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EEOC v. Seapod Pawnbrokers

Judge Jack B. Weinstein

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EEOC v. Seapod Pawnbrokers

Keywords

EEOC, Equal Employment Opportunity Commission, Seapod Pawnbrokers, 1:14-cv-04567-JBW-CLP, Hostile Work Environment, Retaliation, Sexual Harassment, Termination

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

-----X
EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :
: :
Plaintiff, :
: :
v. :
: :
SEAPOD PAWNBROKERS, INC., d/b/a :
SEAPOD PAWNBROKERS; SEAPOD :
CAPITAL GROUP, LLC, d/b/a SEAPOD :
PAWNBROKERS, :
: :
Defendants. :
-----X

CIVIL ACTION NO. 14-cv-4567

CONSENT DECREE

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ **FEB 12 2015** ★
BROOKLYN OFFICE

On July 31, 2014, the EEOC brought this action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct alleged unlawful employment practices on the basis of sex, national origin, race, and retaliation, and to provide appropriate relief to Charging Parties Gina (Rivera) Richardson, Marabelle Williamson, Christina Brens, Jessica (Dawson) Ducos, Estefania Vargas, Catherine Delarosa, and other similarly aggrieved employees who were affected by such alleged unlawful practices. It is alleged in the EEOC's Complaint that Defendants Seapod Pawnbrokers, Inc., d/b/a Seapod Pawnbrokers, and Seapod Capital Group, LLC, d/b/a Seapod Pawnbrokers violated Title VII of the Civil Rights Act of 1964 when they allegedly (i) subjected female employees to sexual harassment; (ii) created a hostile work environment based on sex, national origin, and/or race; and (iii) retaliated against employees for opposing harassment, complaining about harassment, filing EEOC Charges of Discrimination, and/or participating in EEOC investigations.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

PART I GENERAL PROVISIONS

A. Purpose of this Decree

1. The EEOC and Defendants desire to settle this action, and therefore stipulate and consent to entry of this Decree as final and binding between the parties.

2. The Decree resolves all issues that were raised in the EEOC's Amended Complaint and the EEOC Charges of Discrimination filed by Charging Parties Gina (Rivera) Richardson, Marabelle Williamson, Christina Brens, Jessica (Dawson) Ducos, and Estefania Vargas (Nos. 520-2011-02091, 520-2011-02093, 520-2011-02094, 520-2011-02110, 520-2012-02930), and by Catherine Delarosa (No. 520-2014-01937), which served as the jurisdictional prerequisite in this case. This Decree in no way affects the EEOC's right to process any charges that have been or will be filed against Defendants, or to commence civil actions on any such charges.

3. The EEOC and Defendants agree that this Court has jurisdiction over the subject matter of this litigation and the parties, that venue is proper, and that all administrative prerequisites have been met. No party will contest the validity of this Decree or the jurisdiction of the U.S. District Court to enforce this Decree and its terms.

4. The terms of this Decree represent the full and complete agreement of the parties. The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

B. Computation of Time

When a period of time is stated in days, or a longer unit of time, exclude the day of the event that triggers the period, count every day including weekends and federal holidays, and include the last day of the period, but if the last day is a weekend day or federal holiday, the period continues to run until the end of the next day that is not a weekend day or federal holiday.

C. Applicability of Decree to Transferees and Subcontractors

Before either Defendant intends to transfer any portion of its business or assets, it shall provide written notice of this lawsuit and a copy of the Complaint and this Decree to the potential purchaser, successor, assign, subsidiary, affiliate, or entity with which it may merge or consolidate. Before either Defendant engages in any subcontract of its work, it shall provide written notice of this lawsuit and a copy of the Complaint and this Decree to the potential subcontractor. Defendants will provide written notice to the EEOC 21 days before any such transfer or subcontract.

D. Amendments to this Decree

By mutual consent of the parties, this Decree may be amended in the interests of justice and fairness and to facilitate execution of its provisions. No waiver, modification, or amendment of any provision of this Decree will be effective unless made in writing, approved by all parties, and approved or ordered by the Court.

E. Severability

In order to ensure that this Decree continues to effectuate the intent of the parties, if one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the provisions of this Decree which are not rendered unlawful, unenforceable, or incapable of performance as a result of such

legislative act or court decision will remain in full force and effect, and the parties' responsibilities will not abate as to any provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of this Decree would be undermined.

F. Breach of Decree

A breach of any term of this Decree by Defendants will be deemed a material and substantive breach of this Decree. Nothing in this Decree will be construed to preclude the EEOC from bringing proceedings to enforce this Decree if Defendants fails to perform any of the terms contained herein. This Decree will be construed by this Court under federal law.

G. Notices

Except as otherwise provided for in this Decree, all notifications, reports, and communications to the parties required under this Decree will be made in writing and will be sufficient as emailed or mailed to the following persons (or their designated successors):

For EEOC:	Consent Decree Monitor EEOC Legal Unit 33 Whitehall Street, 5th Floor New York, NY 10004 decreemonitor.nydo@eeoc.gov
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For Defendants: by email only	Corey Winograd, Esq. coreywinograd@gmail.com and bngis77@aol.com
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Any party may change such addresses by written notice to the other parties setting forth a new address for this purpose.

PART II INJUNCTIVE RELIEF

A. Specific Injunctions

1. Defendants, their managers, officers, agents, any other person or entity acting on behalf of Defendants, or any subcontractor, are hereby enjoined from subjecting female, Black,

and/or Hispanic employees to different terms, conditions, or privileges of their employment on the basis of their gender, race, ethnicity and/or national origin, including subjecting them to a hostile environment because of their sex, race, and/or national origin.

2. Defendants, their managers, officers, agents, any other person or entity acting on behalf of Defendants, or any subcontractor, are hereby enjoined from retaliating against any employee who opposes unlawful discrimination or who participates in any way in the filing, investigation, litigation, or resolution of any complaint of discrimination.

B. Notice of Resolution

1. Within seven days of entry of this Decree, Defendants will conspicuously post and maintain a Notice of Resolution (attached as Exhibit A) in all prominent places where employee notices are posted. Within 14 days of entry of this Decree, Defendants will certify in writing to the EEOC that they have posted the Notice of Resolution.

2. Within seven days of entry of this Decree, Defendants will provide to each employee, including managers, the Notice of Resolution. Within 14 days of entry of this Decree, Defendants will certify in writing to the EEOC that they have distributed the Notice of Resolution pursuant to this provision.

3. Defendants will provide the Notice of Resolution to all future employees hired within fourteen days of the start of their employment. On a semiannual basis beginning six months after entry of this Decree, Defendants will certify in writing to the EEOC that they have distributed the Notice of Resolution, as required, including a list of employees to whom they were distributed.

C. Non-Discrimination Policy and Complaint Procedures

1. Within seven days of entry of this Decree, Defendants will adopt Policies and Procedures (attached as Exhibit B) specifying their revised anti-discrimination policies and complaint procedures and setting forth their commitment to equal opportunity in all aspects of employment. At a minimum, the Policies and Procedures will contain the following:

- a. a detailed explanation of the prohibition of discrimination on the basis of sex, national origin, and race in all terms, conditions, or privileges of employment, including a detailed definition of “terms, conditions, or privileges” and a detailed explanation of the prohibition of harassment, with examples specific to the retail industry;
- b. an assurance that Defendants will not retaliate against employees who make complaints of discrimination, who oppose practices they consider to be discriminatory, who participate in protected activity, or who provide information related to complaints of discrimination;
- c. a clearly described complaint process that provides accessible avenues of complaint with a number of individuals to whom complaints can be made outside the employee’s chain of command, and at the executive level;
- d. an assurance that Defendants will accept any and all complaints from employees who wish to file internal complaints with the company, whether formally or informally, including the identity of specific individuals to whom employees can issue complaints;
- e. an assurance that Defendants will keep complaints confidential to the extent possible and not publicize unnecessarily the subject matter of the complaints or the identity of the complainants;

- f. an assurance that the filing of anonymous complaints is permitted and an explanation of how Defendants will preserve anonymity when it is requested by a complainant;
 - g. a description of the employee's rights to file a Charge of Discrimination with the EEOC or another government agency and to participate in the investigation of any Charge without fear of retaliation;
 - h. a process that provides a prompt and thorough investigation of all complaints to the extent necessary to reach a reasonable conclusion concerning the allegations, including interviews of the complainant and all identified witnesses and review of all identified material and documents;
 - i. a requirement that all aspects of an investigation be thoroughly documented in writing and retained by Defendants for at least three years;
 - j. an assurance that upon completion of an investigation, Defendants will promptly provide the complainant a summary of the conclusions reached through the investigation and a description of any action to be taken in response;
 - k. an assurance that Defendants will take prompt and appropriate corrective action when they determine that discrimination has occurred; and
 - l. the designation of an executive-level employee who will be responsible for ensuring the thorough and efficient investigation of all complaints and the protection of employees from retaliation.
2. Defendants will not alter or amend the Policies and Procedures without submitting them to the EEOC for review and approval, and will provide the EEOC a copy of the Policies and Procedures upon request.

3. Submission of the Policies and Procedures to the EEOC and attachment of the Policies and Procedures to this Decree is not a representation by the EEOC that Defendants have been or are in compliance with federal anti-discrimination laws.

4. Within ten days of entry of this Decree, Defendants will distribute to each employee a copy of the Policies and Procedures or provide each employee with notice of the Policies and Procedures and instructions on how to gain unlimited access to review and print an electronic copy of the Policies and Procedures.

5. Defendants will provide copies of the Policies and Procedures to all future employees within 14 days of the start of their employment or provide each future employee with notice of the Policies and Procedures and instructions on how to gain unlimited access to review and print an electronic copy of the Policies and Procedures.

6. On an annual basis, Defendants will certify in writing to the EEOC that they have not altered their Policies and Procedures and that they have distributed them to new employees as required. Defendants' certification will include a list of the new employees to whom they were distributed.

D. Non-Association with Frank Morea

Defendants each verify that they do not employ Frank Morea, and they are not associated with him in any ownership, managerial, or independent-contractor relationship, either formally or informally, directly or indirectly. Defendants will not employ Frank Morea or associate with him in any ownership, managerial, or independent-contractor relationship, either formally or informally, directly or indirectly. Defendants will ensure that Frank Morea is not allowed on the premises of any Seapod Pawnbrokers facility, and will make efforts to prevent his contact with Charging Parties or Identified Claimants.

E. Equal Opportunity Memorandum

1. Within seven days of entry of this Decree and once annually throughout the term of the Decree, Defendants will provide to each employee an Equal Opportunity Memorandum (attached as Exhibit C) setting forth the requirements of federal anti-discrimination laws and Defendants' Policies and Procedures, including the prohibition of harassment against female, Black, and/or Hispanic employees and the prohibition of retaliation against employees who oppose, report, or participate in an investigation of harassment, discrimination, or retaliation.

2. Defendants will provide copies of the Equal Opportunity Memorandum to all future employees within 14 days of the start of their employment.

3. Within 14 days of entry of this Decree, Defendants will certify in writing to the EEOC that they have distributed the Equal Opportunity Memorandum pursuant to this provision.

F. Training

1. Annual Training

Within 30 days of the entry of this Decree, and annually throughout the term of the Decree, Defendants will provide training programs for all of their (a) non-supervisory employees, (b) supervisory/management employees, and (c) employees with human-resources responsibilities. The training for (a) non-supervisory employees will be at least two hours in duration, (b) supervisory/management employees will be at least three hours in duration, and (c) employees with human-resources responsibilities will be at least four hours in duration. Defendants will provide any new supervisory/management employee, or employee with human-resources responsibilities, the initial training within 30 days of the start of their employment.

The training programs will be conducted by a third-party entity which must be approved by the EEOC. The training will review the rights and responsibilities of employees under federal anti-discrimination laws and how such laws define discrimination, with a focus on unlawful harassment and retaliation. The training will include examples of unlawful conduct in the context of the retail industry. The training will also cover Defendants' Policies and Procedures, with particular emphasis on the internal complaint, investigation, and remediation processes, and will emphasize an employee's right to file a complaint with or participate in the investigatory efforts of the EEOC and state or local agencies. The training for supervisory or management employees, or employees with human-resources responsibilities will also review the requirements of this Decree and the Policies and Procedures as they relate to the participants' work responsibilities, including the proper procedures for responding to complaints of discrimination or retaliation. All such trainings must be interactive and may be live and in person.

At least 14 days prior to the initial training, or any subsequent annual training if it has been revised since the prior training, Defendants will provide the EEOC with a detailed agenda and any proposed training materials. Submission of the training to the EEOC is not a representation by the EEOC that Defendants have been or are in compliance with federal anti-discrimination laws.

2. Reporting Requirements for Training

All employees attending a training session described in the above paragraphs will print and sign their full names on an attendance sheet that lists the date and title of the training, or will electronically sign proof of training. On a semiannual basis beginning six months after entry of this Decree, Defendants will provide the EEOC with the attendance sheets, or electronic proof,

for any training given since the last report, a list of all employees employed since the last report, and a list of the employees, if any, who did not attend a required training.

3. Pre-Training Notification Requirement

At least 30 days prior to the annual trainings required under this Section, but not to the new-employee trainings, Defendants will provide the EEOC notice of the date, time, and location of the scheduled training. The EEOC, at its discretion, may attend and/or observe any training session, whether live or electronic, and may review its contents and provide changes to be implemented by the trainer.

G. Monitoring and Reporting

1. Monitoring by EEOC

The EEOC may monitor Defendants' compliance with this Decree through the inspection of Defendants' premises and records. Upon reasonable request by the EEOC, and at a mutually agreeable time within 10 days of said request, Defendants will make its premises available for inspection and allow the EEOC access to any records for inspection or copying. The EEOC may monitor Defendants' compliance with this Decree through interviews with Defendants' officers, agents, employees, and contractors. Upon request by the EEOC, and at a mutually agreeable time within 10 days of said request, Defendants will make available for interview its officers, agents, and employees.

2. Reporting of Discrimination or Retaliation Complaints

On a quarterly basis beginning 30 days after entry of this Decree, Defendants will provide a written report to the EEOC with information regarding any verbal or written complaints of sex, national origin, or race discrimination, or retaliation, that were received, pending, or resolved since the prior report. The report will include the name of the complainant,

a summary of the complaint, the name of the alleged harasser or discriminator, the location where the alleged instances occurred, the name of anyone involved in the investigation, a list of each step taken during the investigation, the results of any investigation and any remedial action taken by Defendants, and the name of anyone involved in that determination or action. The report will be cumulative, so that new complaints are added to the report through the term of this Decree.

H. Compliance with Record-keeping Requirements

Throughout the term of the decree, Defendants will maintain all records regarding the application, rejection, hire, assignment, promotion, demotion, warning, discipline, or termination of any employee. Defendants agree to maintain any other records as are necessary to demonstrate their compliance with this Decree and 29 C.F.R. §1602, *et seq.*, and to verify that the reports submitted pursuant to this Decree are accurate.

PART III MONETARY RELIEF

In settlement of this Action, Defendants will pay to the Charging Parties and Identified Claimants the grand total sum of \$300,000.00 to be distributed in amounts to be designated by the EEOC. Within seven days of entry of this Decree, Defendants will send to each Charging Party and Identified Claimant, via certified mail, return receipt requested, to the address provided, one check for the designated backpay damages amount and one check for the designated compensatory/punitive damages amount, together with corresponding IRS Forms W-2 and 1099. Defendants will provide to the EEOC copies of all checks immediately upon their issuance.

PART IV SIGNATURES

All signatories to this Decree represent that they are fully authorized to execute this Decree and to bind the parties on whose behalf they sign.

PART V DURATION OF DECREE

A. This Decree will remain in effect for four years from the effective date of this Decree. The effective date of this Decree will be the date it is docketed by the clerk of court after it is signed by and/or receives approval from the Court. The Decree will not expire against any signatory while any enforcement action is pending against that signatory.


B. If the EEOC has notified Defendants in writing not less than 15 days in advance of the expiration of this Decree that Defendants are not in compliance with any sections of this Decree, Defendants shall have the right to cure any alleged noncompliance within 30 days of receipt of said notice. Defendants' obligations under this Decree will remain in effect until the EEOC reasonably determines that Defendants are in compliance.

C. The Court will retain jurisdiction over this action for all purposes, including the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. Upon signature and approval by the Court, the matter may be administratively closed but will not be dismissed.

APPROVED IN FORM AND CONTENT:

For Plaintiff EEOC:

*Close the case
John M. Ward
1/30/15*


Robert D. Rose
Regional Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York, 10004

For Defendants:



Howard Distafano, Manager
Scapod Pawnbrokers, Inc.
Seapod Capital Group, LLC
439 Crescent Street
Brooklyn, New York 11208

SO ORDERED this _____ day of _____, 2014.

United States District Judge

EXHIBIT A

NOTICE OF RESOLUTION

This notice is posted under a Consent Decree entered by the Federal Court in a lawsuit filed by the Equal Employment Opportunity Commission against Seapod. The lawsuit is *EEOC v. Seapod Pawnbrokers, Inc., et al.*, Civil Action No. 14-CV-4567 (E.D.N.Y.).

In the lawsuit, the EEOC alleged that Seapod violated Title VII of the Civil Rights Act of 1964 when it subjected a group of employees to a hostile environment on the basis of sex, national origin, and race, and retaliated against them when they complained about the harassment and participated in the EEOC's investigation.

Under the Decree, Seapod will pay a significant amount of monetary relief, the amount of which shall remain confidential. The Decree requires Seapod to ensure that employees are not harassed because of their sex, national origin, or race, and are not terminated for opposing discrimination or participating in EEOC investigations. The Decree also provides for revision of Seapod's policies and procedures, annual training of all managers and employees, and reporting of employment practices to the EEOC for monitoring and review.

The EEOC enforces federal laws against discrimination in employment, including discrimination on the basis of disability, race, color, national origin, sex, religion, age, or genetic information. If you believe you have been discriminated against, you may contact the EEOC at 33 Whitehall Street, 11th Floor, New York, NY, 10004, or call them toll-free at (800) 669-4000. The EEOC charges no fees and has employees who speak languages other than English. More information about the EEOC can be found at www.eeoc.gov.

THIS IS AN OFFICIAL NOTICE. DO NOT REMOVE OR CHANGE IT.

This Notice must remain posted for three years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: EEOC Legal Unit, Consent Decree Monitor, 33 Whitehall Street, 5th Floor, New York, NY, 10004.

Date: _____

The Honorable Jack B. Weinstein
United States District Judge