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EEOC v. GMRI, Inc., dba Bahama Breeze

Keywords

EEOC, GMRI, 1:08-cv-02214, Consent Decree, Hostile Work Environment, Retaliation, Constructive Discharge, Race, African American or Black, Hospitality, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

vs.)

GMRI, INC., dba BAHAMA BREEZE,)

Defendant.)

Case No.: 1:08-cv-02214
District Judge Boyko
Magistrate Judge McHargh

CONSENT DECREE

This action was instituted by Plaintiff, the U.S. Equal Employment Opportunity Commission (the “EEOC” or the “Commission”), against Defendant GMRI, Inc. d/b/a Bahama Breeze (“Defendant”), alleging that Defendant violated Sections 703(a) and 704(a) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. Section 2000e-2(1) and 2000e-3(a), at its Beachwood, Ohio restaurant by subjecting Vatisa Graves, Robert Williams, James Vaughn and a class of black employees to a racially hostile work environment and race-based disparate terms and conditions of employment, by retaliating against the employees who complained of the racially hostile work environment or race-based disparate terms and conditions of employment, and by constructively discharging Graves. Defendant answered, denying all allegations of unlawful conduct and asserting various defenses. On July 17, 2009, the Court entered an order granting in part and denying in part Defendant’s motion for partial summary judgment and dismissing Plaintiff’s retaliation claims.

The Commission and Defendant desire to resolve this action without the time and expense of continued litigation. Neither the negotiation of nor the agreement to this Decree is to

be construed as an admission or acknowledgement by Defendant of wrongdoing or liability or as an adjudication on the merits of Plaintiff's claims.

The Court has examined this Decree and finds that it is reasonable and just and in accordance with the Federal Rules of Civil Procedure and Title VII. Therefore, upon due consideration of the record herein and being fully advised in the premises, it is ORDERED, ADJUDGED AND DECREED:

Scope of Decree

1. This Decree resolves all issues and claims of racial harassment, race discrimination in terms and conditions of employment, and retaliation alleged or that could have been alleged in the Complaint filed by the Commission in this Title VII action, which emanated from Charges of Discrimination filed by Vatisha Graves, Robert Williams, and James Vaughn. This Decree does not affect the Commission's right to process other pending or future charges that may be filed against Defendant and to commence civil actions on any such charges as the Commission sees fit. Provided however that EEOC will not pursue or seek relief on behalf of any Beachwood Bahama Breeze employee who comes forward or seeks to pursue a claim of race discrimination or retaliation based on allegations relating to events occurring more than 300 days prior to the date of entry of this Decree and/or any employee identified by the EEOC as an aggrieved individual/claimant who does not sign and return a release of claims as required under Paragraph 4a.

2. The Decree shall be in effect for a period of three years from the date it is entered by the Court. During that time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate the purposes of the Decree.

3. This Decree, being entered with the consent of the EEOC and Defendant, shall not constitute an adjudication or finding on the merits of the case.

Monetary Relief

4. a. Defendant shall pay a total of \$1,260,000.00 to resolve this action. The distribution of this amount among the identified class members/claimants (Claimants) shall be determined by the EEOC. As soon as reasonably possible, the EEOC shall provide Defendant with a distribution list setting forth the names, addresses, and monetary allocations for each Claimant. Also, no later than 20 days from the date of entry of this Decree, EEOC shall provide Defendant with each Claimant's executed release of claims, attached hereto as Exhibit A, releasing all claims of race discrimination, racial harassment and retaliation under Title VII as alleged in this action. Within 10 business days after receipt of all necessary executed releases of claims, Defendant will issue checks to the addresses of each Claimant, with a copy of each check sent to EEOC counsel of record. If any check is undeliverable or returned, counsel for Defendant will promptly notify EEOC counsel, who diligently will attempt to locate the Claimant and thereafter provide to Defendant a correct address. In the event a Claimant cannot be located after 45 days, the amount of his/her payment will be donated to a non-profit organization whose mission is to advance the education and/or employment opportunities of black individuals.

b. All amounts paid to the Claimants are designated non-wage, compensatory damages, and no withholdings will be made. Defendant shall prepare and distribute IRS Form 1099s to the Claimants to whom payment is made and shall make appropriate reports of such payments to the IRS. Claimants shall be responsible for all other tax consequences as a result of receiving these payments.

Injunctive Relief

5. Defendant, its supervisors, managers, and officers are enjoined from racially harassing any employee in violation of Title VII which, in part, is set forth below:

It shall be an unlawful employment practice for an employer –
(1) to discriminate against any individual with respect to his . . . terms, conditions, or privileges of employment, because of such individual's . . . race . . .

42 U.S.C. § 2000e-2(1). Defendant's supervisors, managers, and officers are enjoined from retaliating against any employee who complains of racial harassment or race discrimination as set forth in the following provision:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by his subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a).

Written Policies and Procedures

6. Defendant will maintain and periodically update, if needed, its written policies and procedures prohibiting employment discrimination, including race discrimination, racial harassment, retaliation, and setting forth its complaint procedures, attached as Appendix B.

Notice of Posting

7. Defendant will display and maintain the EEOC poster in all restaurants currently within the same operational region as the Beachwood restaurant in a place visually accessible to employees.

8. Defendant will display and maintain at all restaurants currently within the same operational region as the Beachwood restaurant, in a place visually accessible to employees, a copy of the non-discrimination and complaint policies referenced in paragraph 6.

9. Within 15 days of the entry of this Decree, Defendant will display and maintain at its Beachwood restaurant, in a place visually accessible to employees, a remedial Notice pursuant to this Decree which will contain the toll-free number for reporting incidents of discrimination, harassment, or retaliation, a copy of which is attached as Appendix C.

Anti-Discrimination Training

10. Within two months from the entry of this Decree, and every year thereafter for the duration of this Decree, Defendant will provide to all its Beachwood restaurant employees no fewer than one hour of training in diversity sensitivity and federal laws prohibiting discrimination in employment, with an emphasis in racial harassment and retaliation.

a. The anti-discrimination training will be conducted by an organization or person approved by Defendant and EEOC. Defendant will suggest a proposed trainer to EEOC for approval, which approval will not unreasonably be withheld.

b. Defendant will maintain attendance records identifying the name and job title of the attendees at each session. Within 15 days of the training, Defendant will forward to EEOC a copy of the attendance records from the training session.

11. Within three months of the entry of this Decree, Defendant will (if not already in place) include in its new employee orientation training in federal laws prohibiting discrimination in employment, including racial harassment and retaliation. The training will be conducted live or in DVD/Video format.

a. The anti-discrimination training will be conducted within 10 days of the commencement of employment by a new employee.

b. Defendant will maintain records identifying the name and job title of the employees receiving such training, the date of commencement of employment, and date of training.

12. Within two months from the entry of this Decree, and every year thereafter for the duration of this Decree, Defendant will provide (if not already provided) no fewer than two hours of training in diversity sensitivity and federal laws prohibiting discrimination, with an emphasis in racial harassment and retaliation, for all Beachwood managers. The Employee Relations Manager assigned to this restaurant will also receive two hours of training within two months from entry of this Decree. In the event that the Employee Relations Manager for this restaurant changes within the term of the Decree, s/he will also receive two hours of training within two months of assignment.

a. Defendant will maintain attendance records identifying the name and job title of the attendees at each session. Within 15 days of the training, Defendant will forward to EEOC a copy of the attendance records from the training session.

13. Within three months from the entry of this Decree, Defendant will include (if not already included) in its Manager In Training/new manager training program anti-discrimination training, including racial harassment and retaliation. The training will be conducted live or in DVD/Video format. Defendant will provide EEOC with a report confirming that this information has been incorporated into the new manager training.

a. Defendant will maintain records identifying the name and job title of the employees receiving such training, the date of commencement of each such employee's position, and date of training.

14. During the period of this Decree, Defendant will include in its regular employee and managerial training curriculum, information regarding federal anti-discrimination laws, Defendant's non-discrimination/harassment policy, complaint reporting procedure, and retaliation policy.

15. Within 18 months after entry of this Decree, the Director of Operations for the Beachwood restaurant and at least one person from Defendant's Employee Relations department with responsibility for the Beachwood Bahama Breeze will attend an EEOC TAPS session offered in Cleveland, OH, Pittsburgh, PA, Philadelphia, PA, or Baltimore, MD.

Additional Monitoring Provisions

16. For the duration of this Decree, Defendant shall maintain records of all complaints of race discrimination, racial harassment or retaliation for making complaints of same made by any of its Beachwood employees. A "complaint" shall be defined as any written internal complaint, any complaint made to Defendant's 1-800 Employee Relations number, and/or any oral complaint to the General Manager or Director of Operations which reasonably could be construed as constituting a complaint of race discrimination or retaliation as the reason for the conduct or action taken. Within six months of the entry of this Decree, and every six months thereafter, Defendant shall provide EEOC with a written report containing, at a minimum, a summary of each complaint made pursuant to this paragraph, and for each such complaint: the name of the complaining party or party who was allegedly subjected to race discrimination, harassment or retaliation, the name of the person(s) who allegedly engaged in such racially discriminatory, harassment or retaliatory conduct, the results of any investigation of the complaint or allegation, and any remedial action taken by Defendant. A final report shall be sent to EEOC 15 days before the date of the expiration of this Decree.

17. In addition to monitoring provisions set forth elsewhere in this Decree, EEOC may monitor compliance during the duration of this Decree by inspection of Defendant's Beachwood premises, its personnel records, and interviews with its employees at reasonable times. Upon 10 business days written notice by the EEOC, Defendant will make available for inspection and copying any reasonable request for records by EEOC and employees sought to be interviewed by EEOC.

18. All materials required by this Decree to be sent to EEOC shall be addressed to:

Equal Employment Opportunity Commission
Baltimore Field Office
Attention: Debra M. Lawrence, Acting Regional Attorney
10 S. Howard Street, 3rd Floor
Baltimore, Maryland 21201

19. If at any time during the duration of this Decree it is alleged that a violation of its terms has occurred or a dispute arises over its interpretation, prior to taking any action seeking judicial relief to enforce this Decree or resolve any dispute over compliance with its terms, the party claiming an alleged failure to comply will notify the other party in writing of the alleged failure, will afford at least twenty (20) days within which to respond to and/or cure any alleged non-compliance, and will attempt in good faith to informally resolve those concerns. Notice shall be made to undersigned counsel for the parties.

20. The Commission and Defendant shall bear their own costs and attorneys' fees.

21. The undersigned hereby consent to the entry of the foregoing Consent Decree.

FOR DEFENDANT:

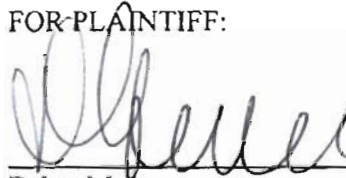


Delaine R. Smith
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Tel. (901) 291-1500

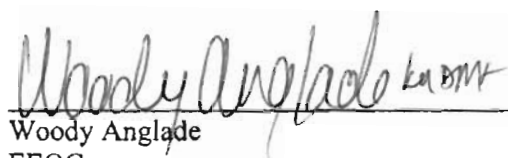


Horace Dawson
Divisional General Counsel
on behalf of GMRI, Inc.

FOR PLAINTIFF:



Debra M. Lawrence
EEOC
10 S. Howard Street
3rd Floor
Baltimore, Maryland 21201
Tel. (410) 209-2734



Woody Anglade
EEOC
801 Market Street, 13th Floor
Philadelphia, PA 19103
Tel. (215) 440-2814

SO ORDERED.

Signed and entered this 11th day of December 2009.

s/Christopher A. Boyko
Christopher A. Boyko
United States District Court Judge

Appendix A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

vs.)

GMRI, INC., dba BAHAMA BREEZE,)

Defendant.)

Case No.: 1:08-cv-02214
District Judge Boyko
Magistrate Judge McHargh

RELEASE OF CLAIMS

Pursuant to the terms of the Consent Decree entered into by Plaintiff Equal Employment Opportunity Commission (EEOC) and Defendant GMRI, Inc. dba Bahama Breeze in the above-referenced case:

In exchange for the Company's promise to pay me \$_____, which is good and valuable consideration, I, _____, do hereby waive, remit, release, and forever discharge GMRI, Inc., its parent and subsidiary companies and affiliates, and any and all shareholders, officers, directors, agents, attorneys, employees, representatives and members of such entities from any and all claims, demands, or causes of action under Title VII of the Civil Rights Act of 1964, including attorneys fees and costs, arising from or relating to any right or entitlement now existing until the date of execution of this Release, including any claim of race discrimination, racial harassment, and retaliation made in or that could have been made in the above-referenced case.

Date: _____, 2009

Signature: _____

Printed Name: _____

Sworn to and Subscribed before me
this ___ day of _____, 2009.

Appendix B Current Non-Discrimination and Harassment Policy

The Darden Family of Restaurants Non-Discrimination and Non-Harassment Policies

Non-Discrimination Policy

The Company is deeply committed to providing an environment that is free of discrimination for our employees as well as our guests. This is reflected in the Company's making diversity one of our core values. The Company strictly prohibits any form unlawful discrimination by any of our employees. Unlawful discrimination in the workplace based upon sex, race, color, religion, age, national origin, disability, sexual orientation, or any other prohibited basis not only demonstrates a lack of judgment and good common sense, it violates Our personnel policies and practices, the law, and our principle of commitment to mutual respect.

The Company is also committed to employing individuals regardless of sex, race, color, religion, age, national origin, disability, sexual orientation, or other protected category. Unlawful discrimination in hiring, promotion, terms and conditions of employment, discipline, and termination of employees on the basis of any protected category is strictly prohibited by the Company.

Reporting Discrimination

If you believe that you have experienced or witnessed unlawful discrimination in violation of this policy, you are encouraged and expected to report such conduct to your General Manager, Director of Operations, or Senior Director. A toll-free number (800-932-2558) is also available to directly contact Employee Relations if you are uncomfortable speaking with – or if your issue is not resolved by the individuals identified above.

Complaints will be handled confidentially to the maximum extent possible and will be investigated and resolved promptly. Where complaints are found to have merit, appropriate disciplinary action will be taken against the offender - up to and including termination of employment.

Our Commitment to an Effective Non-Discrimination Policy

There will be no retaliation against any employee for making a good faith complaint under this policy or for participating in any investigation conducted pursuant to this policy. If you feel that you are being retaliated against as a result of your good-faith complaint of a violation of this policy, you should report your belief to your General Manager, Director of Operations, Senior Director, or to Employee Relations. For the protection of the interests of persons wishing to report violations of this policy, the Company does not require individuals to report incidents of harassment to their immediate supervisors.

Sexual and Other Unlawful Harassment

Harassment based on race, color, sex, religion, age, national origin, disability, sexual orientation or any other legally protected group is also unlawful discrimination. Such harassment that creates an abusive or hostile working environment is also prohibited by the Company. Respect and caring is one of our core values and harassment simply has no place here.

Sexual harassment is misconduct that deprives employees of a workplace free from unwanted and unwelcome sexual overtones. Sexual harassment may include unwelcome sexual advances, requests for sexual favors, or other verbal or physical contact of a sexual nature when such conduct creates an offensive, hostile, and intimidating working environment, and prevents individual from effectively performing the duties of their position.

Examples of conduct that may create a hostile working environment if based on a protected status also include:

- Inappropriate touching;
- Verbal acts such as derogatory comments, name-calling, or continual taunting based on a protected group;
- Conduct that is physically threatening, harmful, or humiliating;
- Taking advantage of employees with physical or mental disabilities, such as encouraging inappropriate behavior;
- Jokes, drawings, photographs, etc., that are offensive to the reasonable person in a protected group.

Sometimes an action that is not intended to be discriminatory or harassing can nevertheless be viewed or perceived by the other person, employee, or guest in a different way and thereby becomes a problem. The best rule of conduct is simple: **treat everyone the same way you expect and want to be treated.**

Reporting Harassment

If you believe that you have experienced or witnessed sexual or other unlawful harassment in violation of this policy, it is **VERY IMPORTANT** that you **REPORT THIS CONDUCT** to your General Manager, Director of Operations, or Senior Director. A toll-free number 1-800-932-2558 is also available to directly contact Employee Relations if you are uncomfortable reporting to, or if your issue is not resolved by, the individuals identified above.

Complaints will be handled in confidence to the maximum extent possible and will be investigated and resolved promptly. Where complaints are found to have merit, appropriate disciplinary action will be taken against the offender up to and including termination of employment.

Our Commitment to an Effective No Harassment Policy

There will be no retaliation against any employee for making a good faith complaint under this policy or for participating in any investigation conducted pursuant to this policy. If you feel that you are being retaliated against as a result of your good-faith complaint of a violation of this policy, you should report your belief to your General Manager, Director of Operations, Senior Director, or to Employee Relations. For the protection of the interests of persons wishing to report violations of this policy, the Company does not require individuals to report incidents of harassment to their immediate supervisors.

Appendix C

NOTICE POSTING

This Notice is being posted as part of an agreement between the Equal Employment Opportunity Commission (“EEOC”) and GMRI, Inc. d/b/a Bahama Breeze (“Bahama Breeze”).

Title VII prohibits employment discrimination based on sex, race, color, national origin, or religion. Title VII also prohibits retaliation against individuals who have complained of or opposed discrimination. Unlawful discrimination can take the form of harassment based on one of these protected categories.

Under this law and Company policy Bahama Breeze WILL NOT engage in any acts or practices made unlawful under Title VII.

Under this law and Company policy Bahama Breeze WILL NOT retaliate against any individual for complaining of or opposing discrimination.

Bahama Breeze’s Non-Discrimination and Harassment Policy and Complaint Procedure strongly prohibits any unlawful discrimination, harassment or retaliation and encourages any employee who believes that they have been subjected to unlawful harassment to report it to their manager, general manager, director of operations, or Employee Relations at 1-800-932-2558. This number is also available at www.bahamabreeze.com under FAQ. Bahama Breeze will thoroughly investigate all such complaints with due regard for the privacy of the individuals involved. Any employee who knowingly retaliates against an employee who has complained of discrimination shall be subject to immediate disciplinary action, up to and including discharge.

If you have a complaint of employment discrimination or questions regarding laws prohibiting employment discrimination, you may seek assistance from the EEOC by visiting the EEOC’s Cleveland Field Office at Anthony J. Celebrezze Federal Building, 1240 E. 9th Street, Suite 3001, Cleveland, Ohio 44199. General information may also be obtained on the Internet at www.eeoc.gov.