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EEOC & Aimee Boss and Morgan Hagedon v. Bodega Bars USA, LLC d/b/a Mosaic Restaurant

Judge Donald J. Stohr

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EEOC & Aimee Boss and Morgan Hagedon v. Bodega Bars USA, LLC d/ b/a Mosaic Restaurant

Keywords

EEOC, Aimee Boss, Morgan Hagedon, Bodega Bars USA, LLC d/b/a Mosaic Restaurant, 4:07-cv-1645, Consent Decree, Sexual Harassment, Constructive Discharge, Sex, Female, Service, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
Plaintiff,)	
)	
and)	
)	
AIMEE BOSS and MORGAN HAGEDON,)	
)	CIVIL ACTION NO. 4:07-
)	CV-1645
Plaintiff-Intervenors,)	
)	
v.)	
)	
BODEGA BARS USA, LLC d/b/a MOSAIC)	
RESTAURANT.)	
)	
_____ Defendant.)	

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (“EEOC”) instituted this action against Defendant Bodega Bars USA, LLC d/b/a Mosaic restaurant (hereinafter “Bodega Bars” or “Defendant”) alleging that Aimee Boss and Morgan Hagedon were subjected to sexual harassment by Andrew Gladney, a customer of Bodega Bars, at Defendant’s restaurant located at 1101 Lucas Avenue, St. Louis, Missouri and that they were constructively discharged from their employment by Defendant’s failure to end the harassment, all in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 (“Title VII”). Hagedon and Boss (“Plaintiff-Intervenors”) were permitted by the Court to intervene in the EEOC’s suit to assert similar claims against the Defendant under Title VII.

For purposes of settlement and compromise only, and with no admission of liability by Defendant, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay, and burden of further litigation;

The parties acknowledge that the settlement of this lawsuit and entry of this Consent Decree, with Defendant's consent, is not and shall not be construed as an admission that Defendant has violated Title VII, nor shall it be construed as or deemed an admission by Defendant that it has any liability whatsoever to the Plaintiff-Intervenors or the Plaintiff EEOC, such liability being expressly denied.

THEREFORE, it is the finding of this Court, made on the pleadings, the record as a whole, and upon agreement of the parties, without an admission or finding of liability on the part of Defendant, that (i) this Court has jurisdiction over the parties to and the subject matter of this action; (ii) the requirements of Title VII will be carried out by the implementation of this Decree; (iii) this Decree is intended to and does resolve all matters in controversy in this lawsuit among all the parties; and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. General Provisions

1. Defendant shall not discriminate against any employee by subjecting such employee to sex discrimination or sexual harassment at any restaurant or other facility owned and/or operated by the Defendant.

2. Defendant shall not discriminate against any employee because such employee has opposed any practices alleged in this lawsuit to be unlawful under the

relevant laws, has participated in an investigation related to this lawsuit, has participated in this lawsuit, and/or has benefitted in any way as a result of this Consent Decree.

II. Relief for Plaintiff-Intervenors

1. Defendant agrees to pay in settlement of all claims alleged against them by Aimee Boss, and by the EEOC on behalf of the plaintiff-Intervenor Boss the sum of \$32,000, to be made in payments of \$8,000 on each of the following dates: June 30, 2008, September 30, 2008, December 30, 2008, and March 30, 2009. This sum represents compensation for back pay in the amount of \$5,000 and for compensatory damages in the amount of \$27,000. The payment of backpay shall be made in the payment due on March 30, 2009. All applicable payroll deductions shall be withheld and paid to the appropriate state or federal agency from that part of the monetary payment for backpay. In addition Defendant shall pay the employer's contribution for social security, medicare, and other payroll taxes on the backpay amount paid to plaintiff-intervenor. The payments to be made to plaintiff-intervenor Boss shall be made by check jointly payable to plaintiff-intervenor Boss and Sedey Harper, P.C. The checks shall be delivered to plaintiff-intervenor's counsel of record, Sedey Harper, P.C.

2. Defendant agrees to pay in settlement of all claims alleged against them by Morgan Hagedon, and by the EEOC on behalf of the plaintiff-intervenor Hagedon the sum of \$32,000, to be made in payments of \$8,000 on each of the following dates: June 30, 2008, September 30, 2008, December 30, 2008, and March 30, 2009. This sum represents compensation for back pay in the amount of \$5,000 and for compensatory damages in the amount of \$27,000. The payment of backpay shall be made in the

payment due on March 30, 2009. All applicable payroll deductions shall be withheld and paid to the appropriate state or federal agency from that part of the monetary payment for backpay. In addition Defendant shall pay the employer's contribution for social security, medicare, and other payroll taxes on the backpay amount paid to plaintiff-intervenor. The payments to be made to plaintiff-intervenor Hagedon shall be made by check jointly payable to plaintiff-intervenor Hagedon and Sedey Harper, P.C. The checks shall be delivered to plaintiff-intervenor's counsel of record, Sedey Harper, P.C.

3. With the exception of the relief provided for in this Consent Decree, Plaintiff EEOC and Plaintiff-Intervenors hereby dismiss, with prejudice, any and all claims against Defendant for attorneys' fees, expenses, costs, back pay, front pay, compensatory damages, punitive damages, and any other relief, sought by Plaintiff EEOC and/or Plaintiff-Intervenors.

4. Within thirty (30) days of the Court's entry of the Consent Decree, Defendant shall direct its owner to prepare and sign letters of reference in the form shown in Exhibit A on appropriate company letterhead, and to make copies of such signed letter part of the respective permanent employment records of Plaintiff-Intervenors.

5. In the case of any inquiries by prospective employers regarding either Plaintiff- Intervenor, Defendant shall limit its response(s) to the information contained in the respective aforementioned letter as applicable, and copies of such letter shall be made available to any such prospective employers upon request.

6. Within thirty (30) days of the Court's entry of the Consent Decree, Defendant shall mail copies of the signed letters described in paragraph II-4, above, to Sedey Harper, P.C., 2711 Clifton Ave., St. Louis, Missouri 63139, and to C. Felix Miller, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

7. Defendant's owner, Claus Schmitz, agrees to personally guarantee the payments required by this section, paragraphs 1 and 2. Should Plaintiff EEOC and/or the Plaintiff-Intervenors be required to bring a legal proceeding because of Defendant's or Claus Schmitz failure to make any of the payments, the prevailing party shall be entitled to reasonable attorneys' fees and costs. Prior to Plaintiff EEOC or the Plaintiff-Intervenors initiating litigation under this paragraph, they must notify Claus Schmitz of any delinquency and Schmitz shall have fifteen (15) days to cure any delinquency. If Schmitz cures any delinquency within fifteen (15) days of notice, Plaintiff EEOC and/or the Plaintiff-Intervenors may not initiate legal proceedings under this paragraph.

III. Injunctive Relief

1. Defendant shall take reasonable actions to exclude Andrew Gladney from its premises.

2. Within thirty days of the Court's entry of the Consent Decree, Defendant shall adopt a sexual harassment policy which shall:

a. Clearly describe the proper procedure to file an internal sexual harassment complaint with Bodega Bars and shall include a telephone number to report sexual harassment that will be monitored by a person trained to receive such reports and

take appropriate action. The complaint procedure shall require that a complaint of sexual harassment may be made to a single individual and shall identify at least two persons to whom such complaints may be made.

b. Require the removal from its restaurant any customer or other person who continues to make unwelcome sexual advances or unwelcome offensive comments of a sexual nature to any of its employees after having been asked to quit making such remarks by management or the employee to whom such remarks were directed.

c. Require all managers who have direct personal knowledge of any unwelcome offensive comments of a sexual nature made by any person on the premises of the restaurant, to take immediate action to end such unwelcome comments regardless of whether or not any person has complained about such comments.

A copy of this policy shall be provided within fifteen (15) days of the Court's entry of the Consent Decree to C. Felix Miller, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103, for review and approval by the EEOC.

3. Within thirty (30) days of the Court's entry of the Consent Decree, Defendant shall distribute to all its employees its sexual harassment policy, including its complaint procedure. This notice will be in the form of a letter, on company letterhead, from the owner, with the policy and procedure attached to or incorporated in such letter. Defendant will obtain a sign-off sheet from each employee stating that the employee has received these materials. Simultaneously with the distribution of such letter, Defendant

shall mail a copy of such letter to C. Felix Miller, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

4. Within five (5) days of their date of hire, Defendant shall distribute to each newly hired employee the sexual harassment policy. This notice will be in the form of a letter, on company letterhead, from the owner with the policy and procedure attached to or incorporated in such letter. Defendant will obtain a sign-off sheet from each employee stating that the employee has received these materials.

5. Within thirty (30) days of the Court's entry of the Consent Decree, Defendant shall develop and post a copy of its sexual harassment policy and complaint procedure notice on the employee bulletin board or similar location in all of its restaurants or other facilities.

6. Within sixty (60) days of the Court's entry of the Consent Decree, Defendant shall cause all of their restaurant managers to attend two (2) hours of sexual harassment training. Each shall be counseled that he or she must fully comply with Defendant's sexual harassment policy and must promptly report to its owner any and all conduct that may constitute sexual harassment and all complaints alleging sexual harassment, and that failure to do so will result in discipline up to and including termination. Within thirty (30) days of the Court's entry of the Consent Decree, an outline and description of the training and the training materials shall be made available for review and approval by C. Felix Miller, Senior Trial Attorney, Equal Employment Opportunity Commission, at 222 South Central, suite 901, Clayton, Missouri 63105.

7. Within thirty (30) days of their date of hire or promotion to their position, Defendant shall cause all new restaurant managers to attend two (2) hours of sexual harassment training. Such training shall emphasize that any and all conduct that may constitute sexual harassment shall be grounds for immediate discipline, including demotion and termination.

8. Defendant shall keep records of any and all internal complaints of possible sexual harassment received during the term of the Consent Decree, and shall retain such records for a period of two years from the date of receipt of each such complaint.

IV. Posting of Required Notices

Within thirty (30) days of the Court's entry of the Consent Decree, Defendant shall post at its restaurant the notice required by 29 CFR 1601.30 and the notice attached to the Consent Decree as Exhibit B. Such notice shall be posted on the employee bulletin board or other similar conspicuous location.

V. Reporting and Monitoring

Within six (6) months of the entry of the Consent Decree, and every six (6) months thereafter during the term of this consent decree, Defendant shall provide written notice to the EEOC of compliance with the requirements set forth in Sections II, III, and IV of the Consent Decree to C. Felix Miller, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103. Such notice shall include copies of any and all documents referenced or described in Sections II, III, and IV not already provided to the EEOC.

VI. Term and Effect of Decree

1. Defendant's owner, Claus Schmitz, shall implement the provisions of Sections I, III, IV, V, and VI of this Consent Decree in any and all restaurants in the City of St. Louis in which he owns a controlling interest.
2. By entering into this Consent Decree, the parties do not intend to resolve any charges of discrimination other than the charges filed by the Plaintiff-Intervenors that created the jurisdictional foundation for the Complaints filed in this case.
3. This Decree shall be binding upon the parties hereto, their successors and assigns.
4. This Decree shall be in force for a period of two (2) years. During the Consent Decree's term, the Court shall retain jurisdiction of this case for purposes of enforcement of the Consent Decree. The term of the Consent Decree can be extended by the Court only upon a showing that Defendant has substantially failed to comply with a material term of the Consent Decree after having been given notice of any such failure to comply and a reasonable opportunity to correct any such non-compliance.
5. Each party shall be responsible for its own attorneys' fees and costs of this litigation.

DATE: 7-2-08


UNITED STATES DISTRICT JUDGE