

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION**

Eastern District of Kentucky

FILED

OCT 15 2004

AT COVINGTON
LESLIE G WHITMER
CLERK U.S. DISTRICT COURT

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

DONNA SALYERS' FABULOUS FURS, INC.,

Defendant.

**CIVIL ACTION NO.
03-113-DLB**

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the "Commission") commenced this action against Donna Salyers' Fabulous Furs, Inc. ("DSFF") pursuant to Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 ("Title VII") to address allegations that DSFF subjected Brenda Oliver ("Oliver"), Tammy Riggs ("Riggs"), Melissa Vogt ("Vogt") and Victoria Pelgen ("Pelgen") to sexual harassment and retaliation. DSFF denies the allegations contained in the Commission's complaint and denies that it is liable in any way to Oliver, Riggs, Vogt or Pelgen.

The Commission and DSFF stipulate to the Court's jurisdiction over the parties. Further, the Commission and DSFF desire to resolve Civil Action No. 03-113-DLB without the burden and expense of further litigation. As a result, and based on the pleadings and the record as a whole, the Court finds that: [i] the Court has jurisdiction over the parties and the subject matter of this action; [ii] the purpose and provisions of Title VII will be promoted and

effectuated by the entry of this Decree; and [iii] this Decree resolves all the matters in controversy between the parties as provided in paragraphs 1 through 16 below.

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED as follows:

1. In all matters arising from or relating to employment, DSFF and its officers, agents, employees, successors, and assigns, and all of those in active concert or participation with them, or any of them, shall not engage in any employment practice which rises to the level of unlawful sexual harassment.
2. **ANTI-RETALIATION:** DSFF and its officers, agents, employees, successors, assigns, and all those in active concert or participation with them, or any of them, shall not engage in reprisal or retaliation, as prohibited by Title VII, against any person because such person:
 - a. Opposed any practice made unlawful under Title VII;
 - b. Filed a charge of discrimination with the Commission or a state agency or testified or participated in any manner in any investigation, proceeding, or hearing under Title VII;
 - c. Requested or received relief in accordance with this Decree;
 - d. Participated in any manner in this action or in the investigation giving rise to this action; or,
 - e. Asserted any rights under this Decree.
3. **NOTICE POSTING:** DSFF agrees to post the Notice of Non-Discrimination Policy (attached to this Decree as Appendix A) in conspicuous locations visible to applicants and

employees throughout its facilities. Said Notices shall remain posted throughout the term of this Decree.

4. **MONETARY SETTLEMENT:** In settlement of the Commission's lawsuit, DSFF agrees to pay the cumulative sum of \$45,000 to Oliver, Riggs, Pelgen, and Vogt, or to their respective heirs and assigns in the event of their respective death. Each check shall be issued by certified mail to the payee's address within ten (10) days of the entry of this Decree. DSFF shall mail a copy of each check and proof of its delivery (a signed certified mail receipt) to the Commission within thirty (30) days of mailing. The Commission shall notify DSFF of any change of address received from a payee so that its payment records may be adjusted accordingly. In the event that any check is returned to DSFF as undeliverable, DSFF will notify the Commission in writing within seven (7) days of receipt of the returned check. The Commission will then attempt to locate the person. No payroll withholding shall be deducted from any amount to any payee covered by this Decree, as the settlement proceeds represent compensation for alleged non-wage relief.

Further, DSFF shall not deduct from any payee's settlement amount the employer's share of any costs, taxes or social security withholding required by law to be paid by the DSFF. DSFF shall issue each payee an IRS Form 1099 to reflect payment for income tax purposes. Each payee shall be responsible for paying her own tax, if any is due.

5. **COMPLIANCE COORDINATOR:** Within fourteen (14) days of the entry of this Decree, DSFF agrees to hire or appoint a Compliance Coordinator who has expertise in Title VII and personnel matters to oversee its compliance with and implementation of this Decree. The Compliance Coordinator will be responsible for:

- a. Coordinating DSFF's compliance with Title VII;
- b. Ensuring DSFF's compliance with this Decree;
- c. Administering and monitoring DSFF's Sexual Harassment Prevention Policy;
- d. Maintaining records of all employees' complaints of sexual harassment;
- e. Assisting in developing and enhancing DSFF's Sexual Harassment Prevention Policy;
- f. Assisting in developing and implementing DSFF's Sexual Harassment Prevention Training Program; and,
- g. Following up on all employee complaints of sexual harassment.

The Compliance Coordinator will report to the Commission on an annual basis in accordance with the requirements found in paragraph 11, *infra*.

6. **REVISED POLICIES AND PROCEDURES:** Within six (6) months of the date of entry of this Decree, DSFF agrees to replace its existing policies regarding sexual harassment with a revised policy which complies with Title VII and which will be reviewed and critiqued in writing by the Compliance Coordinator. The Sexual Harassment Prevention Policy will:

- a. Include a hotline number for employees to use to report sexual harassment;
- b. Create a team of internal or external Investigators who shall commence an investigation of any alleged sexual harassment within 24 hours of a complaint;
- c. Provide for the issuance of an annual letter from the Chief Executive Officer of DSFF to all DSFF employees which reaffirms DSFF's commitment to addressing and eradicating sex discrimination and harassment within the DSFF workplace;

- d. Include a Computer Based Training (CBT) program for all DSFF managers and non-managers addressing issues related to sexual harassment and the effect that such harassment may have on employees and DSFF's business operation; and,
- e. Provide that all investigations will include: [i] a finding of whether discrimination occurred; [ii] a credibility assessment, if necessary; [iii] interviews of all potential victims and witnesses identified; [iv] concurrent notes of the investigation; [v] the issuance of immediate appropriate corrective action to make discrimination victims whole, to discipline violators and to eradicate the discrimination; and [vi] a policy that DSFF shall not retain documents related to the investigation in any of the victims' personnel files, that all disciplinary actions taken against employees for violation of DSFF's policy will be retained in the violator's personnel file, and that in those cases in which no conclusion could be reached on the allegations, the investigation documents shall remain in the alleged violator's file.

DSFF shall effectively disseminate its new Sexual Harassment Prevention Policy by:

- a. Posting the policy in a conspicuous place at each worksite where other EEO and labor notices are posted;
- b. Effectively notifying all current employees of the new policies and procedures;
- c. Explaining in the next-published DSFF Associate Handbook DSFF's newly established procedures for reporting, investigating and addressing allegations of sexual harassment;

- d. Making a copy of the Sexual Harassment Prevention Policy available on any DSFF Intranet site designed for employee/corporate communication; and,
- e. Disseminating a notice of the new Sexual Harassment Prevention Policy and investigative procedures by sending said notice to each Manager by email.

During the term of this Decree, DSFF shall submit all proposed changes to its Sexual Harassment Prevention Policy to the Commission and the Compliance Coordinator thirty (30) days prior to the proposed implementation date of the proposed change. DSFF agrees that it shall discuss any objections the Commission or the Compliance Coordinator may have with any proposed change and attempt to resolve the objection prior to implementing the proposed change.

7. **STAFF TRAINING AND DEVELOPMENT:** Within twelve (12) months of the entry of this Decree, and on an annual basis for the duration of this Decree, DSFF agrees to provide Title VII training both for its management and non-management employees in all of its facilities in each of the geographic areas in which it operates. The annual Title VII training shall be conducted live and shall include some interactive component (*i.e.*, role play scenarios, question and answer session, etc.). DSFF agrees to invite a Commission representative and the Compliance Coordinator to attend all Title VII annual training sessions with reasonable notice. DSFF agrees to include the following topics in all annual Title VII training sessions:

- a. An overview of Title VII, DSFF's obligations under Title VII, and applicant and employee rights under Title VII;
- b. Non-discrimination in hiring and employment;
- c. Forms of harassment and discrimination prohibited by Title VII;

- d. Methods of reporting harassment and discrimination;
- e. DSFF procedure for: [i] quickly assigning an investigator and investigating allegations of harassment or discrimination, [ii] insuring confidentiality of the reporting and investigation process, [iii] making a determination on an allegation of harassment or discrimination, and [iv] conducting effective and continuing follow up on the determination;
- f. Explanation of the harmful psychological and operational effects of discrimination and harassment; and,
- g. DSFF's commitment to meeting the requirements of Title VII.

DSFF agrees to include training for all employees on Title VII in any new hire orientation program and in any other appropriate forum, including in any Management Training Program.

All personnel who attend the annual Title VII training shall sign an attendance roster. The registry of attendance shall be retained by DSFF for the duration of this Decree and reported to the Compliance Coordinator, who shall include the same in DSFF's annual report to the Commission.

During the live training session, DSFF's Chief Executive Officer shall speak to the employees about the discipline that can be taken against supervisors, managers and employees who commit acts of discrimination, harassment or retaliation or allow discrimination, harassment or retaliation to occur in the workplace; the importance of maintaining an environment free of discrimination; and DSFF's policy in regard to discrimination and retaliation referred to in paragraph 6 of this Decree.

8. **COMPUTER-BASED TRAINING PROGRAM:** Within six (6) months of the entry of this Decree, DSFF agrees to develop a Computer-Based Training Program ("CBTP") which addresses Title VII. DSFF agrees that within six (6) months of the entry of this Decree any employee participating in management must review the CBTP and pass a test based on the information presented in the CBTP regarding Title VII. Certification of such training will be retained at the employee's facility. A copy of the certification shall be sent to the Compliance Coordinator, and such certification shall be included in the Compliance Coordinator's annual report to the Commission for the duration of this Decree.

9. **RECORD KEEPING:** DSFF shall retain all personnel records in accordance with 29 C.F.R. § 1602.14.

10. **PERFORMANCE EVALUATIONS:** Within six (6) months of the date of entry of this Decree, DSFF shall institute a procedure which evaluates managers on their compliance with Title VII and DSFF's new Sexual Harassment Prevention Policy. Such compliance will be measured by appropriate testing and other appropriate criteria which shall be developed by the Compliance Coordinator. Understanding of and compliance with DSFF's harassment reporting and investigation procedures shall be a line item on the manager's standard performance evaluation. DSFF agrees that the failure of any manager to implement or enforce its Sexual Harassment Prevention Policy will result in appropriate disciplinary action against the employee.

11. **ANNUAL REPORT:** DSFF agrees to provide annual compliance reports within thirty (30) days of the first anniversary of the entry date of this Decree and annually thereafter to the Commission, by sending the same to Laurie A. Young, Regional Attorney, Equal Employment Opportunity Commission, Indianapolis District Office, 101 West Ohio Street, Suite

1900, Indianapolis, Indiana 46204. DSFF agrees that the Commission may review compliance with this Decree. As part of such review, the Commission may inspect the premises, interview employees, and examine and copy documents. DSFF's annual compliance report shall include:

- a. A report of all activities of the Compliance Coordinator, including disclosure of any complaint of sexual harassment or discrimination at DSFF. Disclosure means providing the name, address, position, social security number and telephone number of any individual who has brought allegations of discrimination and/or retaliation against DSFF's personnel, formal or informal, including, but not limited to, management officials, vendors, agents, employees and/or customers, during the six months preceding the report. The nature of the complaint, investigatory efforts made by DSFF and the corrective action taken, if any, shall be specified;
- b. Descriptions of any Title VII training provided to any employee;
- c. Reports of any audits of facilities concerning compliance with Title VII policies or procedures; and,
- d. Confirmation that: [i] the Notice required in paragraph 3 of this Decree was posted and the locations where it was posted and [ii] the policy required in paragraph six was distributed to each current and new employee and posted.

12. **NON-COMPLIANCE:** In the event that the Commission believes that DSFF has failed to comply with any provision(s) of this Decree, it shall:

- a. Notify DSFF in writing of the alleged non-compliance and shall send such notice to both the Compliance Coordinator and DSFF's counsel; and,

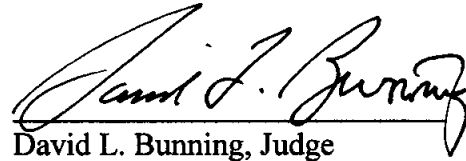
- b. Afford DSFF forty-five (45) business days after service of such notice to remedy the non-compliance.

If DSFF has not remedied the alleged non-compliance within forty-five (45) business days, the Commission may petition the Court to enforce the terms of this Decree at any time during which this Court maintains jurisdiction over this action. In the event the Court finds that DSFF has violated this Decree, the Court may order appropriate relief to remedy the non-compliance, including attorneys' fees, daily fines, and appropriate injunctive relief.

15. **COSTS AND FEES:** The parties shall bear their respective attorneys' fees and costs incurred in this action up to the date of entry of this Decree.

16. **DURATION OF CONSENT DECREE:** This Court shall retain jurisdiction of this action for a period of two (2) years after entry of this Decree. This Decree shall expire by its own terms at the end of two (2) years without further action by the parties. The EEOC shall fully and forever release and discharge the Defendant, their successors and assigns, including their present and former directors, officers, employees, and agents, from any claim or obligation based on alleged sexual harassment in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, which was or could have been raised in Civil Action No. 03-113-DLB.

IT IS SO ORDERED. THIS CONSENT DECREE IS HEREBY ENTERED ON
THIS 13th DAY OF October, 2004.

A handwritten signature in black ink, reading "David L. Bunning", written over a horizontal line.

David L. Bunning, Judge
United States District Court
Eastern District of Kentucky

This Consent Decree is approved and consented to by the following authorized
representatives of the parties:



Bobby C. Simpson
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Louisville Area Office
600 Martin Luther King, Jr. Place; Suite 268
Louisville, Kentucky 40202-2285
502.582.6308 [Direct Dial]

September 24, 2004
Date



Signature of Authorized Officer for Donna Salyers' Fabulous Furs, Inc. *Att'y for Defendant*

9/28/04
Date

Robert D. Hudson

Printed Name of the Authorized Officer
of Donna Salyers' Fabulous Furs, Inc.