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U.S. EEOC v. Gonnella Baking Co.

Judge John W. Darrah

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U.S. EEOC v. Gonnella Baking Co.

Keywords

EEOC, Gonnella Baking Co, 08-CV-5240, Consent Decree, Retaliation, Constructive Discharge, Hostile Work Environment, Race, Hispanic or Latino, Other, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
v.)
)
GONNELLA BAKING CO.,)
)
Defendant.)

JOSE CONTRERAS, ANDRES LOPEZ,)
ROCIO MUNOZ DE FLORES CASTRO,)
and JUAN SEGURA)
)
Plaintiff-Intervenors,)
v.)
)
GONNELLA BAKING CO.,)
)
Defendant.)

Civil Action No. 08-cv-5240

Judge Darrah

CONSENT DECREE

THE LITIGATION

1. Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) filed this action alleging that the Defendant Gonnella Baking Co. (“Gonnella”), violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”), when it: (1) subjected a class of employees at Gonnella’s Aurora, Illinois facility to harassment on the basis of their national origin, Mexican, and because of their race, non-white; and (2) subjected a class of employees at Gonnella’s Aurora facility to retaliation after they made complaints about such harassment. Plaintiff-Intervenors Jose Contreras, Andres Lopez (“Lopez”), Rocio Muñoz de Flores-Castro, and Juan Segura (collectively, “Plaintiff-Intervenors”) also filed a Complaint

alleging that Gonnella violated the Civil Rights Act of 1866, 42 U.S.C. § 1981, when Gonnella subjected each of them to harassment and discharge on the bases of race, color, and retaliation. Lopez also asserted claims under Title VII for sexual harassment and retaliation. Gonnella filed an Answer to the plaintiffs' Complaints denying that it has engaged in any actions that violate the foregoing statutes.

2. This Consent Decree ("Decree") does not constitute a finding by the Court, or an admission by Gonnella, or an agreement of the parties that Gonnella has or has not violated Title VII of the Civil Rights Act of 1964 or the Civil Rights Act of 1866.

3. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be resolved finally by entry of this Decree.

4. This Decree fully and finally resolves: (i) any and all claims arising out of the Charges and Amended Charges of Discrimination filed by the Plaintiff-Intervenors against Gonnella; (ii) all claims contained in the Complaint filed by the EEOC and the Complaint filed by the Plaintiff-Intervenors; and (iii) any and all claims arising out of the Letter(s) of Determination issued by the EEOC concerning the Charges and Amended Charges filed by the Intervenors against Defendant. The Plaintiff-Intervenors and EEOC hereby release Gonnella with respect to any and all such claims.

FINDINGS

5. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the EEOC, Gonnella, the Plaintiff-Intervenors, and the other class members, and the public interest are adequately protected by this Decree.

c. This Decree conforms to the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties, the class members, and the public.

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

INJUNCTION AGAINST EMPLOYMENT DISCRIMINATION

6. This Decree is applicable only to Gonnella's Aurora, Illinois facility and to any other Gonnella facility to which Mary Monarrez is assigned during the term of this Decree for such time as she may be assigned there.

7. Gonnella and its officers, agents, management employees (including supervisory employees), successors, and assigns are hereby enjoined from engaging in any form of employment discrimination prohibited by Title VII, including but not limited to: (1) subjecting any employee to harassment or different terms or conditions of employment on the basis of his or her national origin or race; and (2) retaliating against any person in any manner because such person has opposed any practice prohibited by Title VII, filed a charge of discrimination under Title VII, testified, or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

MONETARY RELIEF

8. Subject to the terms and conditions of this Decree, Gonnella shall make payments ("Payments") to the Plaintiff-Intervenors in the amounts set forth below, totaling \$140,000, and

to the other individuals for whom the EEOC has sought relief (collectively “Other Class Members”) in the amounts set forth below, totaling \$30,000. In addition to the foregoing amounts, Gonnella will pay Plaintiff-Intervenors’ attorneys’ fees and costs in the amount of \$180,000.

Plaintiff-Intervenors:

Jose Contreras:	damages: \$35,000
Andres Lopez:	damages: \$35,000
Rocio Muñoz de Flores Castro:	damages: \$35,000
Juan Segura:	damages: \$35,000

Intervenor-Plaintiffs’ Attorneys’ Fees and Costs \$180,000

Other Class Members:

Mary Guerra:	damages: \$15,000
Jose Lopez:	damages: \$7,500
Orlando Santiago:	damages: \$7,500

Gonnella will issue an IRS Form 1099 to each Class Member.

9. For each class member named in Paragraph 8 no later than fifteen (15) business days after entry of this Decree and receipt by Gonnella of a copy of the Release Agreement executed by the Class Member (in the appropriate form set forth in Exhibit A to this Decree), whichever is later, Gonnella shall issue and mail to the Class Member, by certified mail, a check for damages, in the amounts specified in Paragraph 8. Contemporaneously, Gonnella shall submit copies of the above-noted checks to the EEOC. If any portion of the Payments due to a Class Member is not issued and mailed within the fifteen (15) business day period (“Unpaid Amount”), then, for each business day beyond the fifteenth business day that such portion remains unpaid, Gonnella shall additionally pay to the Class Member, in the manner set forth above, an amount equal to the greater of \$25 or 0.1% of the Unpaid Amount. Gonnella will

remit the Plaintiff-Intervenors' attorneys' fees and costs payment of \$180,000, payable to Foote, Meyers, Mielke & Flowers, LLC, no later than fifteen (15) business days after entry of the Decree.

POSTING OF NOTICE

10. No later than fifteen (15) business days after approval and entry of this Decree, Gonnella shall post copies of the Notice attached as Exhibit B to this Decree at its Aurora, Illinois facility, on the bulletin boards usually used by Gonnella for posting notices directed to employees. The Notice shall remain posted for the term of this Decree. Gonnella shall take all reasonable steps to ensure that the posting is not altered, defaced, or covered by any other material. No later than fifteen (15) business days after entry of this Decree, Gonnella shall certify to the EEOC in writing that the Notice has been posted in a manner consistent with this Decree. Gonnella shall permit a representative of the EEOC to enter Gonnella's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

RECORD KEEPING

11. During the period in which this Decree is effective, Gonnella shall maintain and make available for inspection and copying by the EEOC written records of every complaint or report (including grievances) by any Aurora employee, applicant, or entity representing any such employee(s), of employment discrimination or retaliation prohibited by this Decree. For each such complaint or report of employment discrimination, the above-noted records shall include: (i) the name of the complaining or reporting person or entity (including, as applicable, social security number, address, and telephone number); (ii) the date of the complaint or report; (iii) a written description of what was alleged in the complaint or report; (iv) the names of any

witnesses; (v) a written description of the resolution or outcome of the complaint or report, including a description of what actions, if any, Gonnella took; and (vi) if the complaint or report was made in written form, a copy thereof.

12. Gonnella shall require personnel within its employ whom the EEOC requests for purposes of verifying compliance with this Decree to cooperate reasonably with the EEOC and to be interviewed.

ADOPTION, POSTING, AND DISTRIBUTION OF POLICY
AGAINST EMPLOYMENT DISCRIMINATION

13. Gonnella shall affirm, in writing, a policy against employment discrimination (“Policy”) within thirty (30) calendar days after the approval and entry of this Decree and shall maintain such Policy for the term of this Decree. Commencing no later than sixty (60) calendar days after the approval and entry of this Decree, Gonnella shall distribute a copy of said Policy to each employee of Gonnella’s Aurora, Illinois facility. Additionally:

(a) The Policy shall, at a minimum, specifically prohibit all forms of discrimination prohibited by Title VII.

(b) The Policy will also, at a minimum, inform employees that they are entitled to make complaints or reports of unlawful employment discrimination to Gonnella and to the EEOC.

(c) The Policy shall, at a minimum, inform employees that Gonnella will investigate thoroughly and promptly all complaints and reports of unlawful employment discrimination and shall provide that employees who violate the Policy are subject to discipline up to and including discharge.

(d) Copies of the Policy will be provided to new employees at the time that they are hired by Gonnella.

Gonnella shall forward a copy of the Policy to the EEOC within thirty (30) calendar days

of the approval and entry of this Decree. The inclusion of this Paragraph in the Decree does not represent the EEOC's or the Court's approval of Gonnella's anti-discrimination policy.

TRAINING

14. During the period in which this Decree is effective, all employees at Gonnella's Aurora, Illinois facility shall participate in an annual training session or sessions, conducted by a trainer paid for by Gonnella and approved by the EEOC, regarding the law pertaining to employment discrimination, including the obligations of employers under Title VII. A registry of attendance shall be maintained for each training session. The first such annual training shall occur no later than ninety (90) calendar days after the entry of this Decree. Subsequent annual training sessions shall occur within sixty calendar days of each anniversary following entry of this Decree.

15. Gonnella shall obtain the EEOC's approval of its proposed trainer prior to the commencement of the training sessions described in Paragraph 14. The EEOC shall not unreasonably withhold its approval. Gonnella shall submit the name, address, telephone number, resume, and training proposal of the proposed trainer (including a summary of proposed content to be presented) to the EEOC at least twenty (20) business days prior to the proposed date of each training. The EEOC shall have ten (10) business days from the date of receipt of the information described above to accept or reject the proposed trainer. In the event the EEOC rejects Gonnella's proposed trainer, Gonnella shall have ten (10) business days to identify an alternate trainer. The EEOC shall have ten (10) business days from the date of receipt of the information described above to accept or reject the alternate trainer. If the EEOC does not timely reject the proposed trainer, the trainer shall be deemed approved. If the parties cannot through this process agree on a trainer, then they may seek the Court's assistance under

Paragraph 18.

16. Gonnella shall certify to the EEOC in writing no later than five (5) business days after the training session(s) described in Paragraph 12 that the training required by this Decree has taken place and that the required personnel have attended. Every certification of training described in this Paragraph shall include: (i) the date, location and duration of the training; (ii) a copy of the registry of attendance, which shall include the name and position of each person trained; and (iii) copies of any and all pamphlets, brochures, outlines, or other written materials provided or displayed to the personnel attending the training session(s).

REPORTING

17. Gonnella shall furnish to the EEOC the following written reports semi-annually (“Semi-Annual Report”) during the period in which this Decree is effective. The first Semi-Annual Report shall be due six (6) months after entry of the Decree. Subsequent Semi-Annual Reports shall be due every six (6) months thereafter, except that the final Semi-Annual Report shall be due one (1) month prior to the expiration of the Decree. Each such Semi-Annual Report shall contain:

(a) copies of all records described in Paragraph 11 for each complaint or report of discrimination that was received by Gonnella during the six (6) month period preceding the Semi-Annual Report, or a certification by Gonnella that no such complaints or reports were received during that period; and

(b) a certification by Gonnella that the Notice required to be posted in Paragraph 10, above, remained posted in the manner required by that Paragraph during the entire six (6) month period preceding the Semi-Annual Report.

DISPUTE RESOLUTION

18. If during the term of this Decree any party to this Decree believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to 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 ten (10) business days, the complaining party may apply to the Court for appropriate relief.

TERM OF THE DECREE AND RETENTION OF JURISDICTION

19. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a term of four (4) years immediately following the entry of the Decree, provided, however, that if, at the end of the term of the Decree, any disputes under Paragraph 18, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

20. Each party to this Decree shall bear its own expenses, attorney's fees, and costs, except as expressly provided elsewhere in this Decree.

21. The terms of this Decree are and shall be binding on the present and future directors, officers, managers, agents, successors, and assigns of Gonnella. Prior to any sale or other transfer of Gonnella's business or sale or other transfer of all or a substantial portion of Gonnella's assets, Gonnella shall provide to any potential purchaser, potential transferee, or other potential successor a copy of this Decree.

22. When this Decree requires a certification by Gonnella of any fact(s), such certification shall be made under oath or under penalty of perjury, pursuant to 28 U.S.C. § 1746, by an officer or management employee of Gonnella.

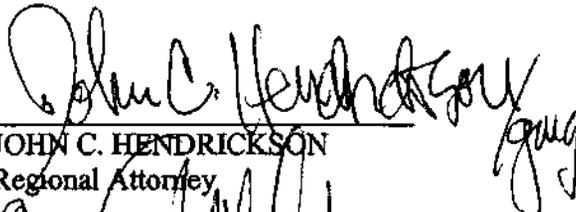
23. When this Decree requires the submission by Gonnella of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: Gonnella Consent Decree Compliance, Legal Unit, U.S. Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2000, Chicago, Illinois 60661. When this Decree requires submission by the EEOC of materials to Gonnella, they shall be mailed to: Mark Schmidt, Gonnella Baking Co., 2006 W. Erie Street, Chicago, IL 60612 and James P. Daley, K&L Gates, 70 W. Madison St., Ste. 3100, Chicago, IL 60602. By agreement of the EEOC and Gonnella, materials may alternatively be submitted by electronic mail in a format agreed to by both parties.

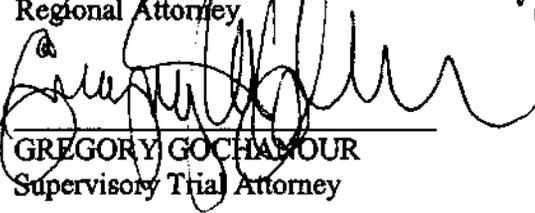
ENTERED AND APPROVED FOR:

For the UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION
500 West Madison Street, Suite 2000
Chicago, Illinois 60661
312-353-7722

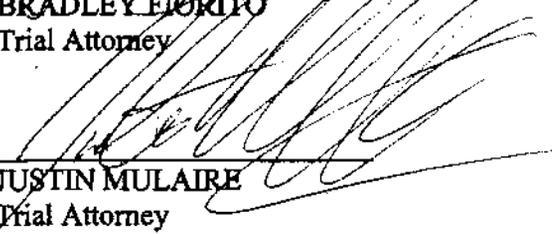
JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel


JOHN C. HENDRICKSON
Regional Attorney


GREGORY GOCHAMOUR
Supervisory Trial Attorney


BRADLEY FIORITO
Trial Attorney


JUSTIN MULAIRE
Trial Attorney

For GONNELLA BAKING CO.


James P. Daley
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For PLAINTIFF-INTERVENORS


Peter L. Currie
The Law Firm of Peter L. Currie, P.C.
536 Wing Ln.
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Robert M. Foote
Matthew J. Herman
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Foote, Meyers, Mielke & Flowers LLC
28 North First St., Ste. 2
Geneva, IL 60134

Kathleen C. Chavez
Chavez Law Firm, P.C.
28 North First St., Ste. 2
Geneva, IL 60134

DATE: _____

ENTER:
The Honorable John W. Darrah
United States District Judge

ENTERED AND APPROVED FOR:

For the UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION
500 West Madison Street, Suite 2000
Chicago, Illinois 60661
312-353-7722

JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
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Kathleen C. Chavez
Chavez Law Firm, P.C.
28 North First St., Ste. 2
Geneva, IL 60134

DATE: _____

ENTER:
The Honorable John W. Darrah
United States District Judge

EXHIBIT A

Release Form No. 1 [For use by Plaintiff-Intervenors]:

RELEASE AGREEMENT

In consideration of \$_____ to be paid to me by Gonnella Baking Co., in connection with the resolution of EEOC, et al. v. Gonnella Baking Co., No. 08 cv 5240 (N.D. Ill.), I waive my right to recover for any claims of employment discrimination arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 1981, and/or the Illinois Human Rights Act that I had against Gonnella Baking Co., on or before the date of this release.

Signature: _____
[class member name]

Date: _____

Release Form No. 2 [For use by all other class members]:

RELEASE AGREEMENT

In consideration of \$_____ to be paid to me by Gonnella Baking Co., in connection with the resolution of EEOC, et al. v. Gonnella Baking Co., No. 08 cv 5240 (N.D. Ill.), I waive my right to recover for any claims of employment discrimination arising under Title VII of the Civil Rights Act of 1964 that I had against Gonnella Baking Co., on or before the date of this release and that were included in the EEOC's complaint in EEOC, et al. v. Gonnella Baking Co.

Signature: _____
[class member name]

Date: _____

EXHIBIT B

NOTICE TO GONNELLA BAKING CO. EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in the Northern District of Illinois in EEOC v. Gonnella Baking Co., No. 08 cv 5240 (N.D. Ill.), resolving a lawsuit filed by the United States Equal Employment Opportunity Commission ("EEOC") against Gonnella Baking Co. ("Gonnella").

In its suit, the EEOC alleged that Gonnella violated Title VII of the Civil Rights Act of 1964 ("Title VII") by subjecting employees to harassment because of their national origin and race, and retaliating against employees because of their complaints about national origin and race discrimination. Gonnella denied all of the EEOC's allegations.

To resolve the case, Gonnella and the EEOC have entered into a Consent Decree which provides, among other things, that:

- 1) Gonnella will make monetary payments to the individuals who were affected by the alleged violations of Title VII;
- 2) Gonnella will not discriminate against any employee on the basis of national origin or race;
- 3) Gonnella will not retaliate against any person because he or she makes or files in good faith a complaint of discrimination, opposes any discriminatory practice prohibited by Title VII, participates in any Title VII proceeding or investigation, or asserts any rights under the Consent Decree; and
- 4) Gonnella will maintain a policy prohibiting discrimination and will train all employees at Gonnella's Aurora, Illinois facility regarding prohibited discrimination and Gonnella's policy.

The EEOC is the federal agency that enforces the nation's laws prohibiting discrimination in employment based on race, color, sex (including sexual harassment and pregnancy), religion, national origin, age, disability, and retaliation. Further information about the EEOC and these laws is available on the EEOC's web site at www.eeoc.gov. If you believe you have been subjected to unlawful discrimination, you may contact the EEOC by phone at 312-353-8195, or by TTY at 312-353-2421. The EEOC charges no fees.

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

This Notice must remain posted for four (4) 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: Gonnella Consent Decree Compliance, Legal Unit, U.S. E.E.O.C., 500 West Madison Street, Suite 2000, Chicago, IL 60661.

Date

Judge John W. Darrah
United States District Court