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Equal Employment Opportunity Commission v. Augusta Fiberglass Coatings, Inc., and John W. Boyd

Judge Terry L. Wooten

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Equal Employment Opportunity Commission v. Augusta Fiberglass Coatings, Inc., and John W. Boyd

Keywords

EEOC, Augusta Fiberglass Coatings Inc., John W. Boyd, 3:00-1255-25BC, Consent Decree, Disparate Treatment, Race, Black, Hostile Work Environment, Assignment, Terms and Conditions, Manufacturing, Employment Law, Title VII

FILED

FEB 26 2002

LARRY W. PROPES, CLERK
FLORENCE, S.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
AUGUSTA FIBERGLASS COATINGS,)
INC., and John W. Boyd,)
)
Defendants.)

CIVIL ACTION NO.
3:00-1255-258C

ENTERED
2/26/02

CONSENT DECREE **SCANNED**

The Equal Employment Opportunity Commission (the "EEOC") instituted this action pursuant to Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, *et seq.*, ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

The EEOC and Defendants Augusta Fiberglass Coatings, Inc. ("AFC") and John W. Boyd ("John W. Boyd") agree that the subject matter of this action is proper and hereby stipulate to jurisdiction of the Court over the parties.

The parties have advised the Court that they desire to resolve the allegations in the pleadings without the burden, expense, and delay of further litigation.

By voluntarily entering into this Consent Decree, Defendants do not admit to any wrongdoing nor do Defendants admit to any violation of Title VII, and Defendants specifically deny the allegations of the Complaint in the above-referenced action. Defendants have agreed to the entry of this Consent Decree solely for purposes of compromising and settling the above-referenced action.

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EPA

It is therefore the finding of the Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of this Consent Decree; and (3) this Consent Decree resolves all matters in controversy between the parties as provided in paragraphs 1 through 20 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. AFC shall not discriminate against employees on the basis of race by denying equal employment opportunities to persons because of their race.
2. AFC shall not discriminate or retaliate against any person because of opposition to any practice made unlawful under Title VII, or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing under Title VII.
3. AFC shall pay a cumulative sum of \$200,000 to those aggrieved persons identified by the EEOC in accordance with the procedures set forth below.
4. Within 10 days of the Court's entry of this Consent Decree, AFC shall pay \$10,000 to an escrow agent (the "escrow agent") to be selected and compensated by Defendants and whose identity shall be disclosed to the EEOC by Defendants. The EEOC shall be a third-party beneficiary of the agency agreement or contract between AFC and the escrow agent. Within five days of receipt of the \$10,000 payment, the escrow agent shall issue a bank draft or check payable to Charlie Frank Williams and a bank draft or check payable to Lloyd Lundy, each bank draft or check in the amount of \$5,000. Within 10 days of issuing the bank drafts or checks to Mr. Williams and Mr. Lundy, the escrow agent shall

send copies of the bank drafts or checks and proof of delivery of the same, to Mindy E. Weinstein, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte, North Carolina 28202. The remaining settlement funds of \$190,000 (“settlement funds”) shall be deposited with the escrow agent as set forth in paragraph 6 below, and distributed to aggrieved persons as specifically described in the following paragraphs.

5. Within 30 days of entry of this Consent Decree, the EEOC shall file a proposed distribution list setting forth the names of all aggrieved persons who shall share in the settlement funds. The proposed distribution list shall include the percentage that each aggrieved person shall draw from the settlement funds. Within 30 days of entry of this Consent Decree, the EEOC shall notify all persons on that list, of: (1) the proposed settlement; (2) the proposed distribution list; (3) their right to object to the proposed distribution list; (4) the deadline for filing objections; and (5) their right to be heard at a fairness hearing before the Court.¹ Additionally, within 30 days of entry of this Consent Decree, the EEOC shall notify all other persons who have been listed as aggrieved persons at any time during this case, of: (1) the proposed settlement; (2) the fact that they will not share in the settlement funds; (3) their right to object to the settlement as described in this Consent Decree; (4) the deadline for filing objections; and (5) their right to be heard at a fairness hearing before the Court. These notifications shall be made by regular mail sent

¹ The individuals identified as aggrieved persons receiving settlement funds under the proposed distribution list will also be notified of their obligation to advise the EEOC of any changes of their address during the term of this Consent Decree and that they may forfeit funds available under the settlement if they fail to do so.

to each person's last known address. Any objections to the proposed distribution list must be filed with the Clerk of Court within 50 days of entry of this Consent Decree, with copies sent to the EEOC. If there are no timely objections, then the EEOC will move the Court for entry of a Final Order approving this consent decree. If timely objections are made, then the EEOC will move the Court for a fairness hearing. The Court will consider any objections timely filed with the Clerk of Court at a fairness hearing for final and binding determination of the distribution of funds to aggrieved persons. No distributions shall be made by the escrow agent until entry of the Final Order approving this consent decree other than those distributions specifically set forth in paragraph 4 to Messrs. Lundy and Williams. As principal, AFC shall be responsible for the escrow agent's distribution of all settlement funds consistent with the terms of this Consent Decree and the Court's Order(s). Defendants have no objection to the EEOC's distribution procedures as outlined in this Consent Decree.

6. On May 1, 2002, or within 10 days after entry of the Final Order approving this consent decree, whichever comes later, AFC shall pay \$30,000 to the escrow agent. Thereafter, AFC shall make four payments of \$40,000 each to the escrow agent on the following dates: May 1, 2003; May 1, 2004; May 1, 2005; and May 1, 2006. These payments will resolve all claims that were or could have been brought by the EEOC in this suit. In consideration for the release from liability referred to in paragraph 18, John W. Boyd shall guarantee each payment set forth in this Consent Decree. Furthermore, John W. Boyd executed a separate written guaranty, which is attached hereto as Exhibit A. Such guaranty shall be subordinate to any other guarantees or secured debt entered into by John

W. Boyd prior to the date this Consent Decree is filed.

7. Within ten days of the entry of the Final Order approving this consent decree, AFC shall direct the escrow agent to pay the settlement funds to the aggrieved persons, by bank draft or check, in accordance with the approved distribution list. With respect to payments to be made in subsequent years, AFC will direct the escrow agent to pay the settlement funds to the aggrieved persons, by bank draft or check, and in accordance with the approved distribution list, within 10 days of the date that the funds are tendered to the escrow agent. AFC shall further direct the escrow agent to send copies of the bank drafts or checks to each of the aggrieved persons and proof of delivery of the bank drafts or checks to each aggrieved person and proof of delivery to Mindy E. Weinstein, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte, North Carolina 28202.
8. The EEOC shall provide AFC with updated mailing addresses for the persons entitled to funds pursuant to this Consent Decree and AFC shall timely provide that information to the escrow agent. If a check sent by the escrow agent to an aggrieved person is returned as non-deliverable, AFC will notify the EEOC, and EEOC will be given the opportunity to provide an updated address. After making reasonable efforts to locate any such aggrieved person, any funds that are not distributed in a particular year due to the inability to locate one or more aggrieved persons will be maintained by the escrow agent and distributed the following year among all aggrieved persons on a pro-rata basis. Any settlement funds that are returned to the escrow agent or that are otherwise unclaimed after the final distribution on May 1, 2006, will be donated to the Voorhees College Restricted Fund—Academic

Assistance. AFC shall direct the escrow agent to issue a bank draft or check to the Voorhees College Restricted Fund–Academic Assistance, in the full and complete amount of the unclaimed settlement funds. AFC shall further direct the escrow agent to send a copy of the bank draft or check to the Voorhees College Restricted Fund–Academic Assistance, and proof of delivery of the bank draft or check to Mindy E. Weinstein, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte, North Carolina 28202.

9. AFC shall implement and strongly endorse a policy (“the policy”) which prohibits any and all racial discrimination and racial harassment, including in particular, a prohibition of racial discrimination against African American employees. The policy shall include a definition of racial harassment and it shall emphasize and strongly prohibit the use of racial slurs by any AFC employee. The policy shall proscribe all actions or conduct which are racially offensive. The policy shall also prohibit the use of racial graffiti or racially offensive displays. The policy shall also prohibit threats, intimidation, cursing and insults directed toward individuals because of their race. The policy shall also prohibit discrimination on the basis of race in the use of production restrooms and drinking facilities which are provided for production employees. The policy shall provide that job assignments will be made in a manner which does not discriminate against employees because of their race. The policy shall set forth the full scope of potential disciplinary actions AFC will take against employees who violate the policy. The policy shall provide the name, address and telephone number of a third-party vendor of human resources services (“third-party vendor”), acceptable to the EEOC and AFC, to receive complaints

pursuant to the policy. The third-party vendor will provide reasonable confidentiality to persons who complain pursuant to the policy. The third-party vendor will have the authority and access to investigate any complaints under the policy, and the third-party vendor will report its findings to AFC's Chief Executive Officer, President or highest ranking human resources manager. AFC shall provide a copy of this Consent Decree to the third-party vendor and AFC shall instruct the third-party vendor to comply with it. AFC shall pay for the services of the third-party vendor.

10. During the term of this Consent Decree, AFC shall provide annual training to all of its management and supervisory employees and any other employees who participate in personnel decision-making. The training will be conducted by a mutually agreed upon human resources trainer, who shall also receive a copy of this Consent Decree from AFC. The training program shall also include an introductory statement by AFC's Chief Executive Officer or President about the policy. At least 30 days prior to the program, AFC shall provide the EEOC with an agenda for the training program, and the parties will mutually agree to the agenda. The training program will include an explanation of the requirements of the federal equal employment opportunity laws, including Title VII of the Civil Rights Act of 1964 and its prohibition against racial discrimination and racial harassment in the workplace. The training shall specifically cover the policy described above in paragraph 9. The first of these annual training programs shall be completed within 90 days after the Court's entry of the Final Order. Thereafter, annual training shall be completed each year on or before the anniversary date of the first annual training. Within 10 days after completion of the training, AFC shall certify to the EEOC the specific

training that was undertaken and shall provide the EEOC with a roster of all employees in attendance.

11. AFC shall provide annual training to all of its employees not referred to in paragraph 10. The training program will include an explanation of the requirements of the federal equal employment opportunity laws, including Title VII of the Civil Rights Act of 1964 and its prohibition against racial discrimination and racial harassment in the workplace. The training will describe all aspects of the policy described in paragraph 9. The training will be conducted by a mutually agreed upon human resources trainer who shall also receive a copy of this Consent Decree from AFC. The training program will also include an introductory statement by AFC's Chief Executive Officer or President about the policy against illegal race discrimination and harassment (referenced in paragraph 9), and the full scope of potential disciplinary actions AFC will take against employees who violate the policy. AFC's Chief Executive Officer or President, in his/her introductory statement, shall define racial harassment, and shall emphasize and strongly endorse the policy against use of racial slurs. The training shall be completed within 90 days after entry of the Final Order by the Court. AFC shall provide each employee with a written copy of the policy implemented pursuant to paragraph 9, including the name, address, and telephone number of the third-party vendor designated for receipt of complaints. This training shall be completed within 90 days after entry of the Final Order by the Court. Thereafter, annual training shall be completed each year on or before the anniversary date of the first annual training. Within 10 days after completion of the training, AFC shall certify to the EEOC the specific training that was undertaken and shall provide the EEOC with a roster of all

employees in attendance.

12. During the term of this Decree, AFC shall conspicuously post the attached Employee Notice, which is attached as Exhibit B and hereby made a part of this Consent Decree, in the entrance to the plant in a locked glass case where other notices are posted. The Notice shall be plainly visible from the location where employees enter their time cards and the view of it shall not be obstructed in any way.
13. AFC shall provide the EEOC with annual reports during the term of this Consent Decree. The reports shall include the identities of all employees who, during the period of this Consent Decree, complain of racial discrimination or racial harassment to the third-party vendor or AFC. The report shall list the full name of each employee, his or her address, telephone number, social security number and date of birth. The report shall also state the date of the complaint and the substance of the complaint, including the identity of the alleged harasser. Finally, the report shall describe the investigation conducted in response to the complaint and any action, if any, taken in response to it. AFC shall submit the reports to the EEOC beginning 180 days after the entry of this Consent Decree, and every year thereafter during the term of this Consent Decree.
14. During the term of this Consent Decree, and after making reasonable arrangements, AFC shall allow the EEOC to review its compliance with this Consent Decree. As part of such review, the EEOC may inspect AFC's premises, interview its employees, and examine and copy documents.
15. If at anytime during the term of this Consent Decree, the EEOC believes that AFC is in violation of this Consent Decree, then the EEOC shall give written notice of the alleged

violation to AFC. AFC shall have thirty 30 days in which to investigate and respond to the allegations. Thereafter, and before the EEOC exercises any remedy provided by law, the parties shall have a period of 30 days, or such additional period as may be agreed upon by them, in which to engage in negotiation and conciliation regarding such allegations.

16. In the event of a transfer or sale of all or substantially all of the assets of AFC, AFC will notify the purchaser of the obligations under this Consent Decree.
17. This Consent Decree shall be in effect from the date of filing with the Court through May 1, 2006, or through 10 days after the 2006 annual training is conducted (see paragraphs 10 & 11), whichever is later.
18. Subject to the provisions of this Consent Decree, including but not limited to paragraph 3, the EEOC agrees for itself and on behalf of all aggrieved persons that AFC and John W. Boyd will be fully released and discharged from all liability for actions arising out of any acts or omissions which were or could have been brought by the EEOC in this suit.
19. Each party shall bear its own costs and attorney fees.
20. The Court shall retain jurisdiction of this cause for purposes of entry of such further orders as may be necessary or appropriate.

IT IS SO ORDERED.

2-25-02
Date

Terry L. Wooten
The Honorable Terry L. Wooten
United States District Judge

WE CONSENT:

Dated this 14th day of February, 2002.

GWENDOLYN YOUNG REAMS
Associate General Counsel

MINDY E. WEINSTEIN
Regional Attorney



EDWIN L. TURNAGE

Trial Attorney

Federal ID# 5189

EQUAL EMPLOYMENT OPPORTUNITY
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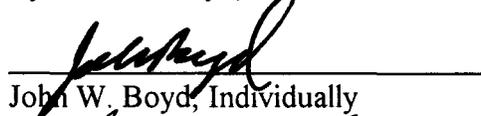
WE CONSENT:

Dated this 12 day of February, 2002.



Augusta Fiberglass Coatings, Inc.

By John W. Boyd, President



John W. Boyd, Individually



James D. Mosteller III

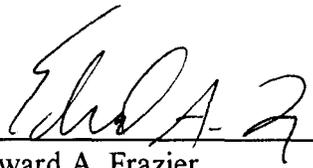
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NOTICE TO EMPLOYEES

1. This Notice is posted pursuant to a Consent Decree issued by the United States District Court, District of South Carolina. The Consent Decree arises out of an agreement between August Fiberglass Coatings, Inc. ("AFC") and the United States Equal Employment Opportunity Commission. The Consent Decree was issued in a case arising from charges of racial discrimination made against AFC.
2. AFC voluntarily entered into the Consent Decree and it does not admit to any wrongdoing nor does it admit to any violation of Title VII. Rather, AFC specifically denies all allegations of racial discrimination made against it by the United States Equal Employment Opportunity Commission. AFC has agreed to the entry of the Consent Decree solely for purposes of compromising and settling the case.
3. Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (over 40) or disability.
4. Title VII of the Civil Rights Act of 1964, as amended, is a federal law which prohibits race discrimination against any employee in aspects of employment including, but not limited to, hiring, promotion, discharge, pay, job training and fringe benefits. It is AFC's policy to maintain a working environment free from racial discrimination, racial harassment, and any other illegal discrimination. AFC has adopted a policy regarding racial discrimination, racial harassment, and other illegal discrimination, which policy sets forth a complaint procedure for individuals who believe that they have been the victim of or witnessed racial discrimination, racial harassment, or any other form of illegal discrimination or harassment.
5. AFC supports and will comply with federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participated in any investigation, proceeding or hearing conducted by the United States Equal Employment Opportunity Commission.
6. An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact the United States Equal Employment Opportunity Commission, 301 N. Main Street, Landmark Building, Suite 1402; Greenville, SC 29601; (864) 241-4400; for the purpose of filing a charge of employment discrimination.

Exhibit B to Consent Decree

EAC