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Equal Employment Opportunity Commission v. The 65th Street Restaurant LLC d/b/a Restaurant Daniel, and The Dinex Group

Judge Richard M. Berman

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Equal Employment Opportunity Commission v. The 65th Street Restaurant LLC d/ b/a Restaurant Daniel, and The Dinex Group

Keywords

EEOC, The 65th Street Restaurant LLC, Restaurant Daniel, The Dinex Group, 07 CIV 6845, Consent Decree, Disparate Treatment, Retaliation, National Origin, Employment Law, Title VII

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
:
EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :

Plaintiff, :

v. :

THE 65th STREET RESTAURANT LLC d/b/a :
RESTAURANT DANIEL, AND :
THE DINEX GROUP, :

Defendants. :
:
-----X

Civil Action No.

07 CIV 6845

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (“EEOC”) and defendants, The 65th Street Restaurant LLC d/b/a Restaurant Daniel (“Restaurant Daniel”) and The Dinex Group LLC (“Defendants”), have agreed to resolve this action by the terms of this Consent Decree (“Decree”) as set forth below.

On July 26, 2007, EEOC brought this action under Title VII of the Civil Rights Act of 1964, alleging unlawful employment practices on the basis of national origin and retaliation, and to provide appropriate relief to Charging Parties Antonio Mejia, Mir Kadir Mamun, Luis Humberto Morocho, Mohammed Mollik Miah, Hector Gutierrez, Ignacio Garcia, and Jose Arenas. In its complaint, EEOC alleges that Defendants discriminated against Antonio Mejia and the other Charging Parties on the basis of national origin, and retaliated against Antonio Mejia in retaliation for engaging in protected activity. Defendants deny the allegations.

Defendants deny all of the allegations in the Complaint and further deny any wrongdoing or liability in this matter, and maintain that they have fully complied with, and continue to comply with, all anti-discrimination laws. EEOC represents that this Decree does not constitute

a finding of liability or wrongdoing on the part of Defendants. The parties agree that this Decree is being entered into solely for the purpose of avoiding the expense and inconvenience of further investigation and litigation.

EEOC and Defendants desire to settle the Action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties, who are the signatories hereto, and their successors or assigns. This Decree resolves all of the claims related to Civil Action No. 07-6845 filed in the United States District Court for the Southern District of New York. The parties have agreed that this Decree may be entered into without Findings of Fact and Conclusions of Law having been made and entered by the Court.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and it is therefore ORDERED, ADJUDGED AND DECREED that:

1. This Decree resolves all issues raised by EEOC Charge Numbers 520-2006-02432, 520-2006-02433, 520-2006-02434, 520-2006-03945, 520-2006-03947, 520-2006-03948, 160-2005-02062, and 520-2006-01470, and the allegations raised in EEOC's complaint..
2. The parties agree that this Court has jurisdiction of the subject matter of this Action and of the parties, that venue is proper, and that all administrative prerequisites have been met.
3. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Breach of any term of this Decree should be deemed to be a substantive breach. Nothing in this Decree shall

be construed to preclude EEOC from bringing proceedings to enforce this Decree in the event that Defendants fail to perform any of the promises and representations contained herein.

4. Defendants and its managers, agents, successors or assigns are enjoined from discriminating against any individual because of the individual's national origin, and from retaliating against any individual who engages in protected activity, including participating in this matter, in any way.
5. Defendants shall pay \$80,000 to eight (8) claimants to resolve this case, payment of which is detailed in attached Exhibit A.
6. Within ten (10) business days of the date of entry of this Decree, Defendants agree to post EEOC's poster at Restaurant Daniel in all prominent places where employee notices are posted.
7. Within ten (10) business days of the entry of this decree, Defendants agree to post at Restaurant Daniel a remedial notice pursuant to this Decree, attached hereto as Exhibit B, in all prominent places where employee notices are posted.
8. Within sixty (60) days of the date of entry of this Decree, Defendants will provide eight (8) hours of training in federal laws prohibiting discrimination in employment for the General Manager and Assistant General Manager of Restaurant Daniel. The training will be conducted by The Cornell School of Industrial Labor Relations. This training, including the agenda for the training, has been reviewed and approved by EEOC.
9. Defendants shall provide the training referenced in paragraph 8 to any new General Managers or Assistant General Managers within the next seven (7) years,

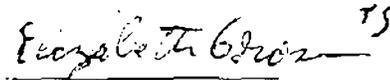
which shall be provided within four (4) months of their hire date.

10. Within fourteen (14) business days of the completion of each training, Defendants will forward to EEOC a copy of the attendance sheet for each training.
11. Defendants shall maintain the promotions policy, anti-discrimination and complaint procedure attached hereto as Exhibit C, which has been reviewed and approved by EEOC, and will be incorporated into Defendants' Employee Handbook..
12. Within thirty (30) days of the date of entry of this Decree, Defendants will provide each employee with a copy of the Revised Dinex Employee Handbook, which shall contain the materials annexed hereto as Exhibit C.
13. Defendants agree to EEOC monitoring of compliance with this Decree by forwarding to EEOC, on a semi-annual basis beginning thirty (30) days after the entry of this Decree, any written discrimination complaints made by Restaurant Daniel's employees or job applicants. EEOC may monitor and review compliance with this Decree through the inspection of Defendants' records relating to Restaurant Daniel and/or interviews with Restaurant Daniel employees at any time, upon reasonable notice to Defendants. Defendants agree to make available for inspection and copying any records requested by EEOC relating to Restaurant Daniel, including but not limited to resumes, job applications and/or evaluations. Complaints shall be forwarded to EEOC, 33 Whitehall St., New York, NY 10004, for a period of four (4) years. Thereafter, for the following three (3) years, EEOC shall monitor Defendants' compliance with this Decree, including complaints of discrimination, by interview of employees or requests for

relevant documents. Defendants agree to provide EEOC, upon EEOC's request and with reasonable notice, documents for EEOC's inspection and/or employees for interviews.

14. Each party shall bear its own attorneys' fees and costs incurred in this Action.
15. This Decree and each of its provisions herein constitute the complete understanding among the parties. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.
16. This Decree will remain in effect for seven (7) years from the date of entry.

By EEOC:

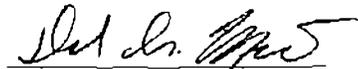


Elizabeth Grossman
Regional Attorney

Lisa Sirkin
Supervisory Trial Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York, 10004

For Defendants:



Daniel S. Moretti
Landman Corsi Ballaine & Ford, P.C.
120 Broadway, 27th Floor
New York, New York 10271

SO ORDERED this ____ day of _____, 2007

United States District Judge

EXHIBIT A

Pursuant to Paragraph 5 of the Consent Decree, Defendants shall pay \$80,000 to resolve this case to eight (8) claimants: the sum of \$35,000 to be paid to Main Street Legal Services of CUNY School of Law, to be forwarded to an escrow account, to be paid within three (3) business days of a fully executed agreement between Defendants and the Charging Parties, and \$35,000 to be forwarded to the escrow account within 14 business days of the fully executed agreement. Within ten (10) days of the entry of this Decree, Defendants shall send a check for \$10,000 directly to Antonio Mejia at the address to be provided by EEOC. A copy of the check to Mr. Mejia shall be forwarded to Lisa Sirkin, Equal Employment Opportunity Commission, 33 Whitehall Street, 5th Floor, New York, NY 10004, immediately upon issuance. Defendants shall issue to Mr. Mejia the Internal Revenue Service Form 1099 for compensatory damages.

EXHIBIT B

NOTICE TO ALL EMPLOYEES OF RESTAURANT DANIEL

This notice is posted and provided as part of a Consent Decree between the U.S. Equal Employment Opportunity Commission ("EEOC") and Restaurant Daniel, in *EEOC v. Restaurant Daniel and The Dinex Group*, Civil Action No. 07-6845, and pursuant to an Assurance of Discontinuance entered into between the Office of the New York State Attorney General and Restaurant Daniel as the result of an investigation by Attorney General and the EEOC of allegations of discrimination against employees because of race, color, national origin and sex.

Federal and State law prohibits employers from discriminating against applicants and employees based on their race, color, national origin, sex, age, disability status and religion. Restaurant Daniel and Dinex have agreed to comply with all laws prohibiting discrimination in the workplace. They will not take any retaliatory action against any employee who asserts his or her rights under, or complains of violations of, these laws by filing a complaint with the EEOC or the Office of the Attorney General.

Should you have any complaint of discrimination, you may contact the

Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004
Telephone: 1-800-669-4000
www.eeoc.gov

and

Office of the New York State Attorney General
Civil Rights Bureau
120 Broadway
New York, New York 10271
Telephone: (212) 416-8250 or (800) 771-7755
Fax: (212) 416-8074
www.oag.state.ny.us

THIS IS AN OFFICIAL NOTICE

This is an Official Notice and must remain posted for seven years from the date of posting and may not be altered, defaced or covered by any other material, until July __, 2014.

Signed:

General Manager, Restaurant Daniel
July __, 2007

EXHIBIT C

PROMOTIONS POLICY

Promotion Policy

Dinex restaurants "promote from within". Many of the dining room's staff members began their employment as bussers and dishwashers. Through hard work, discipline, the maintaining of a positive attitude and a willingness to learn, many have been promoted to higher positions.

It is the policy of The Dinex Group to promote in each restaurant from within whenever possible. In order to maintain this policy, all position vacancies are posted on the restaurant's general information board for a minimum of five (5) working days. All vacancy postings will contain the job description and the date/time by which all applications must be received, and the person(s) to whom application should be made. In order to ensure promotional opportunities for present employees, no job offer will be extended to any candidate prior to five (5) working days from the initial date of posting.

Inquiries regarding posted positions are strongly encouraged, and interested candidates should promptly contact the on site General Manager for further information and consideration. All internal inquiries will be treated confidentially.

At the conclusion of the initial five (5) day posting period all candidates that have applied for a vacant position pursuant to this section will be interviewed by the on site General Manager. If it is determined that you are not qualified for the position, it will be discussed with you so that you may prepare yourself for future openings.

All recruitment activities must be consistent with The Dinex Group's commitment to the principle of equal employment opportunity. To maintain this commitment, Dinex restaurants promote employees based on the following criteria:

Position Availability - A position must be available in order for a current employee to be considered for that position. When a position becomes available, management will post a "Position Available" notice on the general information board in the restaurant. Please note: an available position will not necessarily be filled by a current employee. Management may choose to hire a new employee to fill an available position. However, current employees will be considered first.

Expression of Interest in Being Promoted - An employee must express an interest in being promoted. If an employee doesn't make his interest in a position known by applying in the manner indicated in the posting, he/she ~~may~~ ^{will} not be considered for an available position.

Job Performance - A candidate's job performance history is a very important consideration for promotion. Annual evaluations will be reviewed. The opinions of Managers, Maitre d's, Chefs, and other staff members may be sought in evaluating the candidate's job performance and potential for success.

Disciplinary History - To be considered for promotion, an employee's disciplinary record will be reviewed. All employees are expected to abide by the rules and regulations set

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forth in The Dinex Group Employee Handbook.

Knowledge, Experience & Training- A candidate's knowledge, experience and training will also be considered and may play a role in the promotion process. These factors, while not critical for promotion, are often helpful in evaluating a candidate's potential for success. A willingness to learn, however, is essential. A candidate for promotion should demonstrate an on-going desire to learn and improve his knowledge of food, wine, and the restaurant business, in general. A progression in knowledge should be evident. The candidate should also demonstrate a progression in his/her command of the "points of service".

Where a promotion includes more interaction with guests, as well as a greater role in team leadership, a candidate must demonstrate the ability to perform the communications with guests and subordinates required by the position.

Ability to "Work well with others" - Service is a team sport and a server must be a team player. A knowledgeable employee who doesn't work well with others is much less likely to succeed than one who does. A candidate must demonstrate that he/she "can handle the pressure" of an advanced position in a fine dining environment. A candidate for promotion should possess good communication skills.

Seniority - While an employee's seniority will be considered, the key to promotion is the demonstrated ability to perform the tasks required for the new position. A candidate will not be promoted simply because he/she has been employed with the restaurant longer than other candidates.

Job Descriptions and Performance Review

A job description exists for every position in The Dinex Group. You will be issued a job description within the first few days of your new position. You will have a performance review with your manager at the end of your introductory period and at least annually thereafter.

Policy Against Discrimination

In accordance with federal and state laws, The Dinex Group strongly condemns and strictly prohibits all forms of unlawful discrimination on the basis of race, color, ethnicity, disability, religion, national origin, age, gender, veteran status, sexual orientation, citizenship, or any other category protected by law. Employment policies, practices, and procedures that are covered include but are not limited to recruiting, interviewing, testing, screening, selection, placement, classification, evaluation, transfer, promotion, training, compensation, fringe benefits, layoffs, and termination.

Just as all forms of unlawful discrimination are strictly prohibited, so too are all forms of unlawful harassment, including but not limited to sexual harassment and harassment based upon non-job related factors. Harassment based on sex, race, religion, color,

creed, disability, sexual orientation, national origin, ancestry, age or any other prohibited basis defined by federal or state law is a form of discrimination.

Sexual Harassment

Sexual harassment is against the law. It also creates an unpleasant and unproductive working environment. All employees are reminded that such behavior is absolutely unacceptable and will result in disciplinary action and/or termination. The following activities are examples of possible "sexual harassment." All may be considered serious enough to warrant immediate discipline and/or termination.

1. Threatening retribution or promising benefits in return for sexual favors, whether implicitly or explicitly.
2. Unwanted physical contact. The person being touched is the judge of what contact is unwanted.
3. Unwanted sexual advances.
4. Comments concerning an employee's sexual habits, sexual preference, or sexual desirability, whether directed at him/her or not.
5. Offensive talk about sex, women, men, or sexuality:
6. The use of demeaning or offensive words when referring to men or women.
7. The display of pornographic or other highly offensive material.
8. Any other activity that creates an unpleasant or offensive working environment or that interferes with work performance, because of a person's sex.

It makes no difference if the harassment is "just joking" or "teasing" or "playful." Jokes may be just as offensive as any other type of harassment, and will be dealt with in the same manner.

Harassment by peers is just as strictly prohibited as harassment by supervisors. No employee may take any action that creates an offensive environment for any other employee.

All employees are responsible for successfully maintaining this policy. In particular, every supervisor and manager has an affirmative duty to maintain his or her department free from any form of harassment.

Making Complaints About Harassment or Discrimination

If you believe you have been harassed or discriminated against based on your race, color, ethnicity, disability, religion, national origin, age, gender, veteran status, sexual orientation, citizenship, or any other category protected by law, in any aspect of your employment, you are strongly encouraged to report the incident at once to the General Manager on site or the Director of Human Resources, whose office is located at The Dinex Group's main office. Complaints can be made in person or in writing, and will be kept in the strictest confidence compatible with a thorough investigation.

If you choose to make the complaint in writing, the complaint will be most useful if you identify yourself and/or other witnesses, if available, to the offending conduct. Anonymous complaints will be investigated to the extent possible, but complaints that

fail to state the names of the complainant and/or witnesses often cannot be verified.

Once a complaint is made, the company will promptly conduct a thorough and impartial investigation to determine if harassment has occurred. If the alleged conduct involves individuals who would ordinarily conduct the investigation, an alternate means of investigation will be used.

If it is concluded that unlawful conduct did occur, the company will do its utmost to rectify the situation without delay. This may include the discipline and/or termination of those participating in or condoning the harassment. Discipline may include, but not be limited to, a written warning, probation, suspension, or demotion. Individuals who are found to have violated this policy may also be required to offer a formal apology, transferred to another position, and/or required to undergo counseling.

If the employee is not satisfied with the outcome of the investigation or with the actions taken as a result of the investigation, he or she should notify The Dinex Group's Director of Operations, whose office is located at The Dinex Group's main office, in person or in writing so that the matter can be reviewed.

Employees who make a good faith complaint of discrimination or harassment, or who cooperate with an investigation into possible discrimination or harassment will be protected against resultant adverse employment actions or retaliation. No coworker will suffer a negative impact because he or she followed this policy. Any retaliation against employees because they made good faith complaints, or cooperated in an investigation, is itself a violation of this policy.

Complaints about Promotion

Any employee who has expressed an interest in being promoted and believes that he or she has been wrongfully denied a promotion based upon non-job related factors should promptly report the incident to the Director of Human Resources, whose office is located at The Dinex Group's main office. Complaints can be made in person or in writing, and will be kept in the strictest confidence compatible with a thorough investigation.

If the employee is not satisfied with the outcome of the investigation or with the actions taken as a result of the investigation, he or she should notify The Dinex Group's Director of Operations, whose office is located at The Dinex Group's main office, in person or in writing so that the matter can be reviewed.

Questions

If you have any questions concerning the policy on discrimination or harassment, or concerning any other equal employment opportunity matters, please feel free to contact the Director of Human Resources.