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EEOC and Darmo et al. v. Pinnacle Nissan, Inc. et al.

Judge Mary H. Murguia

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EEOC and Darmo et al. v. Pinnacle Nissan, Inc. et al.

Keywords

EEOC, Darmo, Pinnacle Nissan, Inc., CIV 00-1872 PHX MHM, Consent Decree, Hostile Work Environment, Retaliation, Compensation, Constructive Discharge, National Origin, Religion, Race, Retail, Employment Law, Title VII

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

and

Samuel Darmo; Amer Darmo; and
Samuel Einhorn,

Intervenors,

vs.

Pinnacle Nissan, Inc., et al.,

Defendants.

CIV 00-1872 PHX MHM

CONSENT DECREE

The United States Equal Employment Opportunity Commission (“the Commission” or “EEOC”) filed this action against Pinnacle Nissan, Inc. to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Commission’s Amended Complaint, the Commission alleges that Pinnacle Nissan has subjected a class of employees to a hostile work environment due to their national origin and subjected Samuel Einhorn to a hostile work environment due to his religion. In

1 addition, the Commission alleges that employees were retaliated against for
2 opposing discriminatory practices.

3 Pinnacle Nissan has timely filed answers to the Amended Complaint and at
4 all times denied the allegations in the Amended Complaint.

5 It is understood that this Consent Decree does not constitute an admission
6 by Pinnacle Nissan of any violation under Title VII of the Civil Rights Act of 1964,
7 as amended, and that all allegations of liability are expressly denied by Pinnacle
8 Nissan.

9 The parties to this Consent Decree have decided to resolve this matter on
10 the following terms.

11 The parties do not object to the jurisdiction of the Court over this action and
12 waive their rights to a hearing and the entry of findings of fact and conclusions of
13 law and to a jury trial.

14 It is hereby ORDERED, ADJUDGED AND DECREED:

15 1. This Decree resolves all claims by the Commission and Intervenors,
16 including all claims asserted by the Commission on behalf of class members
17 Bassam Abazly, Claudio Guzelli, Sal De Luna, Mike Madrid, Sam Darmo, Amer
18 Darmo, and Samuel Einhorn and Intervenors Sam Darmo, Amer Darmo, and
19 Samuel Einhorn against Pinnacle Nissan, including claims for discrimination,
20 harassment, constructive discharge, retaliation, back pay, compensatory
21 damages, punitive damages, interest, declaratory relief, injunctive relief,
22 attorney's fees and costs arising out of the issues in this lawsuit and its underlying
23 and related charges.

24 **GENERAL INJUNCTIVE RELIEF**

25 2. Pinnacle Nissan and its officers, agents, employees, successors,
26 assigns and all persons in active concert or participation with it, agree for the
27 duration of the Decree that they will not (a) discriminate based on national origin
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1 or religion, or (b) retaliate against any employee because he or she (i) opposed
2 discriminatory practices made unlawful by Title VII, (ii) filed a charge or is
3 assisting or participating in the filing of a charge of discrimination, or (iii) assisted
4 or participated in an investigation or proceeding brought under Title VII.

5 **APPOINTMENT OF OMBUDSPERSON**

6 3. Consistent with the purposes of the Decree to avoid discrimination
7 and enable Pinnacle Nissan to be a model employer in the area of anti-
8 discrimination and equal employment opportunity, within 60 (sixty) days of the
9 entry of the Decree, Pinnacle Nissan's President will appoint an Ombudsperson,
10 with the approval of the Commission, to serve at least during the term of the
11 Decree. This Ombudsperson shall report directly to Pinnacle Nissan's President
12 and his or her services may be terminated only for cause.

13 4. The Ombudsperson will be exclusively responsible at Pinnacle
14 Nissan for (a) reviewing and, if necessary, revising Pinnacle Nissan's anti-
15 discrimination policies; (b) establishing a meaningful diversity awareness
16 program, as set forth below; (c) receiving, investigating and maintaining all
17 records of all complaints of discrimination; (d) disciplining and terminating
18 employees for violation of Pinnacle Nissan's anti-harassment policies; (e)
19 evaluating employees in the area of anti-discrimination/equal employment
20 opportunity, as set forth in Paragraph 10 below; and (f) preparing reports to the
21 Commission, as required by this Decree.

22 **CORRECTIVE POLICIES AND PRACTICES**

23 5. Pinnacle Nissan will post, for the duration of this Decree, in a
24 prominent place frequented by its employees at its facilities, the notice attached
25 as Exhibit A. The notice shall be the same type, style and size as Exhibit A.

26 6. Pinnacle Nissan will institute and carry out policies and practices
27 that help assure a work environment free from national origin, racial, and religious
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1 discrimination for its employees and that allows employees to raise concerns or
2 complaints without retaliation about matters, whether alleged, perceived, or
3 actual, made unlawful by Title VII.

4 7. Pinnacle Nissan will provide training on national origin, race, and
5 religious discrimination and retaliation, according to the following terms:

6 A. Pinnacle Nissan will retain and pay for consultant/lecturer(s),
7 acceptable to the Commission, who will provide consultation and training as set
8 forth below for a period of two years from the date of this Decree. At least sixty
9 (60) days prior to the proposed training session, Pinnacle Nissan shall submit the
10 name(s), address(es), telephone number(s) and resume(s) of the proposed
11 consultant/lecturer(s), together with the dates of the proposed training session
12 and an outline of the contents of the training to the Regional Attorney, Equal
13 Employment Opportunity Commission, 3300 North Central Avenue, Suite 690,
14 Phoenix, Arizona 85012. The Commission shall have 30 days from the date of
15 receipt of the information described above to accept or reject the proposed
16 consultant/lecturer and/or the contents of the seminar. In the event the
17 Commission does not approve the designated consultant/lecturer and/or the
18 contents of the training, the Commission and Pinnacle Nissan shall attempt in
19 good faith to resolve the matter.

20 B. During each of the next two years, the consultant/lecturer(s)
21 will conduct one live seminar training session each year. The live session shall
22 be for taping purposes and will be for General Managers, supervisors, human
23 resource personnel and top management. All of Pinnacle Nissan's supervisory,
24 human resource, and management employees, who are employed by Pinnacle
25 Nissan, shall attend the live seminar sessions in each year. All of Pinnacle
26 Nissan's non-supervisory employees shall watch the videotaped showing of the
27 live session each year. Pinnacle Nissan shall keep a written record of all
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1 employees who are required to watch the videotaped training and who attend the
2 live training. Pinnacle Nissan may at its election have duplicative videotaped
3 sessions to accommodate staffing needs. Pinnacle Nissan shall be responsible
4 for any additional costs to provide such duplicative sessions.

5 C. During the first year, the seminar-training session shall be
6 conducted within four months of the entry of this Decree. For the second year,
7 the seminar-training session shall be conducted between 8 and 10 months after
8 the completion of the preceding session.

9 D. The seminar-training sessions shall be no less than three
10 hours, including 30 minutes of questions and answers. All personnel, designated
11 in paragraph B, shall both register and attend the seminar-training session. The
12 registry of attendance shall be retained by Pinnacle Nissan for the duration of the
13 Decree.

14 E. The seminars will include the subjects of diversity awareness,
15 what constitutes race, national origin, and religious discrimination, as well as
16 retaliation for engaging in protected activity under Title VII of the Civil Rights Act
17 of 1964. This training will cover discrimination in the hiring, firing, compensation,
18 assignment or other terms, conditions or privileges of employment; the prevention
19 of discrimination; how to provide a work environment free from discrimination,
20 harassment and retaliation; and to whom and by what means employees may
21 complain if they feel they have been subjected to discrimination, harassment or
22 retaliation in the workplace. The session shall also review and explain the
23 policies set out in Paragraph 8 of this Decree.

24 F. During the live training sessions, Pinnacle Nissan's
25 Ombudsperson shall read a letter from the President, if he is not there, and will
26 speak to the employees about the discipline that can be taken against
27 supervisors, managers and employees who commit acts of discrimination,
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1 harassment or retaliation or allow discrimination, harassment or retaliation to
2 occur in the workplace, the importance of maintaining an environment free of
3 discrimination, and its anti-discrimination policies, in accordance with Paragraph
4 8 of this Decree.

5 G. The Commission, at its discretion and with prior notice to
6 Pinnacle Nissan, may designate Commission representatives to attend in the first
7 seminar-training session. The representatives shall have the right to fully
8 participate in the session.

9 8. Within thirty days of the entry of this Decree, Pinnacle Nissan will
10 review and, if necessary, revise its written policies concerning discrimination and
11 retaliation to conform with the law and submit the policy for review to the Regional
12 Attorney of the Phoenix District Office of the EEOC. This written policy must
13 include at a minimum:

14 A. A strong and clear commitment to a workplace free of
15 religious, race and national origin discrimination;

16 B. A clear and strong encouragement of persons who believe
17 they have been discriminated against to come forward;

18 C. A description of the consequences, up to and including
19 termination, that will be imposed upon violators of the policy;

20 D. A promise of maximum feasible confidentiality for persons who
21 believe that they have been discriminated against in violation of the policy;

22 E. An assurance of non-retaliation for persons who believe they
23 have been discriminated against and witnesses;

24 F. That national origin, religious, and racial discrimination by all
25 persons, including management officials, supervisors, vendors, suppliers, third
26 parties and customers is prohibited and will not be tolerated;

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1 G. The identification of specific alternative individuals, including
2 the Ombudsperson, with their telephone numbers, to whom employees who have
3 been subjected to discrimination can report the discrimination and who have the
4 authority to investigate allegations of discrimination in a neutral and confidential
5 manner.

6 H. A written statement that the employee may report the
7 harassment to designated persons outside of his or her chain of management
8 should the complainant believe managers in the chain of command have a
9 conflict of
10 interest, are implicated in the allegations, or may not adequately investigate the
11 complaint.

12 I. Assurances that Pinnacle Nissan will investigate allegations
13 of national origin, race and religious discrimination promptly, fairly, reasonably
14 and effectively by appropriate investigators and that appropriate corrective action
15 to make victims whole and to eradicate the discrimination; and

16 J. Information regarding the employee's right to file a charge of
17 discrimination with the EEOC or the Arizona Civil Rights Division.

18 9. These policies shall be posted in a prominent location at the
19 dealership. These policies shall be transmitted to Pinnacle Nissan's employees
20 by its President and distributed to each current employee within thirty days of the
21 entry of the Decree. These policies shall be distributed to all new employees
22 when hired. These policies also shall be posted in a prominent place frequented
23 by the employees.

24 10. Pinnacle Nissan shall institute a procedure which evaluates the
25 General Manager, managers, supervisors and applicable human resources
26 personnel on their performance in responding to complaints of discrimination and
27 for their compliance with EEO laws, including Title VII. The failure of such an
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1 employee to enforce the policies and the anti-discrimination laws must result in
2 appropriate disciplinary action.

3 11. Pinnacle Nissan shall promptly, reasonably and appropriately
4 investigate all complaints of national origin, religious, and racial discrimination, as
5 appropriate. The investigation must include a finding of whether discrimination
6 occurred, a credibility assessment, interviews of all potential victims and
7 witnesses identified, and concurrent notes of the investigation, as appropriate.
8 Pinnacle Nissan shall take immediate appropriate corrective action to make
9 discrimination victims whole, to discipline violators and to eradicate the
10 discrimination, as appropriate.

11 12. Pinnacle Nissan shall not retain documents related to any such
12 investigation referred to in Paragraph 11 in any of the complainant's personnel
13 files. All disciplinary actions taken against employees for violation of any
14 aforementioned policy will be retained in the violator's personnel file. In those
15 cases in which no conclusion could be reached on the allegations, the
16 investigation documents shall be maintained in a separate file.

17 13. Copies of all complaints of discrimination must be provided to the
18 Ombudsperson.

19 **REPORTING BY PINNACLE NISSAN AND ACCESS BY EEOC**

20 14. Pinnacle Nissan shall report in writing to the Regional Attorney of the
21 Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690,
22 Phoenix, Arizona 85012, beginning six months from the date of the entry of this
23 Decree, and thereafter every six months for the duration of the Decree the
24 following information:

25 A. Any changes, modifications, revocations, or revisions to its
26 policies and procedures which concern or affect the subject of race, national
27 origin, or religious discrimination, or retaliation.

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1 B. The registry of persons attending the live seminars required in
2 Paragraph 7 of this Decree, a list of current personnel employed by Pinnacle
3 Nissan on the days of the seminar-training sessions, and a copy of the written
4 record required for the videotaped training sessions required in Paragraph 7.

5 C. Confirmation that (i) the Notice required in Paragraph 5 of this
6 Decree was posted and the locations where it was posted, (ii) the policies
7 required in Paragraph 8 were distributed to each current and new employee and
8 posted, and (iii) the expungement from each charging party and class member's
9 personnel file as required in Paragraph 12 of this Decree took place, the date of
10 the expungement, and the specific documents expunged.

11 15. The Commission, upon seven (7) days written notice to Pinnacle
12 Nissan's Ombudsperson, shall have the right to enter and inspect Pinnacle
13 Nissan's premises to insure compliance with this Decree and Title VII's
14 prohibition of race, national origin, and religious discrimination, as well as
15 retaliation.

16 **MONETARY RELIEF**

17 16. Pinnacle Nissan agrees to pay the Commission and Intervenors the
18 amount of \$ 361,451.00 pursuant to Exhibit B and paragraphs 17 and 18.

19 17. Within fourteen (14) business days of the entry of this Decree,
20 Pinnacle Nissan shall pay the appropriate settlement amounts separately to each
21 EEOC charging party and class member by check, cashier's check, or money
22 order, in accordance with Exhibit B. These payments represent settlement of
23 compensatory damages. Pinnacle Nissan will issue 1099 forms for all payments.

24 18. The checks provided for in Paragraph 17 of this Decree shall be
25 mailed directly by Pinnacle Nissan to each charging party and class member at
26 the addresses supplied by the Commission. Within three business days of
27 issuance of the checks, Pinnacle Nissan shall submit a copy of each check and
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1 related correspondence to the Regional Attorney, Equal Employment Opportunity
2 Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.
3 Issuance and mailing of the checks shall constitute compliance with the payment
4 obligation set forth herein.

5 19. Within fourteen (14) days of the entry of this Decree, Pinnacle
6 Nissan shall pay \$ 159,549.00 to Steve Montoya for attorney's fees, in full and
7 final settlement for any and all claims for attorney's fees and costs associated
8 with the claims of any class members, including, without limitation, the intervening
9 class members.

10 20. Pinnacle Nissan will not condition the receipt of the individual relief
11 on a claimant's agreement to: (a) maintain as confidential the terms of this
12 Decree; or (b) waive his statutory right to file a charge with any federal or state
13 anti-discrimination agency.

14 **MISCELLANEOUS NON-MONETARY INDIVIDUAL RELIEF**

15 21. Pinnacle Nissan will expunge from the personnel files of each
16 charging party and class member all references to the charges of discrimination
17 filed against Pinnacle Nissan or their participation in this action, and any
18 derogatory documents which related to complaints or investigation of
19 discrimination.

20 22. In response to all future employment inquiries regarding charging
21 parties or class members, Pinnacle Nissan will provide a written reference which
22 states the dates of employment and does not state that the person was
23 terminated for cause.

24 **COSTS AND DURATION**

25 23. Each party will bear its costs and attorney's fees, except as provided
26 herein, incurred as a result of this action through the filing of this Decree.
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1 24. The duration of this Decree will be two years from its entry. This
2 Court will retain jurisdiction over this action for the duration of the Decree, during
3 which the Commission may petition this Court for compliance with this Decree.
4 Should the Court determine that Pinnacle Nissan has not complied with this
5 Decree, appropriate relief, including extension of this Decree for such period as
6 may be necessary to remedy its non-compliance, may be ordered. This Decree
7 will expire by its own terms at the end of twenty four months from the date of
8 entry, without further action by the parties.

9 26. The parties agree to entry of this Decree and judgment subject to
10 final approval by the Court.

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12 ENTERED AND ORDERED this ____ day of _____, 2003.

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15 _____
16 Mary H. Murguia
17 United States District Court Judge
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1 APPROVED AND CONSENTED TO:

2 Pinnacle Nissan, Inc., by:

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

3

4 _____
5 Allan Cady
6 Secretary, Pinnacle Nissan, Inc.

MARY JO O'NEILL
Regional Attorney

6

7

8 _____
9 Laura M. Franze
10 M. Brett Burns
11 **Akin, Gump, Strauss, Hauer &
12 Feld, L.L.P.**
13 1700 Pacific Avenue, Suite 4100
14 Dallas, Texas 75201
15 Attorneys for Pinnacle Nissan

C. EMANUEL SMITH
Supervisory Trial Attorney

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P. DAVID LOPEZ
Trial Attorney

SALLY C. SHANLEY
Trial Attorney

Phoenix District Office
3300 North Central Avenue, Suite
690
Phoenix, Arizona 85012
Attorneys for Plaintiff

**LAW OFFICES OF STEPHEN G.
MONTROYA**
411 North Central Ave., Suite 520
Phoenix, Arizona 85004

Stephen G. Montoya
Attorney for Intervening Plaintiffs

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EXHIBIT A

NOTICE TO ALL EMPLOYEES OF PINNACLE NISSAN

This Notice is posted pursuant to a Consent Decree entered into between Pinnacle Nissan and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under federal law Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of national origin and religion. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Pinnacle Nissan will not discriminate against any employee on the basis of national origin or religion, and will not retaliate against any employee.

If you believe you have been discriminated against by Pinnacle Nissan , you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012, (602) 640-5000; or
- (2) Arizona Civil Rights Division (ACRD) of the Attorney General's Office, 1275 W. Washington, Phoenix, Arizona, 85007, (602) 255-5263.

or have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Pinnacle Nissan for (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD and the address or telephone numbers listed above.

THIS NOTICE MUST REMAIN POSTED UNTIL _____.

Dated:

President of Pinnacle Nissan

EXHIBIT B

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Sam Einhorn \$ 168,000.00
Sam Darmo \$ 126,000.00
Amer Darmo \$ 24,000.00
Mike Madrid \$ 23,450.00
Bassam Abazly \$ 6,667.00
Claudio Guzelli \$ 6,667.00
Sal De Luna \$ 6,667.00