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## **Equal Employment Opportunity Commission, Plaintiff, v. Associated Home Health Care of Palm Beach.**

Judge Daniel T. K. Hurley

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**Equal Employment Opportunity Commission, Plaintiff, v. Associated Home Health Care of Palm Beach.**

**Keywords**

Equal Employment Opportunity Commission, Associated Home Health Care of Palm Beach, 9:99-cv-08434-DTKH, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Termination, Healthcare, Employment Law, ADA

~~FILED~~  
~~NOV 2 2000~~  
~~CLERK U.S. DIST. CT.~~  
~~S.D. OF FLA. - W.P.B.~~

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ASSOCIATED HOME HEALTH CARE OF )  
PALM BEACH )  
 )  
 )  
 )  
 )

CIVIL ACTION NO.  
99-8434-CIV-HURLEY

FILED by *[Signature]* D.C.  
NOV 2 2000  
CARLOS JUENKE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - W.P.B.

CONSENT DECREE

1. This Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC") and Defendant Associated Home Health Care of Palm Beach (hereinafter referred to as "Associated Home Health"). The Commission and Associated Home Health are collectively referred to herein as "the Parties."

2. On June 11, 1999, EEOC initiated this action by filing its Complaint against Associated Home Health. EEOC's Complaint alleged that Associated Home Health violated the Americans with Disability Act of 1990 ("ADA"). The Complaint arose out of the allegations in an EEOC charge filed by Rosetta Jackson against Associated Home Health.

3. On August 26, 1999, Associated Home Health, filed its Answer to EEOC's Complaint, denying its actions were discriminatory

*[Handwritten signature]*  
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in any way.

4. In the interests of resolving this matter, to avoid the costs of litigation, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding upon the Parties, their successors and assigns.

5. The Parties agree that this Decree resolves all claims against Associated Home Health arising out of EEOC Charge Number 15M-97-0085, and the Complaint filed in this action, and constitutes a complete resolution of all claims under the Americans with Disabilities Act. The Parties further agree that this Decree does not resolve any Charges of Discrimination that may be pending with the EEOC other than the Charges referred to in this paragraph.

6. This Decree constitutes the complete agreement between the EEOC and Associated Home Health with respect to the matters referred to herein. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Decree. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved or ordered by the Court.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings

filed by the parties, it is **ORDERED, ADJUDGED AND DECREED THAT:**

7. This Court has jurisdiction of the subject matter of this action and over the parties for the purposes of entering and enforcing this Decree.

**GENERAL INJUNCTIVE PROVISIONS**

8. Associated Home Health, its officers, managers, employees, agents and partners, are enjoined from discriminating against any employee who opposes any of Defendant's practices which the employee believes to be a violation of the Americans with Disability Act of 1990; who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

9. Associated Home Health, its officers, managers, employees, agents and partners, agree that it will not engage in any conduct which violates the Americans with Disabilities Act of 1990, by failing to reasonably accommodate individuals with disabilities.

**TRAINING**

10. Associated Home Health will establish a written policy of compliance with the ADA. A copy of Associated Home Health's written policy will be provided to the EEOC within 30 days of the Court's execution of this consent decree. Associated Home Health certifies that a complete copy of its ADA policy will be provided

to all its current employees at all of its facilities within 30 days of the entry of this Decree. Associated Home Health further agrees that all new employees will be provided a copy of the policy as part of the new employee orientation process.

11. In order to further insure the effective implementation of Associated Home Health's anti-discrimination policies, Associated Home Health will conduct training for all of its managers and supervisory personnel at its corporate facility, in West Palm Beach, Florida, on all aspects of the ADA. Such training will be at least two hours in length and shall be conducted within three months of the entry of this Decree and on a yearly basis, thereafter, throughout the duration of this decree. Associated Home Health agrees to provide the EEOC, at least two weeks notice before it conducts its training session(s), date(s) of the training, copies of all training material to be used at the training session, the name of the individual(s) who will be providing the training material and a list of the names and titles of each employee who will be in attendance at the training. Additionally, Associated Home Health agrees that the EEOC shall, at its discretion, be in attendance at the training session(s).

**POSTING**

12. Associated Home Health will post within seven days from the Court's execution of this Decree an 11" x 17" size copy of the Notice attached hereto as Exhibit A. Said notice shall be posted

at all Associated Home Health facilities for the duration of this Decree in conspicuous locations accessible to all employees.

**MONITORING**

13. Associated Home Health will retain all employment records relating in any way to any complaint, allegation and investigation of ADA discrimination at any of Associated Home Health's facilities for the duration of this Decree and as required by law.

14. Associated Home Health will certify to the EEOC every six (6) months throughout the duration of this Decree that it is in compliance with all aspects of this Decree. The first such certification will be due no later than February 15, 2001. With each such certification, the Associated Home Health will provide the EEOC with the name, address and phone number of any person who alleges they have been discriminated against because of their disability while working at any of Associated Home Health's facilities during the preceding six (6) months. Associated Home Health will also state its actions taken in response to each such allegation. Associated Home Health will provide, upon request by the Commission any and all documentation associated with each such complaint.

15. Associated Home Health will retain copies of all ADA complaints along with the results of internal investigations for the duration of this Decree, and shall make the same available to the EEOC for inspection on a bi-annual basis, at the EEOC's

request.

**MONETARY RELIEF**

16. Associated Home Health shall pay Rosetta Jackson a lump sum in the amount of \$10,000, which represents a full settlement of all claims herein and is not an admission of liability by Associated Home Health. Associated Home Health shall pay \$6000 within five (5)days of the Court's execution of this consent decree, and \$4000 within sixty(60)days of the Court's execution of this Decree. The payment to Rosetta Jackson shall be made by certified check made payable to "Rosetta Jackson" and forwarded to Rosetta Jackson at her home address, by certified mail with a return receipt requested. Defendant agrees to simultaneously provide the Miami District Office of the EEOC with a copy of each payment or checks as well as a copy of the certified mail notice. Said copies shall be forwarded to the attention of Kenneth L. Gillespie, EEOC Trial Attorney, U.S. Equal Employment Opportunity Commission, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

17. If the Associated Home Health fails to tender the above-mentioned payments as set forth in paragraph 16, then Associated Home Health shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.



ENFORCEMENT OF DECREE

18. The Commission and Associated Home Health will make best efforts to effectuate the terms of this Decree.

19. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.

COSTS

20. Each Party shall bear its own costs and attorneys' fees associated with this litigation.

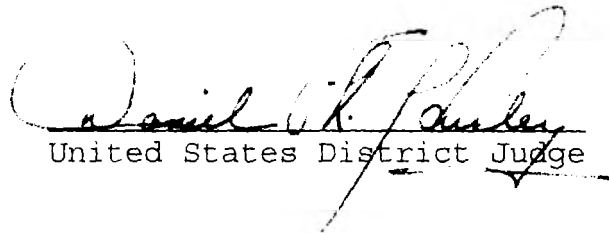
DURATION OF CONSENT DECREE

21. The duration of this Decree shall be four (4) years from the date of entry of the Decree.

22. This case will be dismissed with prejudice. However, the Court will retain jurisdiction to enforce this Consent Decree during the four year period that said Decree is in effect.

SO ORDERED, ADJUDGED AND DECREED, this 1st day of

Nov., 2000.

  
United States District Judge

AGREED TO:  
FOR THE PLAINTIFF,  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: Delner Franklin Date: 10/14/00  
Delner Franklin-Thomas  
Regional Attorney  
U.S. Equal Employment Opportunity Commission  
Miami District Office  
One Biscayne Tower, Suite 2700  
2 South Biscayne Boulevard  
Miami, Florida 33131

AGREED TO:  
FOR THE DEFENDANTS

by: J. DiChiara Date: 9/25/00  
John DiChiara, Esq.

POSTED PURSUANT TO A CONSENT DECREE

This notice is being posted pursuant to a Consent Decree entered by the Court in EEOC vs. Associated Home Health of Palm Beach, Civil Action No.99-8434-CIV-HURLEY in the Southern District of Florida.

Under Section 102 of Title I of the Americans with Disabilities Act of 1990:

It shall be an unlawful employment practice for an employer:

(1) to limit, segregate, or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) to participate in a contractual or other agreement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by the ADA (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) to utilize standards, criteria, or methods of administration -

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are

subject to common administrative control;

(4) to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) to not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) to deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) to fail to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking

skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

Associated Home Health will not engage in any of the above acts or practices.

Associated Home Health will not discriminate or retaliate in any manner against any person because of opposition to any practice declared unlawful under the ADA or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding, or hearing under the ADA.

Associated Home Health will maintain and conduct all employment policies and practices in a manner which does not discriminate on the basis of disability or retaliation.

This notice shall remain posted for four years from the date signed. Employees or applicants for employment who have questions about their rights under the American with Disabilities Act of 1990 or any other federal anti-discrimination laws may telephone the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000, (305) 530-6000 or (305)530-6007.

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PRESIDENT/CEO, Associated Home Health of Palm Beach

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2000.