawful; (ii) instruct what conduct may constitute race harassment; (iii) explain the damaging effects of race harassment on its victims, their families, their co-workers, and the workplace environment; (iv) ensure that Defendant knows how to enforce its race harassment policy; (v); acknowledge that the noose conduct was illegal and warn that anything approaching similar conduct will lead to automatic suspension without pay of the accused, likely termination and referral of assailant for criminal assault; and (vi) acknowledge the full terms of this Consent Decree.

24. Defendant shall notify the Commission about each training session prior to its commencement. The notice shall indicate the time, place and date of the training. The EEOC shall have the right to attend the training sessions and shall send no more than three (3) representatives to each training session.

25. The agenda, the teaching materials and the name of the trainer shall be submitted to the EEOC for approval prior to the training. EEOC shall then have fourteen (14) business days from the date of receipt of the information to accept or reject the contents of the topic outline. In the event that EEOC does not approve Defendant's materials or trainer, Defendant shall have ten (10) business days to submit a revised outline and in such an event the Defendant's ninety (90) day deadline for conducting the training will commence from the date of approval by the EEOC.

26. Following the training, Defendant shall notify the EEOC of the training by indicating when and where the training took place, the duration of the training, and the identity of the trainers and the attendees. A copy of the registry and videotape shall be submitted to the EEOC as part of

Defendant's reporting obligations. Reports of the training shall be submitted to the EEOC no more than fourteen (14) days following the training. The notification or report shall be submitted to the EEOC at the following address: Rudy L. Sustaita, EEOC Houston District Office, 7th Floor, Houston, Texas 77002.

POSTING REQUIREMENT

27. Within fourteen (14) business days after entry of this Decree, Defendant shall post copies of the Notice attached as Exhibit "A" to this Decree at all its Houston facilities in conspicuous locations easily accessible to and commonly frequented by employees. The Notice shall remain posted for the duration of this Decree. Defendant shall ensure that the postings are not altered, defaced or covered by any other material. Defendant shall certify to the EEOC in writing within Fourteen (14) business days after entry of the Decree that the Notices have been properly posted. Defendant shall permit a representative of EEOC to enter its premises for purposes of verifying compliance with this Paragraph at any time during normal business hours.

RECORD KEEPING

28. During the term of this Decree, Defendant shall maintain records (including name, sex, age, social security number, address and telephone number) of each person who is currently employed with Defendant and those who are hired by Defendant for any duration of time during this Consent Decree. The EEOC may contact any current employee of Defendant who has made a complaint of discrimination against Defendant or any employee, officer, or owner of Defendant, or if a current employee is a potential witness who is necessary for the investigation of a claim of discrimination that has been made by another Defendant employee against Defendant, officer, employee, director or owner of Defendant. The word "complaint" shall mean a formal or informal, oral or written complaint of discrimination. However, nothing shall prohibit the EEOC from

communicating with a current employee who has initiated contact with the EEOC.

29. During the term of this Decree, Defendant shall maintain records (including name, sex, age, social security number, address and telephone number) of each person who complains, either orally or in writing, of race discrimination. Additionally, Defendant shall maintain records of the investigation and resolution of each complaint.

30. During the term of this Decree, Defendant shall provide to the EEOC, at Defendant's expense, copies of complaints and documents relating to complaints filed or made pursuant to investigations, findings, and remedial actions undertaken by Defendant as described in Paragraphs 21, 22, and 23.

31. Nothing contained in this Decree shall be construed to limit any obligation Defendant may otherwise have to maintain records under Title VII or any other law or regulation.

REPORTING

32. Defendant shall furnish to EEOC the following written reports semiannually for the term of this Decree. The first report shall be due six (6) months after entry of the Decree. All subsequent reports shall be due in six month intervals. The final report shall be due one month before the expiration of the Decree. Each report shall contain:

- (a) Information gathered pursuant to paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 28, 29 and 30;
- (b) Copies of all complaints and documents relating to complaints filed or made pursuant to Paragraphs 19, 20 and 21;
- (c) All written findings relating to the complaint and investigation and remedial actions proposed pursuant to Paragraphs 19, 20 and 21;
- (d) All documents relating to resolution of the complaints and any remedial

actions taken, if any, under Paragraphs 19, 20 and 21;

- (e) A certification by Defendant that the Notice required in Paragraph 27 remain posted during the entire term of this Decree;
- (f) A certification that the terms of the following Paragraphs are being complied with and have been complied with: 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33 and 34;
- (g) Full copies of the revised policies as described in Paragraphs 19, 21, 22, 23 and 25;

33. During the term of this Consent Decree, Defendant shall provide all employees hired after the entry of this Decree with a copy of Defendant's policies and complaint procedures concerning race harassment.

LIAISON

34. Within thirty (30) days of the entry of this Decree, Defendant shall name a Liaison with whom the Commission can communicate regarding compliance with this Decree. Defendant shall provide the Liaison's name, title (if applicable) work address, and work telephone number. The Liaison shall be responsible for making reports under this Decree and for communicating with the Commission regarding compliance with each term of this Decree.

PERIODIC INSPECTIONS

35. 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. The Commission shall inspect Defendant's premises four (4) times during a calendar year for the duration of this Decree. The Commission may also inspect the premises because of a complaint by an employee.

MISCELLANEOUS PROVISIONS

36. Defendant shall bear the cost associated with administering and implementing the provisions of this Decree.


37. The EEOC, and Defendant shall bear their own cost and attorney's fees.

38. 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.

39. Within thirty (30) days of signing this Decree, Defendant shall either plant or designate a tree on its property in Conroe, Texas in honor of Charles Hickman's employment, in accordance with the Settlement Agreement and Mutual Release of All Claims.

40. The provisions of this Consent Decree shall remain in effect for four (4) years from its entry.


SO ORDERED AND ENTERED this 20th day of March, 2006 at
Houston, Texas.



KEITH P. ELLISON
United States District Judge

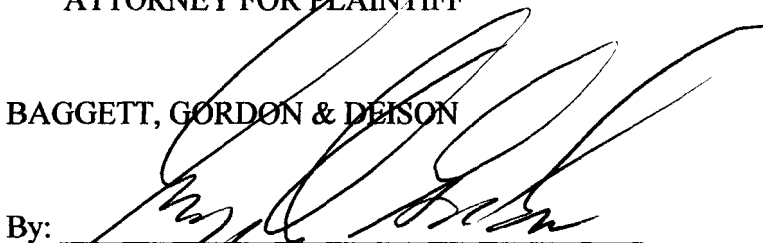
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Equal Employment Opportunity is

THE LAW

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under the following Federal authorities:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

VIETNAM ERA, SPECIAL DISABLED, RECENTLY SEPARATED, AND OTHER PROTECTED VETERANS

38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans, qualified special disabled veterans, recently separated veterans, and other protected veterans.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or call (202) 693-0101, or an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Private Employment, State and Local Governments, Educational Institutions

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under the following Federal laws:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

DISABILITY

The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended (see above), the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of these Federal laws.

If you believe that you have been discriminated against under any of the above laws, you should contact immediately:

The U.S. Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 or an EEOC field office by calling toll free (800) 669-4000. For individuals with hearing impairments, EEOC's toll free TDD number is (800) 669-6820

Programs or Activities Receiving Federal Financial Assistance

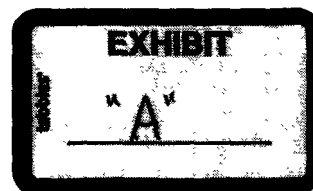
RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX

In addition to the protection of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal assistance.

INDIVIDUALS WITH DISABILITIES

Sections 501, 504 and 505 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance in the federal government. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

If you believe you have been discriminated against in a program of any institution which receives Federal assistance, you should contact immediately the Federal agency providing such assistance.



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