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EEOC and Carl P. Davenport v. Sears, Roebuck & Co.

Judge Keith P. Ellison

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EEOC and Carl P. Davenport v. Sears, Roebuck & Co.

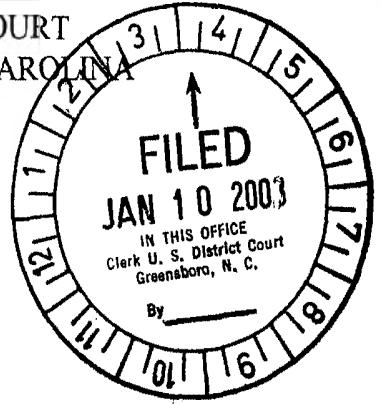
Keywords

EEOC, Sears Roebuck & Co., 1:01-CV-00641, Consent Decree, Disparate Treatment, Hiring, Failure to Accommodate, Visual Impairment, Retail, Employment Law, ADA

87.

D/LS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



EQUAL EMPLOYMENT OPPORTUNITY)
 COMMISSION,)
)
 Plaintiff,)
)
 and)
)
 CARL P. DAVENPORT,)
)
 Plaintiff/Intervenor)
)
 v.)
)
 SEARS, ROEBUCK & CO.,)
)
 Defendant.)
 _____)

Civil Action No. 1:01-CV-00641

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the "Commission") instituted this action seeking relief for Carl P. Davenport pursuant to the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. Thereafter, Carl P. Davenport intervened alleging violations of the ADA and state law. Sears, Roebuck and Co. ("Sears" or "Defendant") denies that it violated the ADA or state law in any manner.

The parties desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

Having carefully reviewed the terms and provisions of this Consent Decree, and based upon the pleadings and the record as a whole, the Court finds the following: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of the ADA will be promoted and effectuated by the entry of this Consent Decree; (3) the rights

of the parties and the public interest are adequately protected by this Consent Decree; and (4) this Consent Decree and a separate agreement entered into between Defendant and Mr. Davenport resolve all matters in controversy between the parties as provided in paragraphs 1 through 13 below. Mr. Davenport acknowledges that he is not entitled to any relief other than the consideration provided by the Defendant as set forth below and in the separate agreement between Defendant and Mr. Davenport.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant shall not discriminate against any applicants on the basis of a disability in the hiring (including instatement) process. Neither shall Defendant discriminate against qualified individuals with disabilities by failing to provide reasonable accommodations as required by the ADA.

2. Defendant shall not discriminate or retaliate against any person because of opposition to any practice made unlawful under Title I of the Americans with Disabilities Act of 1990 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.

3. Defendant shall pay a sum in excess of one hundred twenty five thousand dollars (\$125,000) in settlement of all claims that the Commission or Mr. Davenport raised, or could have raised, in the Complaint filed by the Commission and the Complaint in Intervention filed by Carl Davenport. The method of payment to Mr. Davenport is addressed in a separate agreement between Mr. Davenport and Defendant.

4. Defendant will continue to provide an annual training program to all of its

managers and supervisors at its credit facility on Albert Pick Road, in Greensboro, North Carolina (hereinafter "Greensboro facility"). The training program will include an explanation of the requirements of the ADA with regards to hiring and providing reasonable accommodations. The training program will also cover Sears' ADA policy with regards to hiring, providing reasonable accommodations, and an explanation of the rights and responsibilities of employees and managers with regards to hiring and providing reasonable accommodations under the policy. The training shall be completed within sixty (60) days after entry of the Decree by the Court. Within thirty (30) days after completion of the training, Defendant shall certify to the Commission the specific training which was undertaken and shall provide the Commission with a roster of all managers and supervisors in attendance.

5. During the term of this Decree, Defendant shall conspicuously post the attached Employee Notice, marked Exhibit A, hereby made a part of this Decree, in a place where it is visible to employees at its facility in Greensboro, North Carolina. Within 30 days after the entry of this Decree, Defendant will also post the Employee Notice in Braille at the Greensboro facility. If either Notice becomes defaced or unreadable, Defendant shall replace it by posting another copy of the Notice.

6. During the term of this Consent Decree, Defendant will provide the Commission with reports at six (6) month intervals, with the first being due four (4) months after approval by the Court of this Decree. The reports will include the following information: (a) the identities of all applicants who have requested a reasonable accommodation at Sears' Greensboro facility, including by way of identification each person's name, address, and telephone number; (b) a detailed statement of the individual's request for a reasonable accommodation; and (c) the action

taken in response to the request for a reasonable accommodation. The reports shall be submitted to the Commission at the time intervals outlined immediately above.

7. Within thirty (30) days after this Decree is approved by the Court, Defendant shall designate a manager at its Greensboro facility to be responsible for ADA issues under this Consent Decree. These responsibilities will include:

- (a) coordinating the Greensboro facility's compliance with the ADA;
- (b) overseeing requests for reasonable accommodation at the Greensboro facility and responding to such requests;
- (c) contacting Sears Credit at the home office, if necessary, to seek approval for reasonable accommodations;
- (d) maintaining records for all applicants' requests for accommodation under the ADA at the Greensboro facility; and
- (e) addressing all applicant complaints regarding the reasonable accommodation process at the Greensboro facility.

Defendant further agrees to provide the designated manager's name to all applicants who request a reasonable accommodation under the ADA.

8. Defendant shall make good faith efforts to recruit qualified visually impaired applicants.

9. In order to review compliance with this Consent Decree, upon reasonable notice to Defendant of not less than seventy-two (72) hours, the Commission may inspect Defendant's Greensboro facility, interview managers, supervisors and individuals hired who have a disability, and examine and copy documents relating to any requests reported in accordance with paragraph 6 above, training provided for in paragraph 4 above, and the Notice posting provided for in paragraph 5 above and attached.


10. If at anytime during the term of this Decree, the Commission believes that Defendant is in violation of the Decree, the Commission shall give notice of the alleged violation to Defendant. Defendant shall have thirty (30) days in which to investigate and respond to the allegations. Thereafter, Defendant and the Commission shall have a period of twenty (20) days, or such additional period as may be agreed upon by them, in which to engage in negotiation and conciliation regarding such allegations, before the Commission exercises any remedy provided by law.

11. The term of this Decree shall be one (1) year from its entry by the Court.

12. Each party shall bear its own costs and attorneys' fees.

13. This Court shall retain jurisdiction of this cause for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate. The Commission and Carl Davenport are filing an order dismissing with prejudice the above captioned matter simultaneously herewith, and the Commission agrees not to pursue any further claims on behalf of Mr. Davenport arising out of the facts alleged in the Complaint except as necessary to enforce this decree.

January 10, 2003
Date

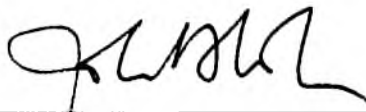


Judge, U.S. District Court
Middle District of North Carolina

The parties jointly request that the Court approve and enter this Consent Decree:

SEARS, ROEBUCK and CO.

By:



John D. Cole
HAYNSWORTH BALDWIN
JOHNSON & GREAVES LLC
Federal Plaza Building
400 West Trade Street
Charlotte, NC 28202

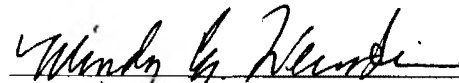
Attorney for Defendant

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

GWENDOLYN YOUNG REAMS
Associate General Counsel

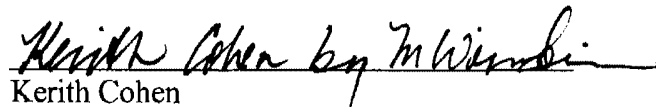
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

By:



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1309 Annapolis Drive
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By:



Kerith Cohen
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Attorneys for Plaintiff

CARL P. DAVENPORT

By: J. Griffin Morgan
J. Griffin Morgan
Elliot Pishko Gelbin & Morgan, P.A.
426 Old Salem Road
Winston-Salem, NC 27601

Attorney for Plaintiff-Intervenor

NOTICE TO EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered into between U.S. Equal Employment Opportunity Commission ("EEOC") and Sears, Roebuck and Co. ("Sears"). Federal law prohibits discrimination against any employee or applicant for employment because of the individual's sex, race, color, national origin, religion, age (40 and over) or disability with respect to hiring, promotion, discipline, firing, compensation, or other terms, conditions or privileges of employment.

Sears supports and will comply with such federal law in all respects and will not take action against employees because they have exercised their rights under the law. Specifically, Sears will not discriminate against any employee or applicant for employment based on his or her disability as provided by the Americans With Disabilities Act.

Sears has adopted an equal employment opportunity policy and will ensure that all management, supervisors, and other employees abide by the requirements of that policy.

If you believe that you have been discriminated against based on your disability, you should report the discriminatory conduct promptly to Sears, or to the U.S. Equal Employment Opportunity Commission.

This Notice will remain posted for at least one (1) year by agreement with the U.S. Equal Employment Opportunity Commission.

DO NOT REMOVE THIS NOTICE UNTIL: _____, 2003.

Date

for Sears, Roebuck and Co.

EXHIBIT A