

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States District Court
Southern District of Texas
ENTERED

MAR 25 2003

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, §
Plaintiff, §
v. §
BAY, LTD., §
Defendant §
§

Civil Action No. C-02-175

21.

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, Bay, Ltd ("Bay"). This Consent Decree resolves the allegations raised by the EEOC referenced in the above-referenced Civil Action No. C-02-CA-175. The EEOC initiated this lawsuit under Title VII of the Civil Rights Act of 1964, as amended and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of national origin and to provide appropriate relief to Gerardo Garza, and a class of similarly situated individuals, who the EEOC maintains were adversely affected by these alleged practices. The EEOC alleged that Gerardo Garza, a Hispanic, and other similarly situated individuals, Hispanic, were subjected to a hostile work environment by one of Bay. Ltd.'s supervisors on the basis of their national origin, Hispanic, in violation of Section 703(a) of Title VII.

The EEOC, and Defendant, Bay. Ltd. wish to settle this action, without the necessity of further litigation, pursuant to the terms delineated in this Decree. Neither Bay's consent to the entry of this Decree, nor any of the terms set forth in it, shall constitute or be construed as Bay's admission

of any Title VII or Title I violation.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties; venue is proper, and all administrative prerequisites to the EEOC's filing of this action have been met. The parties stipulate to the Court's jurisdiction.

2. This Decree resolves those claims against Bay, Ltd. raised in EEOC's Complaint in this case. EEOC expressly reserves its right, however, to process and litigate any other charges which may now be pending or may in the future be filed against Defendant Bay, Ltd.

3. The duration of this Decree shall be two (2) years from the date of its filing with the Court. This Court retains jurisdiction of this action for a period of two (2) years and may enter such other and further relief as it deems appropriate to ensure implementation and enforcement of its provisions. If the EEOC believes that this Decree has been violated by Defendant, the EEOC must within the two-year period of this Decree file a pleading with the Court alleging that a violation has occurred. Said filing shall toll the running of the two-year period as of the date of the filing of said pleading. If the Court determines that this Consent Decree was violated, the Court shall determine what relief is appropriate for Defendant Bay Ltd.'s violation of this Decree. Should the Court find this Consent Decree was not violated, the original two-year period set forth in this Consent Decree shall be deemed to have run continuously as of the date of entry of this Consent Decree. Should no finding be made by the Court within two years and six months of this Consent Decree, the Consent Decree shall expire.

4. Defendant Bay, Ltd. and its successors are enjoined, during the term of this Consent Decree, from discriminating against any employee on the basis of national origin, including but not limited to creating a hostile work environment that can lead to a constructive discharge, and from

engaging in any other act or practice which has the purpose or effect of unlawfully discriminating against any employee on the basis of national origin.

5. Defendant Bay, Ltd. shall provide its employees with a place of employment free of discrimination on the basis of national origin.

6. Defendant Bay, Ltd. agrees to post a notice, for at least the duration of this Decree, of its intent to comply with Title VII. This notice is set forth in Exhibit "A" which is attached to this Decree. Defendant Bay, Ltd. agrees to post a copy of Exhibit "A" in a conspicuous place at Bay facilities in Corpus Christi, Texas, within ten days after this Decree is filed.

7. Within 90 days of the date of entry of this Decree, all general foremen, superintendents, and project managers then employed by Bay Ltd. at its facilities located in Corpus Christi, Texas, shall participate in EEO Title VII discrimination training of not less than one hour. Said training will be provided by Liza Marie Aguilar and/or James F. McKibben, Jr. of Hermansen, McKibben, Woolsey & Villarreal, L.L.P. Within 30 days prior to the date scheduled for this training Bay, Ltd. shall furnish to the EEOC a written report describing the training to be attended by the employees referred to in this paragraph.

8. Non-discrimination and Anti-Harassment Policies: Defendant Bay, Ltd. shall ensure that within 90 days of the entry of this Consent Decree, that its non-discrimination policies meet the following criteria:

- (a) State that Bay, Ltd.: (i) prohibits discrimination against employees on the basis of national origin in violation of Title VII; (ii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of national origin in violation of Title VII; and (iii) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to employees through acts such as physical/verbal abuse and derogatory

comments based on national origin in violation of Title VII;

- (b) Define and provide examples of national origin harassment; said examples to be included in the anti-harassment policy;
- (c) Provide for prompt investigation of discrimination complaints and for prompt action, which is appropriate and effective, to remedy the discrimination;
- (d) Promptly communicate in writing to the complaining party upon the conclusion of its investigation the results of the investigation and the remedial actions taken or proposed, if any;
- (e) Provide for substantial and progressive discipline for violating Bay, Ltd.'s anti-discrimination policy up to and including discharge;
- (f) Provide that all of Bay, Ltd.'s anti-discrimination policies and complaint procedures be in English and Spanish and drafted in plain and simple language.

9. Within ten (10) days from the filing date of this Decree and Bay Ltd.'s receipt of a signed notarized release from Gerardo Garza, Defendant Bay, Ltd., in settlement of this dispute, shall pay a total sum of \$15,000.00 (FIFTEEN THOUSAND AND 00/100 DOLLARS) to Gerardo Garza. Payment shall be made by check and mailed directly to Gerardo Garza at the following address: Gerardo Garza, P.O. Box 584, Ingleside, Texas 78362.

10. A copy of the settlement check, and any accompanying transmittal documents shall be forwarded to: Robert B. Harwin, Regional Attorney, San Antonio District Office, United States Equal Employment Opportunity Commission, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

11. The parties to this Consent Decree shall bear their own costs and attorney's fees incurred in this action. The parties agree that, pursuant to Section 706(k) of Title VII, 42 U.S.C.

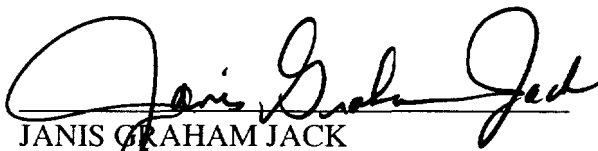
section 2000e-5(k), there is no "prevailing party" in this action or proceeding.

12. The terms of this Consent Decree shall be binding upon the EEOC and Bay, Ltd. and its successors as to the issues resolved herein.

The Clerk shall furnish a copy hereof to each attorney of record.

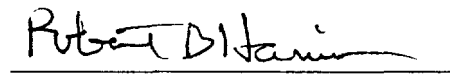
SO ORDERED.

Signed this 24th day of March, 2003.

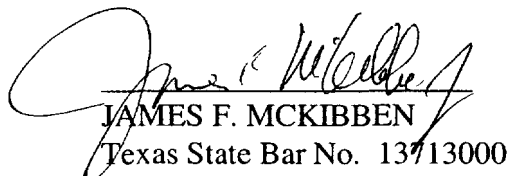

JANIS GRAHAM JACK
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

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Telephone: (210) 281-7679
Telecopier: (210) 281-7669

ATTORNEYS FOR PLAINTIFF

EXHIBIT “A”

NOTICE TO ALL EMPLOYEES

BAY, LTD., IS FIRMLY COMMITTED TO TREATING EMPLOYEES AND APPLICANTS FOR EMPLOYMENT ACCORDING TO MERIT WITHOUT REGARD TO THEIR RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, OR THEIR HAVING ENGAGED IN ACTIVITY PROTECTED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED. THIS POLICY APPLIES TO ALL EMPLOYMENT DECISIONS, INCLUDING RECRUITMENT, RETENTION, PROMOTION, TRANSFER, LAYOFF AND/OR TERMINATION, AND ALL OTHER TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE OF HIS OR HER NATIONAL ORIGIN.

IF YOU BELIEVE YOU ARE BEING DISCRIMINATED AGAINST IN ANY TERM OR CONDITION OF YOUR EMPLOYMENT BECAUSE OF YOUR RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY, OR THAT YOU ARE BEING SUBJECTED TO HARASSMENT BECAUSE OF YOUR NATIONAL ORIGIN OR HAVING ENGAGED IN TITLE VII-PROTECTED ACTIVITY, YOU ARE ENCOURAGED TO SEEK ASSISTANCE FROM SUPERVISORY PERSONNEL, OR FROM THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 5410 FREDERICKSBURG ROAD, SUITE 200, SAN ANTONIO, TEXAS 78229-3550, (210) 281-7600 OR 1-800-669-4000.

NO RETALIATORY ACTION MAY BE TAKEN AGAINST YOU FOR SEEKING ASSISTANCE, FILING A CHARGE, OR COMMUNICATING WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

EEOC ENFORCES TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, WHICH PROHIBITS EMPLOYMENT DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN; THE AGE DISCRIMINATION IN EMPLOYMENT ACT; THE EQUAL PAY ACT; PROHIBITIONS AGAINST DISCRIMINATION AFFECTING INDIVIDUALS WITH DISABILITIES; SECTIONS OF THE CIVIL RIGHTS ACT OF 1991, AND TITLE I OF THE AMERICANS WITH DISABILITIES ACT, WHICH PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN THE PRIVATE SECTOR AND STATE AND LOCAL GOVERNMENTS.