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EEOC v. The Plaza Hotel, Inc.

Keywords

EEOC, The Plaza Hotel, Inc., 03 CV 7680 (LTS), Consent Decree, National Origin, Religion, Service, Employment Law, Title VII

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

-----X
**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

03 CV 7680 (LTS)

Plaintiff,

-against-

**PLAZA OPERATING PARTNERS LTD dba
THE PLAZA HOTEL,
FAIRMONT HOTELS AND RESORTS, INC.,
and FAIRMONT HOTEL MANAGEMENT LP,**

Defendants.

-----X
**TULUN AHMED, MOHAMMED ALAM, MUSA
CHODHURY, EMDADUR CHOWDHURY,
SHAMSUL CHOWDHURY, ABDEL EL BETTAL, ADEL
FATHELBAB, EHSAN KHAN, MOHAMMAD MAMUN,
and MOHAB SAYED,**

Plaintiffs,

-against-

**THE PLAZA HOTEL and FAIRMONT HOTELS AND
RESORTS, INC.,**

Defendants.

-----X
CONSENT DECREE

This cause of action was initiated on September 30, 2003, by the Equal Employment Opportunity Commission (hereinafter "EEOC"), an agency of the United States Government, alleging that Defendants Plaza Operating Partners, LTD d/b/a/ The Plaza Hotel, ("Plaza") Fairmont Hotels & Resorts, Inc. ("FHRI") and Fairmont Hotel Management LP ("FHMLP") (hereinafter collectively, "Defendants") violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 in that they engaged in harassment against a group of

employees on the basis of religion, Muslim, and/or national origin, Arab or South Asian. EEOC resolves this action on behalf of a class of thirteen individual employees (hereinafter the “claimants”).

Defendants deny the allegations brought by EEOC and make no admissions of liability by entering into this Consent Decree. Defendants additionally deny that the claimants were employees of FHMLP or FHRI at any time or that Defendants, FHMLP or FHRI are employers within the meaning of Title VII. This Decree does not constitute a waiver of any of Defendants’ jurisdictional defenses. Defendants reaffirm their commitment to comply with all laws prohibiting discrimination and harassment.

EEOC and Defendants agree that it is in their mutual interest to fully resolve the matter without further litigation.

EEOC and Defendants do hereby stipulate and consent to the entry of this Decree as final and binding between the parties signatory hereto and their assigns or successors.

This Decree resolves all matters raised in the EEOC Complaint filed herein. The Decree in no way affects EEOC’s rights to process any future charges that may be filed against Defendants, and to commence civil actions on any such charges.

The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Decree resolves all of the issues raised by the EEOC Complaint and the

following EEOC Charges: Ehsan Khan, 160A201147; Musa Choudhury, 160A201148; Mohab Sayed, 160A201149; Mohammed Alam, 160A201150; Shamsul Chowdhury, 160A201151; Emdadur Chowdhury, 160A201152; Adel Fathelbab, 160A201153; Mohammad Mamun, 160A201154; Abdel El Bettal, 160A300485; Mohammad Azad 160200403049; and Waheed Gill, 160200400083. This Decree also resolves EEOC's claims on behalf of Azmal Khan raised in the EEOC Complaint.

2. EEOC will provide Tulun Ahmed, Charge No.160A300486, with a Notice of Right to Sue. This Decree resolves EEOC's claims on behalf of Tulun Ahmed raised in the EEOC Complaint.

3. The parties agree that the federal court has jurisdiction to enforce this Decree. The parties agree that they will not contest jurisdiction to enforce this Decree on any grounds, including subject matter jurisdiction, venue, or failing to meet administrative prerequisites. Any party may bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Parties will provide seven (7) business days written notice of breach so that the party alleged to have breached may have an opportunity to cure before bringing an enforcement suit. Such notice will be faxed to Fairmont's Vice President of Human Resources at 416-874-2752 and Vice President of Law at 416-874-2853. If EEOC believes it will be prejudiced, in light of its obligations to litigate in the public interest, by having to provide the notice and/or wait seven (7) business days, it may apply directly to the Court for relief. Nothing in this Decree shall be construed to preclude EEOC from bringing proceedings to enforce this Decree in the event that Defendants fail to perform any of the respective promises and representations contained herein.

4. In settlement of this dispute, a total of \$525,000 will be paid to the claimants, except for Tulun Ahmed, by Defendant, Plaza Operating Partners Ltd. on behalf of all the

Defendants within fourteen (14) days of the entry of the Decree. Claimants will be provided with a 1099 tax form reflecting the appropriate amounts. EEOC will be provided with documentation of the payments made to resolve this matter within three (3) days of payment.

5. EEOC has reviewed the Discrimination and Harassment Prevention Policy and Procedure (“the Policy”) which is in effect at the fourteen hotels (the “Hotels”), managed by FHMLP or its affiliated hotel management companies in the United States listed in Exhibit B (collectively “Fairmont”) and has compiled a Summary of the Policy (“the Summary”). See Summary attached as Exhibit A. See list of Hotels and Affiliated Hotel Management Company attached as Exhibit B. This Summary will be translated into languages other than English by the Hotel’s Human Resources Office upon request of employees. This Summary will also be implemented at the Plaza Hotel when it re-opens should Fairmont be providing its management services. The Summary includes: (a) a clear explanation of prohibited conduct; (b) the assurance that employees who make complaints of discrimination or provide information related to such complaints will not be retaliated against; (c) a clearly described complaint process that provides accessible avenues of complaint; (d) the assurance that Fairmont will accept any and all complaints from employees who wish to file internal complaints; (e) the assurance that Fairmont will protect the confidentiality of complaints to the extent possible; (f) a complaint process that provides a prompt, thorough, and impartial investigation; (g) the assurance that Fairmont will take immediate and appropriate corrective action when it determines that discrimination has occurred; and (h) an assurance that Fairmont will inform complainants of the outcome of investigations within a reasonable amount of time. This Summary will be distributed to all of Fairmont’s employees and to the employees of the Hotels within thirty (30) days of the entry of the Decree.

6. Fairmont will also include the Policy in management and employee handbooks produced for distribution at the Hotels.

7. Fairmont will provide training regarding the Policy for all management and non-management employees who are employed at the Hotels.

A. Fairmont has arranged for outside consultant, Paul Pearce, from Key Learning Group or such other outside consultant as Fairmont may retain upon notice to and approval from EEOC, which will not be unreasonably withheld, to provide a three (3) day training workshop for its Human Resources Staff that conduct harassment and discrimination training at the Hotels who have not already been trained within ninety business days (90) of the entry of the Decree. Fairmont will document training by providing an annual summary of the dates and locations of such training to EEOC before September 30th of each year of the Decree to EEOC at the following address: EEOC, Legal Unit, Attn: Sunu P. Chandy, 33 Whitehall Street, 5th Floor, New York, New York 10004.

B. The Human Resources Staff that conduct harassment and discrimination training (“Trainer”) at each Hotel will provide no fewer than eight (8) hours of training in the Policy for all of its Managers and Supervisors. A training session shall take place within ninety (90) days of the entry of the Decree for any Manager or Supervisor at the Hotels who has not received training within the past two (2) years. Additional training shall take place at two year intervals for the duration of the Decree. Within ninety (90) days of their hire, all Managers and Supervisors at the Hotels who missed the bi-annual training shall be trained for a minimum of eight (8) hours by the Trainer at the hotel. Fairmont will document training by providing an annual summary of the dates and locations of such training to EEOC before September 30th of each year of the Decree to EEOC at the following address: EEOC, Legal Unit, Attn: Sunu P.

Chandy, 33 Whitehall Street, 5th Floor, New York, New York 10004.

C. The Trainer at each Hotel will provide no fewer than four (4) hours of training in the Policy for all of its non-managerial employees every two years during the duration of the Decree. Fairmont will document training by providing an annual summary of the dates and locations of such training to EEOC before September 30th of each year of the Decree to EEOC at the following address: EEOC, Legal Unit, Attn: Sunu P. Chandy, 33 Whitehall Street, 5th Floor, New York, New York 10004.

D. As part of their initial orientation, Fairmont will provide new employees of the Hotels with a copy of the Policy and the Summary. A representative of Fairmont's management will spend a minimum of thirty (30) minutes reviewing the Policy with the new employee and document this meeting for the individual's personnel file.

E. Should the Plaza Hotel reopen and should Fairmont be providing the human resources management services for this Hotel, Fairmont agrees that an outside consultant approved by EEOC will provide eight (8) hours of training for all Managers and Supervisors and four (4) hours of training for all employees no later than the first ninety (90) days of operation. Fairmont will document this training by providing a letter with the date and time of these trainings to EEOC within five (5) days of the last training to: EEOC, Legal Unit, Attn: Sunu P. Chandy, 33 Whitehall Street, 5th Floor, New York, New York 10004.

8. Within ten (10) days of the entry of this Decree, Fairmont will post the Summary and the "Notice to Employees." See Notice attached as Exhibit C. The Summary and the Notice will be posted on the employee bulletin board at each of the Hotels.

9. The obligations of Fairmont herein shall apply only to the Hotels if they are managed by Fairmont.

10. Defendants will not discriminate against any employee (as defined by Title VII) because of her or his national origin or religion.

11. Defendants will not retaliate against any employee (as defined by Title VII) for asserting her or his rights under federal employment discrimination laws. Defendants are enjoined from retaliating against any individual who has participated in this matter in any regard. Should the Plaza Hotel reopen and should Fairmont be providing the human resources management services for this Hotel, Fairmont will comply with the terms of any collectively bargained agreement with the New York Trades Council, AFL-CIO governing rehire.

12. Each party shall bear its own attorneys fees and costs incurred in this action.

13. This Decree satisfies all obligations under Magistrate Judge Maas' February 7, 2005 Memorandum Decision and February 14, 2005 Ruling and resolves EEOC's pending appeal of portions of this Decision before this Court.

14. This Decree constitutes the complete understanding among the parties to this Decree. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.

15. This Decree will remain in effect for three (3) years from the date of entry.

FOR PLAINTIFF EEOC

Dated: _____

Elizabeth Grossman, Acting Regional Attorney

Sunu P. Chandy, Senior Trial Attorney
33 Whitehall Street, 5th Floor
New York, New York 10004
Phone 212-336-3706

Fax 212-336-3623

FOR DEFENDANTS

Dated: _____

For Defendant Plaza Operating Partners, Ltd.

New Plaza Associates Liquidating Trust as liquidating trust to New Plaza Associates, L.L.C., successor by merger to Plaza Operating Partners, Ltd.

By: Paul Underhill, President, CDL Hotels USA, Inc., member

Dated: _____

For Defendant Fairmont Hotel and Management LP

Dated: _____

For Defendant Fairmont Hotel & Resorts, Inc.

SO ORDERED, ADJUDGED, AND DECREED,

Signed this ____ day of _____, 2005

Hon. Laura Taylor Swain

EXHIBIT A

FAIRMONT HOTELS & RESORTS DISCRIMINATION AND HARASSMENT PREVENTION POLICY & PROCEDURES

Fairmont Hotels & Resorts is committed to providing and maintaining a workplace that is free from discrimination and harassment, where employees are accorded equality of employment opportunity based on merit and ability. Fairmont Hotels & Resorts will not tolerate discrimination or harassment of its employees, nor will it accept casual or unfair handling of harassment complaints. Fairmont Hotels & Resorts will take whatever actions it considers necessary to provide an environment free of unlawful discrimination and harassment.

Each employee has the right to work in an environment that is free from harassment and discrimination based on race, ancestry, place of origin, color, ethnic origin, citizenship, religion, sex, sexual orientation, age, record of offenses, marital status, family status, pregnancy, disability or any other ground listed in legislation (called "prohibited grounds").

This policy covers interactions between employees, managers and employees, employees and guests, and employees and contractors. (Others covered would include family and friends of Fairmont employees attending work-related functions.)

Discrimination is defined as the denial of equal treatment in employment because of a prohibited ground under legislation.

Harassment is defined as any course of conduct, comment or gesture relating to a person's race, age, disability or other prohibited ground, that is known, or ought reasonably to be known, to be unwelcome, or that is likely to cause offence or humiliation to any employee.

Poisoned/Hostile Work Environment is defined as a work environment that is "poisoned" or negatively affected by discriminatory or harassing conduct, even if not directed at a specific individual.

Condonation is defined as a course of behaviour where a manager or supervisor has become aware that discrimination or harassment may be occurring and he/she does not demonstrate due diligence in taking the necessary actions to stop it.

Sexual Harassment is defined as any course of conduct, comment, gesture or contact based on sex that is known, or ought reasonably to be known, to be unwelcome, or that is likely to cause offence or humiliation to any employee. Sexual Harassment may also involve "quid pro quo" situations – where a person in a position of authority solicits sexual activity and the solicitation is known, or ought reasonably to be known, to be unwelcome, or where the person in authority threatens retaliation if the other person refuses the sexual solicitation, or it becomes a basis for employment decisions, or interferes with an employee's work performance. Fairmont Hotels & Resorts will not accept behaviour that could in any manner be classified as sexual harassment, and will make every reasonable effort to ensure that no one, male or female, is subject to sexual harassment.

Complaint Procedures

If an employee is comfortable and believes it would help, he/she should approach the offending individual, and let the individual know that the comments or conduct are unwelcome or offensive. Sometimes individuals don't recognize the impact of what they are doing and when they are made aware, they stop.

Any employee who believes that he/she have been subject to discrimination or harassment should bring the complaint to any Manager, to his or her Director of Human Resources, to The Ethics Hotline at 888-837-9605 or to Corporate Human Resources at 416-874-2641.

Anti-Retaliation Provision

Any retaliation, threat of reprisal, or actual reprisal because someone refused to participate in an act of unlawful discrimination or harassment, submitted a complaint, cooperated in an investigation of unlawful discrimination or harassment, or any other activity protected by law is unacceptable and grounds for disciplinary action.

Manager and Supervisor Responsibilities

Management is responsible for ensuring that the work environment is free from discrimination and harassment by:

- a. Posting this policy in an area accessible by all employees and communicating this policy at orientation and annually thereafter.
- b. Responding appropriately and efficiently to any known incidents of discrimination or harassment.
- c. Communicating incidents of discrimination or harassment immediately to the Director of Human Resources, General Manager or Corporate Human Resources at 416-874-2641; Failure to take such action amounts to condonation of the behaviour.
- d. Ensuring that the work environment is free of printed material and other prohibited materials or behaviours, which could be discriminatory or harassing.
- e. Assuring employees who complain of discrimination or harassment that they will not face retaliation, meaning that their employment will not be affected in any way, as a consequence of their complaint and that bringing forth complaints is important to ensure a respectful and productive workplace.
- f. Conveying that a charge of discrimination or harassment is very serious and will be dealt with accordingly.
- g. Role modeling Fairmont Values and the employee responsibilities listed below.
- h. Respecting the confidential nature of any discrimination or harassment investigation.

Employees' Responsibilities

Employees are responsible for helping to ensure every employee's right to a work environment free from discrimination and harassment by:

- a. Behaving in a professional manner and treating others with respect by refusing to participate in or tolerate discrimination or harassment.
- b. Reporting known or observed incidents of discrimination or harassment and supporting colleagues who report incidents of discrimination or harassment.
- c. Respecting the confidential nature of any discrimination or harassment investigation.

Investigation Process

Upon receiving a complaint, the Director of Human Resources will interview the complainant, the person alleged to have discriminated or harassed and any witnesses who may establish the facts of the case. All relevant facts should be documented accurately and completely in a fair and unbiased manner. In the event that any of the employees involved in the complaint are bound by a collective bargaining agreement, any investigation procedures of the collective agreement must be followed, to the extent applicable in a given case.

A decision on any action to be taken should be rendered in a reasonably timely manner. The complainant and the person alleged to have discriminated or harassed, should be kept apprised of the progress of the investigation. Under no circumstances may the name of the complainant or the circumstances related to the complaint be disclosed to any person except where the disclosure is necessary for the purpose of investigating the complaint or taking disciplinary action.

Disciplinary Action

Discrimination and Harassment of any form, and condonation of such actions, is a serious offense subject to a wide range of disciplinary sanctions, up to and including discharge, and will be treated accordingly by management. The appropriate disciplinary action for any discrimination or harassment should be determined individually and should be exercised with due regard for the specific circumstances. Discipline could range from a verbal warning to dismissal. Disciplinary action should only be taken after all relevant information has been properly presented to the employee being disciplined, and the individual has been given the opportunity to respond to all of the allegations against him or her. In the event that disciplinary action is recommended with respect to the resolution of a complaint, the General Manager must approve such disciplinary action. Any such written discipline will be recorded in the employee's personnel file.

*** Please note that translation of this Policy into languages other than English is available upon request from the Hotel's Human Resources Office.***

Exhibit B

**Hotels Managed by FHMLP or Its Affiliated Hotel Management
Companies in the United States**

<u>Hotel</u>	<u>Operator</u>
The Fairmont Chicago	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont Copley Plaza Boston	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont Dallas	Fairmont Hotel Management L.P.
The Fairmont Kansas City at the Plaza	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont Kea Lani Maui	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont Miramar Hotel, Santa Monica	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont New Orleans	Fairmont Hotel Management, L.P.
The Fairmont Olympic Hotel, Seattle	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont Orchid, Hawaii	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont San Francisco	Fairmont Hotel Management, L.P.
The Fairmont San Jose	Fairmont Hotel Management, L.P.
The Fairmont Sonoma Mission Inn & Spa	Fairmont Hotels & Resorts (U.S.), Inc.
The Fairmont Turnberry Isle Resort & Club	FHR TB LLC
The Fairmont Washington, D.C.	Fairmont Hotels & Resorts (U.S.), Inc.

EXHIBIT C

NOTICE TO EMPLOYEES

This notice is being posted pursuant to a Consent Decree entered in resolution of a lawsuit brought by the U.S. Equal Employment Opportunity Commission ("EEOC") against The Plaza's former owner, Plaza Operating Partners LLP, Fairmont Hotels & Resorts and Fairmont Hotel Management LP in September 2003 in federal court in the Southern District of New York. In its lawsuit, EEOC alleged that the defendants subjected Muslim, South Asian and Arab employees to a hostile work environment on the basis of religion and national origin.

Federal law prohibits employers from discriminating against applicants and employees based on national origin, religion, race, color, sex, age or disability. Fairmont Hotel Management LP and its affiliated hotel management companies (collectively "Fairmont") reaffirm their commitment to comply with all laws prohibiting discrimination in the workplace and to prohibit any manager, employee, officer or agent from discriminating against any individual on any prohibited basis under federal employment discrimination law. Fairmont also reaffirms its commitment not to retaliate against any individual who asserts his or her rights under these laws.

Fairmont is committed to providing and maintaining a workplace that is free from discrimination and harassment contrary to law, where employees are accorded equality of employment opportunity based on merit and ability. Fairmont's Discrimination and Harassment Prevention Policy, which has been reviewed by EEOC, is posted below this notice, may be found in the Colleague Handbook and is available at the Human Resources Department. The Hotel regularly conducts training for Managers and Colleagues regarding their rights and responsibilities under this policy. Fairmont has redistributed its Discrimination and Harassment Prevention Policy to all its employees and to all employees at entities that they own and/or manage and will continue to provide training to all supervisors, managers and employees regarding their rights and responsibilities with respect to issues of workplace discrimination.

If you have a complaint of discrimination or harassment, you may report it to the Director of Human Resources, any Manager of the Hotel, the Fairmont Ethics Hotline at 888-837-9605 or Corporate Human Resources at 416-874-2641. You may also call:

Equal Employment Opportunity Commission
National Call Center 800- 669-4000

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

This notice must remain posted for three years from the date of posting, until _____.

Signed: _____
Chris Cahill, President, Fairmont Hotel Management, LP