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EEOC v. Trendwest Resorts, Inc.

Judge Robert S. Lasnik

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EEOC v. Trendwest Resorts, Inc.

Keywords

EEOC, Trendwest Resorts, Inc., C04-503L, Consent Decree, Disparate Treatment, Sex, Terms and Conditions, Female, Hospitality, Employment Law, Title VII

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7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10

11 EQUAL EMPLOYMENT OPPORTUNITY) NO. C04-503L
COMMISSION,)
12) [PROPOSED] CONSENT DECREE AND
Plaintiff,) ORDER OF DISMISSAL
13)
vs.)
14)
TRENDWEST RESORTS, INC.,)
15)
Defendant.)
16

17 **A. INTRODUCTION**

18 1. This action originated with a discrimination charge filed by Brenda McAllister
19 (“Charging Party”) with plaintiff Equal Employment Opportunity Commission (“EEOC”). The
20 Charging Party alleged that defendant Trendwest Resorts, Inc. (“Trendwest”), discriminated against
21 her and a class of similarly situated individuals on the basis of their sex, female, by subjecting them
22 to disparate terms and conditions in their employment, in violation of Title VII of the Civil Rights
23 Act of 1964, as amended (“Title VII”), 42 U.S.C. § 2000e *et seq.*

24 2. After conducting an investigation of Charging Party's allegations, the EEOC sent to
25 Trendwest a Letter of Determination with a finding of reasonable cause that it had violated Title VII.

26 3. On October 23 and November 24, 2003, the EEOC and Trendwest participated in a
27 mediation. As a result of the mediation, the EEOC and Trendwest have agreed to conclude all
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1 claims without expending further resources in contested litigation by means of this [Proposed]
2 Consent Decree and Order of Dismissal (this “Consent Decree”).

3 4. With respect to a civil action that the EEOC intends to bring against Trendwest in
4 connection with this Consent Decree, the parties have agreed as follows:

5 a. The EEOC intends to commence a civil action (the “Civil Action”) against
6 Trendwest in the U.S. District Court for the Western District of Washington (the “District Court”)
7 at Seattle based on the allegations of the Charging Party’s charge of discrimination against
8 Trendwest.

9 b. Notwithstanding the commencement of the Civil Action, the EEOC will
10 proceed to effect resolution of the Civil Action consistent with the terms of this Consent Decree, and
11 will pursue prosecution of that action only in the event that this Consent Decree does not become
12 effective under the terms and conditions set forth below.

13 c. The EEOC will take all necessary and reasonable steps to facilitate adoption
14 of the Consent Decree by the District Court without the need for Trendwest to answer the EEOC’s
15 civil complaint or otherwise participate in the litigation process (other than in support of the District
16 Court’s adoption of the Consent Decree), including such measures as deferring service on Trendwest
17 of the EEOC’s complaint in the Civil Action.

18 d. It is the intention of the parties that this Consent Decree will serve as the final
19 judgment in the Civil Action.

20 **B. NON-ADMISSION OF LIABILITY AND NON-DETERMINATION BY THE COURT**

21 This Consent Decree is not an admission of wrongdoing or an adjudication or finding on the
22 merits of the case. On the contrary, Trendwest specifically and vigorously denies that its
23 employment practices with respect to Charging Party, any Class Member (as defined in section E.1.),
24 or anyone else, were unlawful in any respect. This Consent Decree will not be used as evidence of
25 liability or for purposes of *res judicata* or collateral estoppel in any legal proceeding against
26 Trendwest. Neither the agreement to enter this Consent Decree, nor the Consent Decree itself, will
27 be admissible in any proceeding as an admission by Trendwest of any violation of, failure to comply
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1 with, interference, retaliation or obstruction of compliance with Title VII or any other employment
2 law or order.

3 **C. SCOPE OF SETTLEMENT**

4 This Consent Decree is the final and complete resolution of all issues and claims by the
5 EEOC against Trendwest arising out of Charging Party's EEOC charge, including claims for
6 attorneys' fees and costs, and is binding and final as to all such issues and claims except that, if
7 Charging Party or any Class Member declines to sign the release required under this Consent Decree,
8 it will not be binding as to that person individually. This Consent Decree will apply only to
9 Trendwest's Northwest Region, which includes Trendwest's facilities in the States of Alaska,
10 Washington, Oregon, and Idaho.

11 **D. JURISDICTION AND VENUE**

12 Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sections 451, 1331, 1337, 1343,
13 and 1345. This action is authorized to be brought by the EEOC pursuant to sections 706(f)(1) and
14 (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and section 102 of the Civil Rights Act of 1991,
15 42 U.S.C. § 1981a. The employment practices alleged to be unlawful occurred within the
16 jurisdiction of this Court.

17 **E. DEFINITION OF TERMS**

18 For the purposes of this Consent Decree, the following definitions apply:

19 1. "Class Member" means a female employee of Trendwest who was employed in its
20 Northwest Region as a Sales Representative or Sales Assistant Manager for at least six consecutive
21 months during the Class Period; and who, in at least three (not necessarily consecutive) months
22 during her employment as a Sales Representative or Sales Assistant Manager, ranked within the top
23 25 percent by compensation of all female Sales Representatives and Sales Assistant Managers in the
24 Northwest Region.

25 2. "Class Period" means the period from January 1, 2001, to December 31, 2003,
26 inclusive.

27 3. Unless otherwise indicated, "days" means calendar days.

28

1 4. “Effective Date of the Consent Decree” means the date that the Court enters this
2 Consent Decree as its judgment in this matter.

3 5. “Settlement Pool” means \$475,000 to be paid by Trendwest pursuant to this Consent
4 Decree.

5 **F. MONETARY RELIEF/RELEASE OF CLAIMS**

6 1. In settlement of the EEOC's claims in this matter, and subject to the terms and
7 conditions set forth below, Trendwest will distribute the Settlement Pool to all Class Members who
8 grant a release to Trendwest in the form specified by Trendwest.

9 2. Each Class Member’s share of the Settlement Pool will be calculated based on that
10 Class Member’s number of months employed as a Sales Representative or a Sales Assistant Manager
11 in Trendwest’s Northwest Region during the Class Period, compared to the number of months of
12 such employment during the Class Period by other Class Members. For example, a Class Member
13 who worked one year as a Sales Representative in the Class Period would receive a share that is
14 twice as large as a Class Member who worked six months as a Sales Representative during the Class
15 Period. In cases of service with a fractional month, the month will be rounded up or down to the
16 nearest whole month.

17 3. Each Class Member will be entitled to receive reimbursement of up to \$200 for her
18 reasonable attorneys’ fees if the Class Member consults an attorney about the release before signing
19 it. The total potential reimbursement of \$5,000 will be taken out of the Settlement Pool before
20 distributions are made.

21 4. Payments (other than reimbursement of attorneys’ fees) will be made less applicable
22 tax withholdings and deductions, which also will be paid out of the Settlement Pool. However,
23 Trendwest will pay all employer portions of payroll taxes from other resources and not from the
24 Settlement Pool. Payments will be made within 30 days of the Court’s final judgment entering this
25 Consent Decree.

26 5. Trendwest’s acceptance of this Consent Decree is conditioned by the execution and
27 return to Trendwest of the release by at least 75 percent of the Class Members not later than 60 days
28 after notice of the settlement evidenced by this Consent Decree is given to the Class Members.

1 Notice will be accomplished by means of mailing to Class Members the form of notice evidenced
2 by Exhibit A to this Consent Decree accompanied by a summary of this Consent Decree and the
3 release. If that minimum percentage is not reached, Trendwest has the right to declare this Consent
4 Decree null and void and it will have no force or effect.

5 6. If at least 75 percent but not 100 percent of the Class Members timely return the
6 release to Trendwest, then Trendwest may retain those non-participating Class Members' shares of
7 the Settlement Pool to help pay for the cost of its defense against any claims that the
8 non-participating Class Members may bring against Trendwest that would have been released had
9 the Class Members participated in the Settlement.

10 7. Upon notice by Trendwest of which Class Members have failed to timely return the
11 release to Trendwest, the EEOC will issue a right-to-sue notice to those non-participating Class
12 Members indicating that a claim under Title VII against Trendwest must be brought within 90 days
13 after receipt of the right-to-sue notice or be barred. If, within six months after issuance of the
14 right-to-sue notice by the EEOC, the non-participating Class Member has not brought such a claim,
15 then Trendwest will donate that Class Member's share, plus accrued interest, to Dress for Success,
16 c/o Rita Ryder, Executive Director of the Seattle YWCA. In addition, any amount of the \$5,000 set
17 aside from the Settlement Pool that is not used to reimburse Class Members for their reasonable
18 attorneys' fees will be donated, plus accrued interest, to Dress for Success.

19 8. By agreeing to this section of the Consent Decree, Trendwest is not waiving any
20 defense to any such non-participating Class Member's claim based on the statute of limitations, nor
21 conceding that a claim brought within the 90-day or six-month period following issuance of the
22 right-to-sue notice would be timely.

23 **G. INJUNCTIVE RELIEF**

24 1. **Compliance with Title VII**

25 a. Trendwest reaffirms its commitment to comply with Title VII. To further this
26 commitment, Trendwest will monitor the affirmative obligations of this Consent Decree. The
27 following terms of this Consent Decree apply to all applicants and employees in Trendwest's
28 Northwest Region.

1 b. Trendwest will not retaliate against any applicant or employee for opposing
2 a practice deemed unlawful by Title VII or for making a charge, testifying, assisting, or participating
3 in any investigation, proceeding, or hearing associated with this action.

4 c. Trendwest is hereby enjoined from engaging in personnel practices that
5 unlawfully discriminate against applicants and employees in violation of Title VII. In recognition
6 of its obligations under Title VII, Trendwest will institute the policies and practices set forth below.

7 **2. Retention of a Consultant**

8 Trendwest will retain, at Trendwest’s expense, a consultant to conduct an internal review and
9 audit of Trendwest’s promotion and advancement practices and procedures within the sales division
10 of its Northwest Region. With the assistance of the consultant, Trendwest will adopt a written policy
11 that sets forth the requirements and criteria for advancement opportunities and make this policy
12 available to all applicants and employees of Trendwest’s Northwest Region. This policy will be
13 distributed to all present and future employees, both management and non-management, in
14 Trendwest’s Northwest Region within 90 days of the entry of this Consent Decree.

15 **3. Strengthening of Policies**

16 a. Trendwest will improve and strengthen its existing policies against
17 discriminatory employment practices based on sex by creating and improving its internal grievance
18 and complaint resolution procedure as outlined below. This policy will be distributed to all present
19 and future employees, both management and non-management, in Trendwest’s Northwest Region
20 within 45 days after entry of this Consent Decree and continuing for the duration of this Consent
21 Decree. Distribution to temporary employees may consist of notification of the existence and the
22 location of the policy.

23 b. Trendwest affirms the following “Statement of Zero-Tolerance Policy and
24 Workplace Objectives”:

25 Trendwest Resorts, Inc. is firmly committed to developing and maintaining a
26 zero-tolerance policy concerning sex discrimination and retaliation against
27 individuals who report discrimination in the company’s workplace; to swiftly and
28 firmly responding to any acts of sex discrimination or retaliation of which the
company becomes aware; to implementing a disciplinary system that is designed to
strongly deter future acts of sex discrimination or retaliation; and to actively

1 monitoring its workplace in order to ensure tolerance, respect and dignity for all
2 people.

3 **4. Employment References and Expunging Records**

4 a. Trendwest will not disclose any information or make references to any charges
5 of discrimination or this case in responding to employment reference requests for information about
6 Charging Party or any of the Class Members. In response to any inquiries, Trendwest will provide
7 employment references that include only dates of employment and positions held. Trendwest may
8 produce personnel information involving these individuals if it is responding to any lawful
9 third-party subpoena or other order of a court.

10 b. Trendwest will expunge from the personnel files of Charging Party and Class
11 Members any references to a charge of discrimination against Trendwest and this lawsuit. Trendwest
12 will not add any information or references to the personnel files of Charging Party or the Class
13 Members regarding the charge of discrimination and this case after such references have been
14 expunged. Files containing information about Charging Party and the Class Members that have been
15 developed during this action will be maintained by Trendwest separately from the personnel files of
16 Charging Party and Class Members and be kept secure and confidential. Trendwest will make the
17 personnel files of Charging Party and Class Members available for inspection by, respectively,
18 Charging Party and Class Members, or their respective counsel, at Trendwest's offices located at
19 9805 Willows Road, Redmond, Washington 98052 upon reasonable notice.

20 **5. Additional Compliance Measures**

21 In order to carry out the objectives embodied in Trendwest's Statement of Zero-Tolerance
22 Policy and Workplace Objectives and this Decree, Trendwest will ensure the following policies,
23 procedures, and practices are in effect:

24 a. **Complaint Procedures**

25 (1) Trendwest will provide to its employees the name, responsibilities,
26 work location, and telephone number of the management employees charged with investigating
27 issues of employment discrimination. That information will be routinely and continuously posted.
28 If the name or designation of the management employees charged with investigating issues of sex

1 discrimination and retaliation changes, Trendwest will re-post his or her name, responsibilities, work
2 location, and telephone number. Also, as part of its procedure, Trendwest will maintain its Integrity
3 Hotline, an 800 telephone service which allows any Trendwest employee to register complaints or
4 concerns on an anonymous basis. Upper management employees designated by Trendwest to
5 investigate complaints of discrimination regularly will gather the complaints from the Integrity
6 Hotline.

7 (2) Trendwest will enable complaining parties to be interviewed by
8 Trendwest about their complaints in such a manner that permits the complaining party, at such
9 party's election, to remain inconspicuous to all of the employees in such party's work area.
10 Trendwest's complaint procedure will not impose upon individuals seeking to make a complaint
11 alleging sex discrimination or retaliation any requirements that are more burdensome than are
12 imposed upon individuals who make other complaints of comparable gravity.

13 (3) Trendwest will ensure that its policies and procedures provide that
14 complaint handling and disciplinary procedures regarding all complaints of sex discrimination or
15 retaliation are investigated and addressed promptly. Specifically, Trendwest will make its best effort
16 to investigate all complaints of sex discrimination or retaliation promptly and to complete
17 investigations within four weeks. Trendwest will further make its best effort to prepare its written
18 findings of the results of each investigation and the remedial actions proposed within 14 days after
19 completion of the investigation, and will thereupon promptly communicate to the complaining party
20 the results of the investigation and the remedial actions taken or proposed, if any.

21 (4) Trendwest will make its best effort to ensure that appropriate remedial
22 action is taken to resolve complaints and to avoid the occurrence of sex discrimination or retaliation.
23 Trendwest will maintain its progressive discipline policy to provide for substantial discipline,
24 including, but not limited to, suspensions without pay or termination, as a possible consequence for
25 violations of its anti-discrimination policy.

26 **b. Policies Designed to Promote Supervisor Accountability**

27 (1) Trendwest will impose substantial discipline, up to and including
28 demotion, suspension without pay, or termination, as permitted by law, upon any supervisor or

1 manager who engages in sex discrimination or permits any such conduct to occur in his or her work
2 area or among employees under his or her supervision, or who retaliates against any person who
3 complains or participates in any investigation or proceeding concerning any such conduct.
4 Trendwest will communicate this policy to all of its supervisors and managers.

5 (2) Trendwest will continue to inform all managers and supervisors of
6 their duty to actively monitor their work areas to ensure employees' compliance with the company's
7 anti-sex discrimination policy, and to report any incidents and/or complaints of sex discrimination
8 or retaliation of which they become aware to the department charged with handling such complaints.

9 (3) Trendwest will take into account the manager's or supervisor's
10 compliance with its sex discrimination policy in determining the employee's compensation.

11 (4) Trendwest will include a commitment to prevention of sex
12 discrimination or retaliation and the reporting of sex discrimination and retaliation as a criterion for
13 qualification for supervisory or management positions.

14 **c. Anti-discrimination Training**

15 (1) Trendwest will provide annual anti-discrimination training to all
16 employees; including management officials and those charged with providing anti-discrimination
17 training to all new employees during employee orientation. This training, particularly that directed
18 towards senior management officials, may require one-on-one training or educational sessions.

19 (2) All training required by this Consent Decree will be conducted by
20 educators, consultants, attorneys, or other professionals experienced in the area of anti-discrimination
21 training, with the exception that new employee orientation and annual training may be conducted
22 by Trendwest's Human Resources Department.

23 (3) Trendwest will require the General Manager or a member of the
24 Executive Committee in addition to the Human Resources Director to introduce all
25 anti-discrimination training to communicate Trendwest's commitment to its Statement of
26 Zero-Tolerance Policy and anti-discrimination policy.

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d. Reporting

(1) Six months following the entry of this Consent Decree and every six months thereafter for the duration of this Consent Decree, Trendwest will send the EEOC a written report (i) identifying by gender individuals who held the position of Sales Assistant Manager, Sales Manager, or Project Director over the prior six months; and (ii) describing any complaints of sex discrimination in promotions received by Trendwest during the prior six-month period and the steps taken by Trendwest to resolve them.

(2) Trendwest will submit a final report to the EEOC 30 days before the Consent Decree expires containing a statement that it has complied with all the terms of this Consent Decree.

e. Posting

Within two (2) weeks after entry of this Decree, Trendwest will post a notice in the form evidenced by Exhibit B to this Consent Decree in prominent and conspicuous location(s) in or near the employee cafeteria, lunchroom or other place within Trendwest’s Northwest Region where employees tend to gather. The notice will remain posted for the duration of this Consent Decree. In the event that the persons and/or departments to whom individuals should make complaints alleging discrimination and/or retaliation change during the term of the Consent Decree, such that the information contained on the notice is no longer accurate, Trendwest will immediately prepare a new notice that contains the correct information. Trendwest will thereupon promptly replace the old notices with the revised notices. Trendwest will maintain a copy of this Consent Decree in its Personnel Office for any employee who wishes to review it.

H. ENFORCEMENT

If the EEOC concludes that Trendwest has breached this agreement, it may bring an action in this Court to enforce this Consent Decree. Before bringing an action for breach of this Consent Decree, the EEOC will first give Trendwest 20 days’ written notice to permit the parties to attempt, in good faith, to resolve the matter without the need for litigation.

I. RETENTION OF JURISDICTION

The Court will retain jurisdiction over this matter for the duration of this Consent Decree.

1 **J. DURATION AND TERMINATION**

2 This Consent Decree will be in effect for two years, commencing with the date the Consent
3 Decree is entered as the order of the Court. If the EEOC petitions the Court for breach of agreement
4 during the two-year term, and the Court finds Trendwest to be in breach of the terms of the Consent
5 Decree, the Court may extend this Consent Decree.

6 **K. CONCLUSION**

7 The provisions of this Consent Decree are not binding on the parties until the authorized
8 representatives of each party sign and the Court enters the Consent Decree as its order.

9 Dated: March __, 2004.

10 A. LUIS LUCERO, JR.
11 Regional Attorney

ERIC S. DREIBAND
General Counsel

12 KATHRYN OLSON
13 Supervisory Trial Attorney

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17 909 First Avenue, Suite 400
18 Seattle, Washington 98104
19 Telephone (206) 220-6893

Office of the General Counsel
1801 "L" Street, N.W.
Washington, D.C. 20507

19 By: _____
20 Attorneys for Plaintiff Equal Employment Opportunity Commission

21 Dated: March __, 2004.

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26 By: _____
27 Attorneys for Defendant Trendwest Resorts, Inc.

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ORDER

The Court having considered the foregoing stipulated agreement of the parties. IT IS HEREBY ORDERED THAT the foregoing consent decree be, and the same is, approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party. The Court retains jurisdiction of this matter for purposes of enforcing the consent decree approved herein.

DATED this _____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE

EXHIBIT B

TRENDWEST RESORTS, INC.

**NOTICE TO ALL EMPLOYEES
POSTED PURSUANT TO A CONSENT DECREE**

This notice has been posted pursuant to an Order of the Court, approving the Consent Decree entered in resolution of a lawsuit brought by the U.S. Equal Employment Opportunity Commission ("EEOC") against Trendwest Resorts Inc. ("Trendwest"), on March 5, 2004, Case No. C04-503L, in the U.S. District Court for the Western District of Washington at Seattle. The Consent Decree resolves EEOC's claims of sex discrimination against Trendwest and enjoins Trendwest from certain conduct prohibited by law. Trendwest denies the allegations of the EEOC and affirms its commitment to compliance with laws against discrimination.

Federal law and the Consent Decree prohibit discrimination against any individual because of his or her sex.

Federal law also prohibits retaliation against any individual by an employer because the individual complains of discrimination, cooperates with any Trendwest or government investigation of a charge of discrimination, participates as a witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under law.

Any employee who is found to have retaliated against any other employee because such employee participated in this lawsuit will be subject to substantial discipline, up to and including immediate discharge.

Should you have any complaints of discrimination, you should contact the Human Resources Director or the General Manager or the Human Resources Department for Trendwest at the following numbers: _____.

Employees have the right to bring complaints of discrimination and/or harassment to the U.S. Equal Employment Opportunity Commission, Seattle District Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, (206) 220-6883, or the Washington Human Rights Commission at 711 S. Capitol Way, Suite 402, Olympia, WA 98504-2490, (360) 753-6770. You may also request a copy of the Consent Decree from Trendwest's Human Resources Department.

This is an official notice and shall not be defaced by anyone. This notice shall remain prominently posted in the employee lunchroom/break room at all Northwest Region facilities for Trendwest until _____, 2006. This Official Notice shall not be altered, defaced, covered, or obstructed by any other material.