IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO.: 1:09-CV-1151**
JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.,	)	
Defendant.	)	

CONSENT DECREE

TABLE OF CONTENTS

Page

I. Introduction 2

II. Scope 5

III. Term, Dismissal and Retention of Jurisdiction 7

IV. Compliance with Title VII 8

V. Settlement Fund 9

VI. Claimants' Individual Relief 9

VII. Numerical Hiring Goals and Assessment 12

VIII. Implementation of Nondiscriminatory Hiring Measures 16

IX. Reports and Records 18

X. Posting of Notice 19

XI. Notifications 19

XII. Notice to Successors 20

XIII. Allegations of Breach 20

XIV. Costs and Attorneys' Fees 20

I. INTRODUCTION

A. This matter was instituted by Plaintiff, Equal Employment Opportunity Commission (the "Plaintiff" or the "Commission"), an agency of the United States, alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*. ("Title VII"), and the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). The Commission has alleged that John Wieland Homes and Neighborhoods, Inc. (the "Defendant" or the "Company") engaged in a pattern or practice of unlawful race discrimination by selecting and placing African American sales agents in job assignments based on race, resulting in most African American sales agents earning significantly less than their non-African American comparators. The Plaintiff also alleged that the Defendant subjected Michelle Mouser, a former human resources representative, to a hostile work environment and unlawful retaliation which culminated in her being constructively discharged

from her employment, all in violation of Title VII. The Defendant hereby denies that it engaged in the alleged pattern and practice, denies that it discriminated against African American sales agents and denies that it subjected Michelle Mouser to a hostile environment, retaliated against her or constructively discharged her.

B. The Plaintiff and the Defendant (the "Parties") advise this Court that they wish to avoid the expense, delay and uncertainties of further protracted litigation in these matters, and therefore agree to settle this action by this Consent Decree ("Consent Decree").

C. The Parties agree that this Court has jurisdiction over the subject matter of the claims alleged and the Parties to this lawsuit.

D. The parties also agree to resolve, through this Consent Decree, a Charge of Discrimination pending with the Plaintiff, Charge No. 410-2009-03929, involving, inter alia, investigation into the Defendant's hiring practices as they relate to the hiring of African American and female applicants into management positions. Pursuant to Title VII, the parties hereby consent to the jurisdiction of this Court for purposes of resolving such allegations.

E. The Parties agree that this Consent Decree is voluntarily entered into by the Parties, that it shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by the Company or any of its

affiliates that it violated Title VII or engaged in any illegal conduct or omission. The Company denies the allegations in the Complaint and denies that it has committed a violation of Title VII or of any other applicable law or regulation. The Company denies that race or sex played any role in its job assignment, hiring, or promotion decisions and denies that Mouser was subjected to discriminatory treatment.

F. This Consent Decree is final and binding upon the Parties, their successors and assigns. Further, the Parties agree jointly to defend this Consent Decree should it be challenged by a non-party. The Parties agree to bear their own legal fees and costs in any such defense, provided, however, the Commission shall not be required to intervene as a defendant in any action brought against the Company and the Company shall not be required to intervene as a defendant in any action brought against the Commission.

G. The Parties agree that this Consent Decree fairly resolves the issues alleged in this lawsuit, and constitutes a complete resolution of all claims of discriminatory conduct or omissions on the basis of race in violation of Title VII that were made or could have been made by the Commission in this action based on acts or omissions of the Company in hiring sales agents or assigning African American sales agents to home sales locations, or in hiring or promoting African Americans or females into management positions.

H. The Parties have undertaken discovery sufficient to permit them to assess the desirability of this resolution.

I. The Parties' officers, agents, employees, and successors shall not interfere with the relief herein ordered, but shall reasonably cooperate in the implementation of this Consent Decree. This provision shall not expand the Court's personal jurisdiction to any natural person presently beyond that jurisdiction.

J. The Parties desire that the Court approve this Consent Decree. Upon approval, the Parties will begin taking certain actions as set forth in Sections V through XIII of this Consent Decree.

NOW THEREFORE, it is the finding of this Court, made on the pleadings and the record as a whole, that this Court has jurisdiction over the Parties to and the subject matter of this action, and that this Consent Decree constitutes a fair and equitable resolution.

IT IS FURTHER ORDERED, DECREED AND ADJUDGED AS FOLLOWS:

II. SCOPE

A. This Consent Decree resolves all claims which the Plaintiff brought or could have brought for both monetary and non-monetary relief on the basis that Defendant engaged in a pattern or practice of unlawful race discrimination by

selecting and placing African American sales agents in job assignments based on race from 2003 through 2009 at its headquarters, branch offices and work sites throughout the southeastern United States.

B. This Consent Decree resolves all claims which the Plaintiff could have brought for both monetary and non-monetary relief on the basis that Defendant engaged in a pattern or practice of unlawful race and/or sex discrimination by failing to hire or promote African Americans and females into management positions from 2003 to present at its headquarters, branch offices and work sites throughout the southeastern United States.

C. This Consent Decree resolves all claims which the Plaintiff could have brought for both monetary and non-monetary relief on the basis that Defendant's hiring practices resulted in an unlawful disparate impact on African Americans and females by failing to hire or promote them into management positions from 2003 to present at its headquarters, branch offices and work sites throughout the southeastern United States.

D. This Consent Decree resolves all claims which the Plaintiff brought or could have brought for both monetary and non-monetary relief on the basis that Defendant subjected Michelle Mouser, a former human resources representative, to a hostile work environment, unlawful retaliation or constructive discharge in violation of Title VII.

III. TERM, DISMISSAL AND RETENTION OF JURISDICTION

A. The term of this Consent Decree shall be six (6) years from the date of final Court approval (the "Term"). However, in the event the Company fails to attain the Numerical Hiring Goal as set forth in Section VII during the Term hereof, then the Consent Decree shall be automatically extended for one (1) year increments until the hiring goal is met. If Defendant fulfills the Numerical Hiring Goal in less than six (6) years, then the Term of the Consent Decree shall be shortened and, subject to Section VII.H, terminate after Defendant has submitted a report indicating it has met the goal. Notwithstanding the above, in no event shall the Term of the Consent Decree be less than two (2) years. During the Term hereof, this Court shall retain jurisdiction over the Parties for purposes of compliance with this Consent Decree, including issuing such orders as may be required to effectuate its purposes. Upon approval of this Consent Decree, this Court shall dismiss all claims by the Commission in this action, with prejudice, but shall retain jurisdiction to monitor compliance with this Consent Decree during the Term hereof.

B. The Parties agree that all disputes between them regarding any provision of this Consent Decree or any alleged violation of Section IV or any other section of the Consent Decree shall first be raised informally between them, and that they shall attempt in good faith to meet and confer regarding such matters

with the view to prompt and informal resolution. If such matters are not resolved informally within thirty (30) days, the Parties shall then exchange written notices setting forth their positions, and shall (a) further attempt to reach a resolution and (b) consider whether resort to mediation is in the best interests of the Parties. If the Parties cannot, within thirty (30) days after exchanging written notices of their positions, reach agreement on a resolution or agree to mediate, or if the mediation does not result in an agreement between them, then they may bring the dispute to this Court for resolution, provided that they set forth with specificity the efforts they have made to comply with the provisions of this paragraph.

IV. COMPLIANCE WITH TITLE VII

A. Defendant shall comply with Title VII in connection with the hiring and placement of sales agents and hiring or promotion into "Management Positions" (as defined below), and that all employment practices relating to such decisions shall be conducted in a manner that does not discriminate on the basis of race or sex.

B. Defendant shall not retaliate against any person for assisting the Commission with this case under Title VII.

C. Nothing in this paragraph shall create an exception to the normal charge filing and processing requirements or statutes of limitation under Title VII. No act, omission, policy or practice shall be deemed to be in violation of this

Section unless, as a precondition, a timely and proper Charge of Discrimination has been filed, the Commission has conducted an investigation and the Commission has made a "cause" finding concerning the act, omission, policy or practice alleged to violate this Section. Any violation found after such Charge filing, investigation and cause finding shall then be governed by the resolution procedures set forth in Section III. B above.

V. SETTLEMENT FUND

Defendant shall pay the gross sum of Three Hundred Seventy Eight Thousand Five Hundred Dollars ($378,500.00) ("Settlement Fund") for the use and benefit of the six Eligible Claimants listed in a separate document (the "Side Letter").

VI. CLAIMANTS' INDIVIDUAL RELIEF

Defendant, in settlement of all claims alleged by the Commission in its Complaint, shall pay the agreed-upon amounts of back pay and compensatory damages from the Settlement Fund to the Eligible Claimants in two equal separate payments. Total payments to be made to each Eligible Claimant shall be set forth in the Side Letter.

The first payment shall be disbursed no later than June 30, 2010, and the second payment shall be disbursed no later than August 31, 2010. Forty percent (40%) of payments to each Eligible Claimant shall represent back pay and shall be

subject to customary withholding of applicable taxes and other deductions required by law. The other sixty percent (60%) of payments to each Eligible Claimant shall represent damages and will not be subject to withholding. With respect to the respective amounts, Defendant shall issue an IRS Form W-2 and an IRS Form 1099 to each Eligible Claimant as appropriate. Within five (5) business days of issuing the checks to each claimant, Defendant will mail copies of the checks to Robert K. Dawkins, Regional Attorney, EEOC Atlanta District Office, 100 Alabama Street SW, Suite 4R30, Atlanta, Georgia 30303. Each Eligible Claimant must submit to the Defendant a valid and accurate completed and executed IRS Form W-9 as a precondition to payment. Each Eligible Claimant also must execute and not revoke a valid Release of all claims in the Complaint and any relevant Charge of Discrimination (as described below) as a precondition to payment.

The Defendant shall not refuse payment because any Eligible Claimant has refused to release claims beyond the claims alleged in the Complaint pertaining to such Eligible Claimant and any claims or allegations made in any Charge of Discrimination filed by or relating to such Eligible Claimant. If Defendant proposes that an Eligible Claimant execute a release agreement that releases claims beyond those released in the Release attached hereto as Exhibit A (the "Release"), and Claimant refuses to execute such broader release agreement, then Defendant

shall immediately submit a copy of the Release to such Claimant for execution. Plaintiff shall not discourage any Eligible Claimant from executing the Release or any other release agreement proposed to an Eligible Claimant by Defendant. In the event that any Eligible Claimant refuses to release such claims described in the Release, Defendant shall inform Plaintiff in writing as soon as practicable. Upon confirming such refusal, Plaintiff will contact such claimant and provide a copy of the Release. The Plaintiff shall inform such Eligible Claimant of the consequences of failing to execute the Release and attempt to obtain such Eligible Claimant's signature. In the event any Eligible Claimant refuses to execute such Release within five (5) business days after it is submitted by the Plaintiff, the Plaintiff may reallocate the settlement fund among Eligible Claimants who have released such claims and have executed the Release or another release acceptable to Defendant. Notwithstanding the foregoing, however, if Claimant T (as identified in the Side Letter and the term sheet executed by the Parties) refuses or fails to execute the Release, Defendant shall have the right, in its discretion, to withdraw from this Consent Decree by notifying the Plaintiff of its withdrawal in writing and the Consent Decree shall be rescinded. In no event shall any Eligible Claimant be entitled to receive any payment if he or she fails or refuses to sign the Release or be excluded from allocation of funds for refusal to release claims other than claims or allegations made in the Complaint and those raised in any Charge of

Discrimination filed by or relating to such Eligible Claimant as described in the Release.

VII. NUMERICAL HIRING GOALS AND ASSESSMENT

A. Numerical Hiring Goals: Each year during the term of this Consent Decree, the Company shall make reasonably diligent, good faith efforts to hire qualified African American and female applicants into Management Positions (as defined below) through either hire or promotion. Defendant shall exercise good faith in hiring qualified African American and female applicants at or reasonably near the qualified applicant rates for African Americans and females for that position.

B. "Management Position" for purposes of this Consent Decree shall be defined as any position included by the Company in the Officials and Managers category on its 2007, 2008 or 2009 EEO-1 report. The Company shall provide to the Plaintiff copies of lists of such positions for 2007, 2008 and 2009. If the Company seeks to count a position that is not listed on such EEO-1 reports for purposes of meeting the Numerical Hiring Goal or Interim Hiring Goal described in Section VII. D below, it shall notify the Commission of the proposed addition and any dispute by the Commission over counting such a position shall be subject to the resolution procedures set forth in Section III. B above.

C. Each year during the term of this Consent Decree, the Defendant shall make reasonable good faith efforts to further integrate its workforce by a) hiring qualified females into Management Positions; and b) hiring qualified African Americans into Management Positions.

D. Defendant shall offer at least five (5) Management Positions to qualified African American applicants during the term of this Consent Decree and at least five (5) Management Positions to qualified female applicants during the term of this Consent Decree, representing a total of ten (10) offers for Management Positions (the "Numerical Hiring Goal"). At least five (5) of such offers must occur by the third anniversary of the entry of this Consent Decree by the Court (the "Interim Numerical Hiring Goal"). The Defendant may count an unaccepted offer toward the Numerical Hiring Goal if it makes the offer in writing and provides a copy of the written offer to the Plaintiff along with either a written rejection from the candidate receiving the offer, other evidence of rejection of, or failure to accept, the offer and contact information for the candidate receiving the offer. If the Defendant does not provide evidence of the rejection or failure to accept and the candidate, when contacted by the Plaintiff, credibly disputes that he or she received the offer or either rejected or failed to accept the offer, then the Parties shall seek to resolve the dispute through the procedures set forth in Section III. B.

E. If, as of the third anniversary of the entry of this Consent Decree by the Court, Defendant has not made offers of Management Positions to at least five (5) African American and/ or female applicants, the Plaintiff may request copies of all applications for Management Positions for which applicants have been hired during the Term of this Consent Decree through such third anniversary and the Defendant shall provide such requested applications to the Plaintiff.

F. Goal Attainment Review: The Defendant shall conduct an annual review of its Numerical Hiring Goal attainment. Such review shall consist of an analysis of the number of African Americans and females hired or promoted into Management Positions, any feedback received regarding the Numerical Hiring Goals by the Company's Director of Diversity from its personnel, as well as any complaints, reports or allegations of discrimination in hiring for Management Positions or non-compliance with the Consent Decree and investigations thereof.

G. Each year during the term of this Consent Decree until the Numerical Hiring Goal is met, within sixty (60) days after the anniversary date of the entry of this Consent Decree by the Court, Defendant shall submit a report to Plaintiff containing the following: 1) the names, locations, dates of offer or hire, and job titles of African Americans and females offered Management Positions during the period and 2) the names, addresses and contact information for any African

American or female applicant who rejected an offer into a Management Position during the period.

H. In the event that the Company fails to attain the Interim Numerical Hiring Goal by the end of the third year after entry of this Consent Decree or fails to attain the Numerical Hiring Goal after the sixth year after entry of this Consent Decree, the Defendant shall provide to the Plaintiff a report showing the number of persons hired into Management Positions and the job titles and locations of those Management Positions during the preceding three-year period. In addition, the parties shall meet in good faith to seek to determine a fair and reasonable way to meet the Numerical Hiring Goal as soon as practicable and either party may require that the parties enter into the dispute resolution process set forth in Section III. B of this Agreement. In the event that the Company meets the Numerical Hiring Goal prior to the end of the sixth year after the entry of this Consent Decree, the Company shall submit a report to the Commission setting forth the information detailed in subsection G, above, for the preceding twelve-month period. The Term of this Consent Decree shall expire thirty (30) days after the Company's submission of that report if the Plaintiff has not raised a dispute within such thirty (30) day time period.

VIII. IMPLEMENTATION OF NONDISCRIMINATORY HIRING MEASURES

Within 60 days of the entry of this Consent Decree, Defendant or any successor thereof, shall implement the following policies designed to prevent race and sex discrimination in violation of Title VII in hiring of employees.

A. RECRUITMENT AND SELECTION

1. Recruiting, Hiring Materials

During the Term of this Consent Decree, primary recruitment and hiring materials for Management Positions, including internet and newspaper advertisements, shall specifically advise that the Company is an "Equal Opportunity Employer" and that the Company "promotes a diverse workforce" or words of similar meaning. The Company will review existing materials regarding recruitment, hiring and training to eliminate, if applicable, any explicit and/or implicit expressions of a race- or sex-based applicant or employee preferences.

2. Target Advertising Program

During the Term of this Consent Decree, the Company will continue to identify and utilize sources for advertising to publicize its commitment to diversity and a race and gender balanced workforce in publications and media likely to be seen or heard by African Americans and females, in reasonably appropriate periodicals in each of its markets.

The Company will, as necessary and in its discretion, use target advertising to publicize specific Management Position openings and employment possibilities and to publicize job fair recruitment attendance and recruitment visits for Management Positions.

B. TRAINING FOR POSITIVE EEO MANAGEMENT PRACTICES

1. General

Within 30 days of the entry of this Consent Decree, Defendant shall inform executives, human resources personnel, recruiters and any management persons who participate in the recruiting and hiring process for Management Position openings, of the hiring goals contained in this Consent Decree.

2. Managing a Diverse Workplace

Defendant has incorporated diversity training into its training for executives, management personnel, recruiters and other persons who participate in the recruiting and hiring process, designed to raise the awareness of participants of both overt and subtle biases and barriers which inhibit the development of a race and gender-diverse organization and to increase understanding of the principles of diversity and adherence to non-discriminatory selection procedures. During the Term of this Consent Decree, the Company shall continue to provide such training periodically, whether through orientation programs, Wieland University or otherwise.

3. Discrimination Complaint Procedure

The Company has in place a Complaint Procedure, which is included in the Employee Handbook, to resolve employee complaints of discrimination. During the Term of this Consent Decree, the Company shall maintain its current complaint procedure or another procedure that provides employees an avenue for making internal complaints of discrimination.

IX. REPORTS AND RECORDS

A. The Company shall commence maintaining, and upon demand (or, in the case of item 3 below, upon demand if Defendant fails to meet the Numerical Hiring Goal) make available to the Plaintiff for copying and inspection, the following documents and records during the term of the Consent Decree:

1. Copies of all Annual Review Reports generated during each period in accordance with Section VII.F.

2. Copies of samples of recruitment advertising placed during the reporting period pursuant to the Targeted Advertising Program, Section VIII. B.

3. Copies of all applications received by the Company for Management Positions during the Term of this Consent Decree.

B. As described in Section VII. G above, the Company shall submit annual written reports to the Commission describing the progress made toward the

Numerical Hiring Goals during the preceding twelve (12) months. The first report shall be due no later than 60 days after the first anniversary date after the entry of this Consent Decree. Each subsequent report shall be due no later than 60 days after each subsequent anniversary date of the Consent Decree.

C. The Defendant shall comply with all applicable record-keeping requirements of Title VII and the Commission's regulations, including but not limited to, 29 C.F.R. § 1602.14.

X. POSTING

The Defendant agrees to post all equal employment opportunity posters required by law.

XI. NOTIFICATIONS

All notifications and reports required under this Consent Decree shall be made in writing and in the case of notification to the Commission, shall be sufficient if hand-delivered or sent by registered or certified mail to Regional Attorney, EEOC Atlanta District Office, 100 Alabama Street SW, Suite 4R30, Atlanta, Georgia 30303. Notifications to the Defendant shall be made to John Wieland Homes and Neighborhoods, Inc., attention General Counsel, 4125 Atlanta Road, Smyrna, Georgia 30080, with a copy to Clare H. Draper IV, Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309-3424.

XII. NOTICE TO SUCCESSORS

Defendant shall give notice of the non-monetary relief requirements of Sections VII, VIII, IX and X to any prospective purchaser. This Consent Decree shall apply to all Defendant or successor business operations and facilities.

XIII. ALLEGATIONS OF BREACH

If either Party to this Consent Decree believes that the other Party has breached any provision of this Consent Decree, it shall so notify the other Party, in writing, of the alleged breach. Upon receipt of written notice, the Party alleged to have committed the breach shall have fifteen (15) days to either correct the alleged breach, and so inform the other Party, or deny the alleged breach, in writing. If the parties remain in dispute after exchanging such notices, they shall proceed with the dispute resolution procedure set forth in Section III. B of this Consent Decree.

XIV. COSTS AND ATTORNEYS' FEES

Each Party shall be responsible for and shall pay its own attorney's fees and costs, except as to costs and expenses allocated by this Consent Decree.

[Signatures continue on following page]

BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

June 17, 2010
Date

Robert K. Dawkins
Regional Attorney
Atlanta District Office
100 Alabama Street, SW, Suite 4R30
Atlanta, Georgia 30303
(404) 562-6818

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

June 17, 2010
Date

Clare H. Draper IV
Georgia Bar No. 229575
Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, GA 30309-3424
Tel: 404-881-7000
Fax: 404-881-7777
Attorneys for Defendant John Wieland Homes and Neighborhoods, Inc.

APPROVED this 22nd day of June 2010.

BY THE COURT:

s/HORACE T. WARD
The Honorable Horace T. Ward
United States District Judge
Northern District of Georgia