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Equal Employment Opportunity Commission v. Betsy Ross Flag Girl, Inc. d/b/a Betsy Ross Flag Girl and Barjac Company

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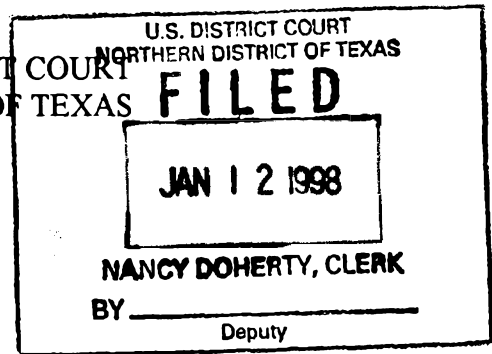
Equal Employment Opportunity Commission v. Betsy Ross Flag Girl, Inc. d/b/a Betsy Ross Flag Girl and Barjac Company

Keywords

EEOC, Betsy Ross Flag Girl, Barjac Company, 3-97-CV-1572-R, Consent Decree, Sexual Harassment, Hostile Work Environment, Female, Sex, Retail, Employment Law, Title VII

CM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

BETSY ROSS FLAG GIRL, INC. d/b/a)
BETSY ROSS FLAG GIRL and BARJAC)
COMPANY)

Defendant.)

CIVIL ACTION NO.

3-97-CV-1572-R

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and between the Equal Employment Opportunity Commission ("EEOC") and Betsy Ross Flag Girl, Inc., d/b/a Betsy Ross Flag Girl, Inc. (sometimes known as Betsy Ross Flag Girls) and Barjac Company (Barjak) (collectively defined as "Betsy Ross"), in the United States District Court for the Northern District of Texas, Dallas Division, Civil Action NO. 3-97-CV-1752- R, based upon a charge of discrimination filed by Debi K. Smith against Betsy Ross.

The above referenced action alleges that Betsy Ross violated Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. Sections 2000e-2 and 2000e-3, by subjecting Debi K. Smith, Stephanie L. Belford, Fleeta K. Kelley, Karen Rosato, Kimberly C. Schuler and Ruth Vasquez ("aggrieved individuals") to a sexually hostile work environment. The parties hereto desire to compromise and settle the differences embodied in the aforementioned

lawsuit, and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree (“Consent Decree”).

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues and claims raised in EEOC Charge No. 310-96-2258. This Decree further resolves all issues and claims raised in the Complaint filed by the EEOC in this civil action. The EEOC and the aggrieved individuals agree that this Consent Decree is intended to be a full and final compromise, release and settlement of all claims, demands, actions, and causes of action relating to the allegations contained in the above captioned lawsuit, and the claims made in EEOC Charge No. 310 96 2258. The EEOC and the aggrieved individuals waive further litigation on all issues raised in the above referenced Complaint and Charge. The EEOC and the aggrieved individuals agree and acknowledge that this Consent Decree is intended to fully and finally release, acquit, and discharge Betsy Ross, and their respective insurers, employees, officers, directors, shareholders, agents, divisions, subsidiaries, parent corporations, affiliates, predecessors, successors and assigns, and all other persons and entities, of and from any and all claims, demands, actions, and causes of action, relating to those matters which were raised or could have been raised in the above captioned lawsuit and EEOC Charge No. 310 96 2258. The Commission does not waive processing or litigating charges other than the above referenced charge; provided, however, that the EEOC agrees and acknowledges that it hereby waives all claims and matters arising from the above captioned lawsuit and the EEOC Charge No. 310 96 2258.

2. The parties agree that this Consent Decree does not constitute an admission by Betsy

Ross of any violation of Title VII of the Civil Rights Act of 1964.

3. Betsy Ross agrees that it shall conduct all employment practices in a manner which does not subject any employee to sexual harassment or a hostile work environment in violation of Title VII of the Civil Rights Act of 1964.

4. Betsy Ross agrees that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under Title VII, or because of the filing of a charge; giving testimony or assistance or participating in any manner in any investigation, proceeding or hearing under Title VII.

5. Betsy Ross agrees to implement the written sexual harassment and complaint procedure policy attached to this Consent Decree as Attachment A. Betsy Ross will provide a copy of such policy to each current employee, and agrees to provide a copy of such policy to each new employee at the time of hire. Betsy Ross agrees that the Human Resources Director shall be the official avenue for reporting and responding to Title VII violations. Betsy Ross further agrees that, for the duration of this decree, all reports of sexual harassment shall be reported by the Human Resources Director to the EEOC within 24 hours of the report.

6. Betsy Ross agrees to post the Notice appended hereto as Attachment B on its employee bulletin board at each Betsy Ross facility within ten (10) days of signing of this Consent Decree by the Court. Betsy Ross will report to the EEOC that it has complied with this requirement within 14 days after posting the notices. The notices shall remain posted for the duration of this Consent Decree as specified in Paragraph 16, below.

7. Betsy Ross agrees to conduct training for all employees, including Jack Casey, Jr., and all supervisors, managers and office workers, advising them of the requirements and

prohibitions against sexual harassment under Title VII. The training shall also address the prohibition against retaliatory treatment under Title VII against employees who participated in any way in the filing of the EEOC charge, the investigation of the charge or the filing of this lawsuit. The training will inform the employees of the complaint procedure. The training will also advise employees, including supervisors and managers, of the consequences of violating Title VII. The training shall be at least four hours in duration and shall be conducted on or before June 30, 1998. No less than 10 days before the training is conducted, Betsy Ross agrees to give written notice to the EEOC as to the date and location of the training, the name of the person providing the training and the substance of the training.

8. Betsy Ross agrees to provide a neutral letter of reference to Debi K. Smith and Stephanie L. Belford within 10 days after the signing of this Consent Decree by the Court.

9. Betsy Ross agrees to purge all personnel files of Debi K. Smith, Stephanie L. Belford, Fleeta K. Kelley, Karen Rosato, Kimberly C. Schuler and Ruth Vasquez of all references, if any, to this lawsuit, the charge of discrimination upon which this lawsuit is based and the facts and circumstances that led to the filing of the charge.

10. Betsy Ross agrees to make a total award of \$205,975.00 in monetary relief to Debi K. Smith, Stephanie L. Belford, Fleeta K. Kelley, Karen Rosato, Kimberly C. Schuler and Ruth Vasquez by check drawn on the trust account of Cantilo, Maisel & Hubbard, L.L.P. Betsy Ross shall send a check to each aggrieved individual made payable to the aggrieved individual in the specific amount stated by the EEOC. Each check shall be sent directly to the aggrieved individual at her home address by depositing the checks in the U.S. Mail within three (3) business days of the signing of this Consent Decree by the Court. Betsy Ross agrees to provide a copy of each check to the

EEOC within three (3) business days of mailing.

11. Payment of monetary relief as described in Paragraph 10, above, shall be in addition to the payment of bonuses for May 1997 in the amount of \$11,900.00 and bonuses for December 1997 in the amount of \$5,975.00.

12. If Betsy Ross fails to tender payment or otherwise fails to timely comply with the terms of paragraph 9, above, Betsy Ross shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the defendant.

The parties reserve the right to seek contempt sanctions for non-payment and non-compliance with this Court Order and Judgment and all other rights secured by the laws of the United States.

13. All reports to the EEOC required by this Decree shall be sent to Toby Costas, Legal Unit, EEOC, 207 S. Houston, Dallas, Texas 75202.

14. No party shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of any party to bring an enforcement action upon breach of any term of this Consent Decree by any party. Nothing in this Decree shall be construed to preclude the Commission from enforcing this Decree in the event that Betsy Ross fails to perform the promises and representations contained herein. All parties shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court.

15. The parties agree to bear their own attorney fees and costs associated with this action.

16. The term of this Decree shall be for two years or until Jack Casey, Jr. no longer holds an ownership interest in, no longer is employed by and no longer operates as a board member, officer, consultant or independent contractor for Betsy Ross Flag Girl, Inc., through conveyance of Betsy Ross Flag Girl, Inc. to a non-family member, and provides proof to the EEOC that he has done so in an arms length transaction; but in no event shall the term of this Consent Decree be less than six (6) months.


SO ORDERED, ADJUDGED AND DECREED this 12th day of January, 1998.



U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

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Attachment A

SEXUAL AND OTHER UNLAWFUL HARASSMENT

Betsy Ross Flag Girl, Inc. (the "Company") is committed to providing a work environment that is free of unlawful discrimination and harassment. Company policy prohibits sexual harassment and harassment because of an individual's sex, race, religious creed, national origin or ancestry, physical or mental disability, age, sexual orientation or any other basis protected by applicable federal, state or local law. Harassment or any form of misconduct by an employee, or other person doing business with or for the Company, that is demeaning to another person, that undermines the integrity of the employment relationship, or that create a hostile working environment is strictly prohibited.

Prohibited unlawful harassment includes, but is not limited to, the following behavior:

- a. Verbal conduct such as epithets, derogatory jokes or comments, slurs or unwanted sexual advances, invitations or comments;
- b. Visual conduct such as derogatory and/or sexually-orientated posters, photography, cartoons, drawings or gestures;
- c. Physical conduct such as assault, unwanted touching, blocking normal movement or interfering with work because of sex, race or any other protected basis;
- d. Threats and demands to submit to sexual requests as a condition of continued employments, or to avoid some other loss, and offers of employments benefits in return for sexual favors; and
- e. Retaliation for having reported or threatened to report harassment.

Any employee who believes that he or she is a victim of any unlawful harassment, including but not limited to any of the conduct listed above, by any supervisor, management official, other employee, customer, client or any other person in connection with employment at the Company should bring the matter to the attention of his or her supervisor. An employee may report such conduct even though he or she was not the target of the harassment. An employee who is uncomfortable for any reason in bringing the matter to the attention of his or her supervisor should report the matter to the Human Resources Director. Any questions about this policy or potential sexual harassment should also be brought to the attention of the same persons.

Any supervisor who becomes aware of possible sexual harassment or other unlawful harassment should promptly advise the Human Resources Director.

The Company will immediately undertake effective, thorough and objective investigation of all harassment allegations. If the Company determines that unlawful harassment has occurred, effective remedial action will be taken in accordance with the circumstances involved. Any employee determined by the Company to be responsible for unlawful harassment will be subject to appropriate disciplinary action, up to and including termination. Whatever action is taken against the harasser

will be made known to the individual subjected to the harassment.

The Company will not pay damages assessed against any employee personally on account of sexual harassment. In addition, the Company will take disciplinary action, up to and including termination, against any employee who is determined to have engaged in harassment in violation of this policy.

Company policy and state law forbids retaliation against any employee who opposes any unlawful harassment, files a complaint, testifies, assists or participates in any manner in an investigation, proceeding or hearing conducted by an regulatory agency. The Company will not retaliate against any employee for filing a complaint and will not tolerate or permit retaliation by management, employees or co-workers.

NOTICE AS REQUIRED
UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

This NOTICE to all employees of Betsy Ross Flag Girl, Inc. And Barjak is being posted as part of a Consent Decree between Betsy Ross Flag Girl, Inc. and Barjak and the U.S. Equal Employment Opportunity Commission.

1. Federal Law requires that there be no discrimination against any employee or applicant for employment because of that person's race, color, religion, sex, national origin, age or disability with respect to hiring, compensation, promotion, discharge, or other terms, conditions or privileges of employment.
2. Betsy Ross Flag Girl, Inc. and Barjak strongly support and will comply with such Federal Law in all aspects and it will not take any action against employees because they have exercised their rights under the law by filing charges with the U.S. Equal Employment Opportunity Commission.
3. Specifically, Betsy Ross Flag Girl, Inc. and Barjak will report on their implementation and adherence to the adopted sexual harassment policy enacted as a result of the settlement of Civil Action No. 3-97-CV-1572.
4. Betsy Ross Flag Girl, Inc. and Barjak will not tolerate sexual harassment in the workplace.
5. This NOTICE will remain posted until December 31, 1999, or as provided in the Consent Decree.