



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Consent Decrees

Labor and Employment Law Program

6-15-1999

EEOC v. Sidney Frank Importing Co., Inc. and All State Promotions, Inc.

Judge Sidney H. Stein

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/condec>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. Please help support our student research fellowship program with a gift to the Legal Repositories!

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in Consent Decrees by an authorized administrator of DigitalCommons@ILR. For more information, please contact hlmdigital@cornell.edu.

EEOC v. Sidney Frank Importing Co., Inc. and All State Promotions, Inc.

Keywords

EEOC, Sidney Frank Importing Co., Inc. and All State Promotions, Inc., 97 Civ. 3722 (SHS), Consent Decree, Disparate Treatment, Retaliation, Sexual Harassment, Sex, Female, Commodities, Employment Law, Title VII

harassment and retaliatory conduct, and by failing to prevent or remedy such unlawful conduct by various third parties.

EEOC's Complaint further alleges that SFIC engaged in a pattern of harassment and retaliation by requiring all employees to sign a restrictive arbitration agreement whereby the employees expressly relinquished compensatory and punitive damages and the right to a jury.

On August 29, 1997, SFIC filed an Answer and Affirmative Defenses to the EEOC's Complaint.

In the interest of resolving this matter, and as a result of comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Decree. By agreeing to this Decree, SFIC does not admit, but denies, that it violated Title VII. This Decree does not constitute an adjudication and/or finding on the merits of the case, and shall not be used as evidence of liability, res judicata, or collateral estoppel in any other legal proceeding against SFIC.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. The Consent Decree resolves all issues in the Charges and the Complaint filed in this action and constitutes a complete

resolution of all claims that were made as part of the Complaint.

2. The Parties agree that this Court has jurisdiction of the subject matter of this action and of the Parties for the duration of this agreement, that venue is proper, and that all administrative prerequisites have been met.

3. The Parties agree that this Consent Decree constitutes the complete agreement between the EEOC and SFIC with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all Parties to this decree and approved by the Court or ordered by the Court; except that the Parties may mutually agree to modify the procedures in paragraphs 6 through 11 without approval of the Court.

4. The Consent Decree shall continue in force and effect for a period of three (3) years from entry of the Decree, and will expire three (3) years from the date of entry. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing the Decree under the procedures in paragraph 25 herein. No claimant shall have the right to bring an enforcement action in regard to this Decree.

5. SFIC agrees to abide by the requirements of Title VII. SFIC further agrees not to discriminate or retaliate against any person alleging harassment, filing a charge, giving testimony or assistance or participating in any manner in this lawsuit or in an investigation of such allegations.

Sexual Harassment Policy and Training

6. SFIC agrees to post and keep posted in conspicuous places on its premises for the duration of this Consent Decree the Posting pertaining to the application of Title VII as prescribed by the Commission and attached as Exhibit A.

7. SFIC shall maintain its Policy Against Sexual Harassment and Discrimination (the "Policy"), last revised in July 1998, with the following modifications: (a) SFIC will change the name of its in-house "Equal Employment Opportunity Committee" to the "Fair Employment Practice Committee" to avoid confusion of identity with EEOC and; (b) individuals complaining of discrimination or harassment are given the option of providing a verbal or written report. A copy of the revised Policy containing the changes conforming to the requirements of this paragraph is annexed hereto as Exhibit B.

8. SFIC shall maintain its Policy as modified above and shall issue the modified Policy to all employees within thirty (30) days of the entry of this Decree. In the event that SFIC should wish to modify the Policy during the term of the Decree it shall do so only after submitting a substitute policy to the EEOC for approval and receiving such approval in writing.

9. SFIC agrees to provide all employees with a copy of the Policy or any revised Policy approved by the EEOC pursuant to this decree. SFIC further agrees to advise all new employees that any complaints of sexual harassment should be reported in accordance

with the Policy. SFIC agrees to advise all employees that complaints of harassment or other forms of discrimination will not adversely affect promotional opportunities, assignment of work or any other terms and conditions of employment.

10. The training SFIC provided to all of its supervisors and managers in January and February, 1999 regarding Title VII is an example of training that meets the affirmative needs of future compliance required to resolve this case. SFIC also agrees to provide training regarding Title VII to all new managers or supervisors who did not receive the above training. The EEOC agrees that training for new managers and supervisors required under this paragraph may be conducted through the auspices of Cornell University's School of Industrial and Labor Relations. SFIC agrees that all such training shall be given within six (6) months of an employee being placed in a management or supervisory position.

11. SFIC agrees to provide training to its employees regarding sexual harassment by customers or employees of other entities. SFIC agrees to investigate and, if warranted, take prompt remedial action in the event of any complaint of such harassment, which action will include, where appropriate, termination of its business relationship with the customer or employees of the promotion site.

Monetary Relief

_____12. SFIC will pay the sum of \$2,600,000.00 in damages to the

claimants. This payment is to be called the Claims Fund. This payment is to be divided among all eligible claimants based upon a schedule that EEOC will provide SFIC. SFIC will prepare and tender the award checks in accordance with the provisions hereafter noted. Within ten (10) days of the Court's approval of Exhibit C, the entire sum shall be placed in an interest-bearing account for the benefit of the claimants qualified for monetary relief. Should any earned interest on this interest-bearing account for the Claims Fund not be distributed to claimants, it shall be used by SFIC to pay for sexual harassment training for managers, supervisors and employees. SFIC will issue checks after the Consent Decree is finalized by the Court, subject to the fairness hearing detailed in Exhibit C. The Parties agree that no award shall be issued to any claimant under this Decree until SFIC receives a duly executed release of claims that were subject to this action in the form attached as Exhibit D.

13. The parties agree that eligible claimants shall be those individuals who were employed by SFIC between July 1, 1993 and the date of the Court's approval of Exhibit C (the "Claim Period") who submit evidence credible to EEOC that subsequent to July 1, 1993, that they were subjected to sexual harassment or retaliation.

14. Within two weeks of the Court's approval of Exhibit C, the EEOC shall provide notice via letter to all eligible claimants that a settlement has been reached between SFIC and the EEOC and that monetary damages exist for eligible claimants. Employees and

former employees shall be advised that, if they wish to make application for an award, they must do so in a writing mailed to the Legal Unit of EEOC, New York District Office not later than eight weeks after the date of the mailing of Exhibit E. The notice shall provide that SFIC shall take no adverse action against any employees or former employees for filing such an application. A copy of such notice is attached as Exhibit E. EEOC will provide SFIC with the final list of claimants after the eight week period has ended that will all claimants.

15. The Claims Fund shall be divided among those persons described in paragraph 13. Based upon the evidence provided by the qualified claimants, EEOC shall award appropriate monetary relief which will consist of compensatory damages. EEOC shall divide the entire Claims Fund among the claimants. Subject to paragraph 12, no portion of the fund shall remit to SFIC. Because of the nature of the harm, all of the money awarded will be considered compensatory damages for emotional distress. None of the money will be considered wages within the meaning of Sections 3121(a), 3306(b) and 3401(a) of the Internal Revenue Code of 1986. None of the amounts paid to claimants shall be for punitive damages. Claimants shall be responsible for any federal, state, local income tax and employee social security taxes that are due on payments made to them from the Claims Fund.

Settlement Agreements

16. SFIC agrees that for the duration of the Consent Decree

any settlement agreements it enters into shall not use any language that prohibits a party from filing a charge with the EEOC, voluntarily cooperating in an EEOC investigation as a witness or aggrieved individual or providing information to EEOC regarding SFIC employment practices. SFIC further agrees that it will not retaliate in any way against an individual who signs such a settlement agreement and subsequently files a charge or cooperates with the EEOC or other government agency.

Arbitration Agreements

17. SFIC agrees that it shall revoke its agreements to arbitrate with all of its employees within 30 days of the entry of this Decree. This revocation will be communicated to all SFIC employees.

18. SFIC agrees that any alternative dispute resolution agreements it enters into with its employees will be voluntary and will include all substantive rights afforded under Title VII, including compensatory damages, punitive damages, interest on backpay, attorney's fees and front pay.

Reporting

19. Within sixty (60) days of the entry of this Consent Decree, SFIC shall provide the Legal Unit of EEOC, New York District Office with a listing of all managers and supervisors who have received the training described in paragraph 10. Thereafter, on a semi-annual basis beginning on July 1, 1999, and for the duration of this Consent Decree, SFIC shall provide the Legal Unit

of EEOC, New York District Office with a listing of all managers and supervisors receiving the training described in paragraph 10, the date the individual was placed in a management or supervisory position, and the date of the training.

20. For the duration of this Decree, on an annual basis beginning July 1, 1999, SFIC shall provide the Legal Unit of EEOC, New York District Office with information on any verbal or written sexual harassment complaints received during the preceding year. SFIC shall provide to the Legal Unit of EEOC, New York District Office the name of the complainant, the name of the alleged harasser, the results of any investigation of the complaint, and remedial action, if taken by SFIC. All such information provided by SFIC on any such complaint shall be held in strict confidence by the EEOC as required pursuant to 42 U.S.C. 2000e-8(e) and 29 C.F.R. § 1601.22 unless litigation is subsequently commenced on that complaint.

21. SFIC shall provide the Legal Unit of EEOC, New York District Office with verification of all monetary payments made pursuant to paragraph 12, in accordance with the provisions of that paragraph.

22. SFIC shall provide the Legal Unit of EEOC, New York District Office with copies of all notices sent out by it pursuant to this Decree.

Duration and Miscellaneous Provisions

23. The effective date of this Decree shall be its date of

entry as an order of the Court.

24. This Decree is final and binding upon the Parties, their successors and assigns.

25. No party shall contest the validity of this Consent Decree nor the jurisdiction of the Federal District Court to enforce this Consent Decree and its terms or the right of any party to bring an enforcement action upon breach of any term of this decree by any party. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that SFIC fails to perform the promises and representations contained herein. If the EEOC determines that SFIC has not complied with the terms of this Consent Decree it shall give SFIC thirty (30) days from the receipt of written notice to cure any noncompliance. EEOC will specify the nature of the noncompliance. If the parties are unable to resolve the dispute, EEOC may seek to enforce the Decree by application to the Court. The Court shall retain jurisdiction over any such proceeding arising from an act, or failure to act, occurring during the duration of this Consent Decree.

26. The Parties shall each pay their own costs and attorney fees associated with this action.

27. This Decree may be executed in one or more counterparts each executed copy shall be deemed an original which shall be binding on the Parties.

SO ORDERED, ADJUDGED AND DECREED this _____ day of

_____, 1999.

UNITED STATES DISTRICT JUDGE
SIDNEY H. STEIN

Agreed to in form and content:

FOR THE PLAINTIFF

FOR THE DEFENDANT
SIDNEY FRANK IMPORTING CO. INC

JAMES L. LEE (JL-1955)
Regional Attorney

ELIZABETH GROSSMAN (EG-2478)
Supervisory Trial Attorney

LOUIS GRAZIANO (LG-0530)
Trial Attorney

FOR THE DEFENDANT
ALL STATE PROMOTIONS INC.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
7 World Trade Center
18th Floor
New York, New York 10048
(212) 748-8512