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EEOC v. Horseshoe Lake Golf Course, Inc

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EEOC v. Horseshoe Lake Golf Course, Inc

Keywords

EEOC, Horseshoe Lake Golf Course, Inc., C06-148-JLR, Consent Decree, Disparate Treatment, Retaliation, Constructive Discharge, Sexual Harassment, Sex, Hospitality, Employment Law, Title VII

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,
v.

HORSESHOE LAKE GOLF COURSE,
INC.

Defendant.

No. C06-148-JLR

CONSENT DECREE AND [PROPOSED]
ORDER DISMISSING ACTION

I. INTRODUCTION

1. This action originated with discrimination charges filed by Amber Harper, Amanda Niles, Ashley Kunish, Lynetta Brooks, Amanda Bolz, Amber Privitt, Meghan Hike and Anna Day (“Charging Parties”) with the Equal Employment Opportunity Commission. The Charging Parties alleged Horseshoe Lake Golf Course, Inc. (“Horseshoe Lake”) discriminated against them on the bases of sex by subjecting them to sexual harassment, retaliation, and/or constructive discharge, in violation of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 2000e et seq.

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IV. SETTLEMENT SCOPE

7. This Consent Decree is the final and complete resolution of all allegations of unlawful employment practices contained in the Charging Parties' discrimination charges, in the EEOC's administrative determinations, and in the complaint filed herein, including all claims by the parties for attorney fees and costs.

V. MONETARY RELIEF

8. In settlement of this lawsuit, Defendant has agreed to pay \$367,000.00 to Charging Parties and class members. Of this amount \$267,000 is payable to the eight named charging parties. Payment for Charging Parties Amber Harper and Amanda Niles will be made within twenty (20) business days of signing this agreement. Payment to Ashley Kunish, Lynetta Brooks, Amanda Bolz, Amber Privitt, Meghan Hike and Anna Day will be made within sixty (60) business days of signing this agreement. There will be a settlement fund established out of the total remaining sum in the amount of \$100,000.00, and final determination of payments to individual class members from the class settlement fund shall follow the procedures as described below in Section VI.

VI. ADMINISTRATION OF CLASS SETTLEMENT

9. A Potential Claimant is defined as a woman who applied for a position at Horseshoe Lake or worked at Horseshoe Lake between September 28, 2004 and June 20, 2006.

10. A Successful Claimant is defined as a Potential Claimant who presents credible evidence that she was subjected to sexual or gender-based harassment at Horseshoe Lake between the dates of September 28, 2004 and June 20, 2006. Further, a Successful Claimant must meet all deadline and claim requirements as set forth in this Consent Decree. The

1 Successful Claimant will be required to present credible evidence, which will include her own
2 sworn statement, to establish such sexual or gender-based harassment.

3 11. The EEOC will determine who the Successful Claimants are based upon the criterion
4 outlined in Paragraph 10 and the share of the settlement fund each such person will receive. The
5 determination by the EEOC shall be binding upon the parties.

6 12. The Potential Claimants will be sent a Notice to Potential Claimants (“Notice”)
7 which will include a description of the charges against Horseshoe Lake, a definition of Potential
8 Claimants, a summary of the settlement reached, and the criteria for determination of who will
9 qualify as a Successful Claimant. It will also include a list of examples of sexual or gender-
10 based harassment. The Notice will also contain a description and explanation of the deadlines
11 and other claim requirements and will include an Application Form to be completed by each
12 Potential Claimant which will assist in the presentation of her prima facie evidence of sexual or
13 gender-based harassment. The Notice and Claim form to be used are attached hereto as Exhibits
14 A and B.
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17 13. Deadlines and claim requirements are as follows:

18 a. Within 10 days of the entry of this Consent Decree EEOC will mail by
19 certified mail, return receipt requested, copies of the Notice and Application Form
20 to all Potential Claimants. The mailing will include a stamped, return address
21 envelope with the EEOC’s Seattle Field Office address.

22 b. Potential Claimants will have thirty (30) days to respond by returning a
23 completed Application Form to the EEOC.
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1 c. If the original Notice mailed is forwarded to a Potential Claimant by the Post
2 Office, then that individual will be provided with an additional thirty (30) days to
3 respond.

4 d. If the original Notice mailed is returned as undeliverable, EEOC will have
5 fifteen (15) days to research and update the Potential Claimant's address and re-
6 mail the documents. Re-mailing the Notice and Application Form will provide
7 another thirty (30) day response deadline.

8 e. Within ten (10) days of receiving the last Potential Claimant response, the
9 EEOC will provide Horseshoe Lake with a list identifying each Successful
10 Claimant whom the EEOC has determined presented a prima facie case pursuant
11 to the criteria outlined in this Consent Decree. The identity of unsuccessful
12 claimants will also be provided at this time.

13 f. At the time it notifies Horseshoe Lake of the list of unsuccessful and successful
14 claimants, the EEOC will notify each claimant as to whether her application was
15 successful or not, and if so, the amount she will be awarded from the settlement
16 fund. Successful claimants will be notified that the receipt of settlement proceeds
17 will require the execution of the release attached hereto as Exhibit C and its return
18 to the EEOC. Successful claimants will also be notified that they are entitled to
19 consult an attorney before signing the release. If a claimant seeks such
20 consultation, they are entitled to receive reimbursement of up to \$200.00 for
21 reasonable attorney's fees (an amount in addition to the individual settlement
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1 from the \$100,000 proceeds). The reimbursement will be made by Horseshoe
2 Lake within ten (10) business days upon proof of such consultation.

3 g. Payment by Horseshoe Lake to the Successful Claimants will be made within
4 fourteen (14) days from the date Defendant is notified that the EEOC has received
5 the signed release.

6 h. Upon proof of payment to the successful claimant, the EEOC will send the
7 original signed releases to counsel for Horseshoe Lake.

8 i. In the event that a successful claimant does not execute the release, EEOC will
9 distribute the sum to the remaining successful claimants through a pro-rata
10 distribution.
11

12 VII. INJUNCTIVE RELIEF

13 A. General Provisions

14 14. Horseshoe Lake reaffirms its commitment to comply with Title VII. To further this
15 commitment, the company shall monitor the affirmative obligations of this Consent Decree. The
16 terms of this Consent Decree apply to all applicants and employees.
17

18 15. The company will not retaliate against any applicant or employee for opposing a
19 practice deemed unlawful by Title VII or for making a charge, testifying, assisting, or
20 participating in any investigation, proceeding, or hearing associated with this action.
21

22 16. Horseshoe Lake, its officers, agents, and employees are hereby enjoined from
23 engaging in personnel practices which unlawfully discriminate against applicants and/or
24 employees in violation of Title VII. In recognition of its obligations under Title VII, Horseshoe
25 Lake will institute the policies and practices set forth below.

1 B. Retention of Sexual Harassment Consultant to Develop Policy Against Sexual
2 Harassment

3 17. With the assistance of an independent sexual harassment consultant, Horseshoe Lake
4 will adopt a written equal employment opportunity policy which sets forth the requirements of
5 federal laws against employment discrimination and specifically those provisions which make
6 sexual harassment unlawful and which make it unlawful to retaliate against any current or former
7 employee for opposing any practice made unlawful by Title VII. The sexual harassment
8 consultant will be retained, at Horseshoe Lake's expense, to conduct an internal review and audit
9 of the company's sexual harassment policy and complaint procedure. The sexual harassment
10 consultant will be subject to the prior approval of the EEOC and the policy and complaint
11 procedure to be developed will address, at a minimum, the following statement of "Zero-
12 Tolerance Policy": Horseshoe Lake is firmly committed to developing and maintaining a zero-
13 tolerance policy concerning sex discrimination, sexually-based harassment and retaliation against
14 individuals who report discrimination or harassment in the company's workplace; to swiftly and
15 firmly responding to any acts of sex discrimination, sexually-based harassment or retaliation of
16 which the company becomes aware; to implementing a disciplinary system that is designed to
17 strongly deter future acts of sex discrimination, sexually-based harassment or retaliation; to
18 eradicating any vestiges of a work environment that is sexually hostile to individuals; and to
19 actively monitoring its workplace in order to ensure tolerance, respect and dignity for all
20 people."
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1 C. Development of Anti-Harassment Policies, Procedures and Practices

2 18. In order to effectuate the objectives embodied in Horseshoe Lake's Zero-Tolerance
3 Policy and this Decree, Horseshoe Lake shall develop and maintain policies, procedures and
4 practices that contain the following elements:

5 a. Sex Discrimination and Harassment Policy. Horseshoe Lake agrees that it
6 shall implement a sex discrimination and harassment policy, as necessary, in
7 order to:

8
9 i. provide clear definitions and examples of prohibited sex discrimination,
10 sexually-based harassment, and retaliation;

11 ii. provide for substantial and progressive discipline for incidents of sex
12 discrimination, sexually-based harassment, and/or retaliation;

13 iii. provide that complaints of sex discrimination, sexually-based
14 harassment and/or retaliation will be accepted by Horseshoe Lake in
15 writing and orally;

16
17 iv. provide a timetable for reporting a complaint, for commencing an
18 investigation after a complaint is made or received and for remedial action
19 to be taken upon conclusion of an investigation; and

20
21 v. indicate that, promptly upon the conclusion of its investigation of a
22 complaint, Horseshoe Lake will communicate to the complaining party the
23 results of the investigation and the remedial actions taken or proposed, if
24 any.

1 b. Complaint Procedures.

2 i. Horseshoe Lake agrees that it shall institute a complaint procedure
3 designed to encourage employees to come forward with complaints about
4 violations of its sex discrimination, sexually-based harassment and
5 retaliation policy. As part of this policy, Horseshoe Lake agrees that it
6 shall provide its employees with convenient, confidential and reliable
7 mechanisms for reporting incidents of sex discrimination, sexually-based
8 harassment and retaliation. Horseshoe Lake agrees that it shall designate
9 at least two upper management employees charged with investigating such
10 issues, as persons who may be contacted, and their names, responsibilities,
11 work locations and telephone numbers shall be routinely and continuously
12 posted. Also as part of its procedure, Horseshoe Lake agrees that it shall
13 keep a Complaint Box in a place within Horseshoe Lake premises where
14 employees tend to gather and which is not in the managerial area of
15 Horseshoe Lake's offices. The upper management employees designated
16 by Horseshoe Lake as charged with investigating complaints of
17 discrimination will gather the complaints from the Complaint Box.
18 Additionally as part of its complaint procedure, Horseshoe Lake agrees
19 that it shall maintain throughout its workplace the presence of personnel
20 charged with handling complaints of sex discrimination, sexually-based
21 harassment and retaliation.
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1 ii. Horseshoe Lake agrees that it shall enable complaining parties to be
2 interviewed by Horseshoe Lake about their complaints in such a manner
3 that permits the complaining party, at such party's election, to remain
4 inconspicuous to all of the employees in such party's work area.

5 Horseshoe Lake agrees that its complaint procedure shall not impose upon
6 individuals seeking to make a complaint alleging sex discrimination,
7 sexually-based harassment and/or retaliation any requirements that are
8 more burdensome than are imposed upon individuals who make other
9 complaints of comparable gravity.

10
11 iii. Horseshoe Lake agrees that it shall ensure that its policies and
12 procedures provide that complaint handling and disciplinary procedures
13 regarding all complaints of sex discrimination, sexually-based harassment
14 and/or retaliation are investigated and addressed promptly. Specifically,
15 Horseshoe Lake agrees that it shall make its best effort to investigate all
16 complaints of sex discrimination, sexually-based harassment and/or
17 retaliation promptly and to complete investigations within one (1) week.
18 Horseshoe Lake will further make its best effort to prepare its written
19 findings of the results of each investigation and the remedial actions
20 proposed within one (1) week after completion of the investigation, and
21 shall thereupon promptly communicate to the complaining party the
22 results of the investigation and the remedial actions taken or proposed, if
23 any. If the investigation is the result of an anonymous complaint filed in
24
25

1 the complaint box, Horseshoe lake will only be obligated to notify affected
2 parties, to the extent they are known, of the result of the investigation and
3 remedial actions taken or proposed, if any.

4 iv. Horseshoe Lake agrees that it shall make its best effort to ensure that
5 appropriate remedial action is taken to resolve complaints and to avoid the
6 occurrence of further incidents of sex discrimination, sexually-based
7 harassment and/or retaliation. Horseshoe Lake further agrees that it shall
8 revise its progressive discipline policy to provide for appropriate
9 discipline including, but not limited to, suspensions without pay, demotion
10 or termination, as possible consequences for violations of its sex
11 harassment policy.
12

13 c. Policies Designed To Promote Supervisor Accountability.

14 i. Horseshoe Lake agrees that it shall impose discipline designed to stop
15 any unlawful behavior, up to and including suspension without pay,
16 demotion or termination upon any employee, including supervisors or
17 managers, who engages in sex harassment or permit any such conduct to
18 occur in his or her work area or among employees under his or her
19 supervision, or who retaliates against any person who complains or
20 participates in any investigation or proceeding concerning any such
21 conduct. Horseshoe Lake shall communicate this policy to all of its
22 employees.
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1 ii. Horseshoe Lake agrees that it shall continue to advise all managers and
2 supervisors of their duty to actively monitor their work areas to ensure
3 employees' compliance with the company's sex discrimination and
4 harassment policy, and to report any incidents and/or complaints of sex
5 harassment and/or retaliation of which they become aware to the
6 department charged with handling such complaints.

7
8 iii. Horseshoe Lake agrees that, in evaluating the performance and
9 determining compensation of managers and supervisors, it will take into
10 account how supervisors and managers handle equal employment
11 opportunity ("EEO") issues, and to link such evaluations to any supervisor
12 or management promotion and/or salary/bonus decisions.

13
14 iv. Horseshoe Lake agrees that it shall include "commitment to equal
15 employment opportunity" as a criterion for qualification for supervisory or
16 management positions.

17 d. Sexual Harassment Training.

18 i. Horseshoe Lake agrees that it shall provide mandatory annual sex
19 discrimination and sexual harassment training to all employees, including
20 supervisors, managers and senior managers; to provide mandatory sex
21 discrimination and sexual harassment training to all new employees during
22 employee orientation; and to provide training to all persons charged with
23 the handling of complaints of sex discrimination, sexual harassment and/or
24 retaliation harassment in the workplace, including the techniques for
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1 investigating and stopping it. This training shall include issues regarding
2 sex discrimination as it may affect employees of Horseshoe Lake.

3 Horseshoe Lake agrees to require Owner/General Manager Alex Roland to
4 undergo training/counseling. The training shall consist of nine (9) hours
5 of one on one counseling/training with an individual approved by the
6 EEOC, and nine (9) group sessions taken over a two (2) year period. Nine
7 (9) of the 18 sessions must take place within one year after the entry date
8 of this Consent Decree. No more than ten sessions may be completed
9 within the first year. These training/counseling sessions must address
10 issues of sexual harassment and use and abuse of power over subordinates.
11 Horseshoe Lake agrees that Alex Roland will not occupy the position of
12 General Manager until the completion of this training/counseling.

13
14
15 ii. Horseshoe Lake agrees that all training required by this Decree shall be
16 conducted by experienced sex discrimination and sexual harassment
17 educators and/or consultants. Horseshoe Lake agrees that the training
18 outlined in this Decree shall begin with an initial assessment conducted by
19 the educators and/or consultants and may include a broad assessment of
20 Horseshoe Lake's function as it interplays with the training issues outlined
21 above. Horseshoe Lake understands that this assessment may result in
22 policy or training recommendations beyond those required by this Decree,
23 and that Horseshoe Lake shall be responsible for all costs associated with
24 any assessment or training growing out of this Decree.
25

1 D. Expungement of Records

2 19. Horseshoe Lake will not disclose any information or make references to any charge
3 of discrimination or this lawsuit in responding to requests for information about any Charging
4 Party or class member. Horseshoe Lake agrees to expunge from its records or files all materials
5 related to the Charging Parties' charges of discrimination and this EEOC lawsuit.
6

7 E. Reporting

8 20. Horseshoe Lake shall report in writing to the EEOC on an annual basis, beginning
9 twelve months (12) months from the date of the entry of this decree, and thereafter every twelve
10 (12) months thereafter the following information:

- 11 a. Certification of the completion of training for managers, supervisors, and non-
12 management employees along with lists of attendees;
- 13 b. Certification that their EEO policies have been distributed to all current and
14 newly hired employees;
- 15 c. A list of any changes, modifications, revocations or revisions to their EEO
16 policies and procedures which concern or affect the subject of discrimination.
- 17 d. A summary of internal discrimination or sexual harassment complaints, if any;
18 and
- 19 e. A statement certifying that the company has complied with the terms of this
20 Consent Decree. If Defendant has not complied with any term of this Consent
21 Decree, the statement will specify the areas of noncompliance, the reason for the
22 noncompliance, and the steps taken to bring Defendants into compliance.

23 F. Posting

24 21. Horseshoe Lake will post a Notice, attached as Exhibit D to this Consent Decree.
25
26 The Notice shall include a recitation of the "Zero-Tolerance Policy referred to in Paragraph 17
27 above. The Notice shall be posted on a centrally located bulletin board or other place where such
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1 notices are normally posted and read by employees during the five (5) year period of this
2 Consent Decree.

3 **VIII. ENFORCEMENT**

4 22. If the EEOC determines that Horseshoe Lake has not complied with the terms of this
5 Consent Decree, the EEOC will provide written notification of the alleged breach to the
6 company. The EEOC will not petition the Court for enforcement of this Consent Decree for at
7 least thirty (30) days after providing written notification of the alleged breach. The 30-day
8 period following the written notice shall be used by the parties for good faith efforts to resolve
9 the dispute.
10

11 **IX. RETENTION OF JURISDICTION**

12 23. The United States District Court for the Western District of Washington shall retain
13 jurisdiction over this matter for the duration of this Consent Decree.
14

15 **X. DURATION AND TERMINATION**

16 24. This Consent Decree shall be in effect for five (5) years beginning the day the Court
17 enters the Decree. If the EEOC petitions the Court for breach of this settlement agreement, and
18 the Court finds Defendant to be in violation of its terms, the Court may extend the duration of
19 this Consent Decree.
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1 XI. CONCLUSION

2 25. The parties are not bound by any provision of this agreement until it is signed by
3 authorized representatives of each party and entered by the Court.

4 Dated this 29th day of September, 2006.

5
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