

2005 WL 2276726

Only the Westlaw citation is currently available.
United States District Court,
D. Arizona.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
and
Tracy VALENZUELA, Plaintiff–Intervenor,
v.
JPI PARTNERS, L.L.C., et al., Defendants.
Tracy Williams VALENZUELA and Joseph Valenzuela, et ux., Plaintiffs,
v.
JPI PARTNERS, L.L.C., et al., Defendants.

No. CIV 02–2643PHXDGC, CIV 03–0064PHXDGC. | Jan. 11, 2005.

Attorneys and Law Firms

Frank Schubert, CFO and Executive Vice President, JPI, LLC., J. Mark Ogden, Peter Pryniewicz, Littler Mendelson, P.C., Phoenix, AZ, for Defendant JPI.

Mary Jo O’Neill, Regional Attorney, C. Emanuel Smith, Supervisory Trial Attorney, Katherine Kruse, Trial Attorney, Equal Employment Opportunity Commission, Phoenix, Arizona, for Plaintiff.

William D. Holm, Shaye D. Mann, Jones, Skelton & Hochuli, P.L.C., Phoenix, AZ, for Plaintiff Intervenor.

Opinion

CONSENT DECREE

CAMPBELL, J.

***1** The United States Equal Employment Opportunity Commission (“EEOC” or “Commission”) filed this action against the Defendants, JPI Partners, L.L.C., and JPI Arizona Apartment Management, L.L.C. (collectively “JPI”) to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission’s Complaint alleges that JPI discriminated against Tracy Valenzuela because of her sex when it disciplined Ms. Valenzuela and then discharged her because she was pregnant. JPI denies these allegations. After the Commission filed its Complaint, Ms. Valenzuela obtained leave to file a Complaint in Intervention. In addition, a separate Complaint filed by Tracy Valenzuela and her husband Joseph Valenzuela, CIV 03–0064, was consolidated with the Commission’s action.

As a result of settlement negotiations, the Commission, Tracy Valenzuela, and JPI agree that this action should be finally resolved by entry of this Consent Decree. The Commission, Tracy Valenzuela, and JPI entered into this Consent Decree as a way of resolving all outstanding differences that may have existed in this case. This Consent Decree fully and finally resolves any and all claims arising out of the Complaint filed by the Commission, the Complaint in Intervention filed by Tracy Valenzuela, and the consolidated Complaint filed by Tracy and Joseph Valenzuela. The parties waive the Entry of Findings of Fact and Conclusions of Law.

It is ORDERED, ADJUDGED, AND DECREED:

1. The Court has jurisdiction over the subject matter of this action and of the parties hereto.
2. This Consent Decree resolves all claims asserted by the Commission on behalf of Tracy Valenzuela against JPI in this lawsuit, including without limitation back pay, compensatory and punitive damages, injunctive relief, costs, and attorneys fees. It also resolves all claims asserted by both Tracy Valenzuela in her Complaint in Intervention, and by

Tracy and Joseph Valenzuela in the consolidated Complaint.

3. The rights of the parties are adequately protected by this Decree.

4. This Consent Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of the Commission, Tracy Valenzuela, JPI, and the public.

5. This Decree, and any provision herein regarding JPI, applies to JPI and to its officers, agents, employees, successors, and assigns, acting within the scope of their employment.

INJUNCTIVE RELIEF

6. JPI will not, for the duration of this Decree, discriminate against an applicant or employee based on sex, and will not discipline or terminate an employee due to her pregnancy. JPI agrees to conduct all employment practices in a non-discriminatory manner.

7. JPI will not, for the duration of this Decree, retaliate against any employee because he or she (i) opposed discriminatory practices made unlawful by Title VII, (ii) filed a charge of discrimination, or is assisting or participating in the filing of a charge or (iii) testified, assisted, or participated in an investigation, proceeding, or hearing brought under Title VII.

*2 8. For the duration of this Decree, in all matters arising from or relating to employment, JPI shall preserve all personnel records relevant to the determination of whether employment practices in violation of Title VII have been or are being committed. JPI shall preserve these records for one year from the date of the making of the record or of the personnel action documented in the record, whichever occurs later.

9. If a charge of discrimination is filed against JPI with the EEOC or a state fair employment practices agency, JPI shall preserve all relevant personnel records until final disposition of the charge.

MONETARY RELIEF

10. JPI, or its agent, shall pay the amount of \$135,000 to Tracy Valenzuela's legal counsel. JPI, or its agent, shall make no deductions from this amount and shall provide a United States Internal Revenue Form 1099 on or before January 31, 2005, for this payment. JPI, or its agent, shall pay the settlement amount to Ms. Valenzuela's attorneys by check, cashier's check, or money order no later than fourteen (14) days from entry of this Consent Decree. JPI also shall mail copies of the check to:

Mary Jo O'Neill

Regional Attorney

Equal Employment Opportunity Commission

Phoenix District Office

3300 North Central Ave., Suite 690

Phoenix, AZ 85012

11. JPI shall not condition the receipt of this individual relief on Ms. Valenzuela's agreement to waive her statutory right to file a charge with any federal or state anti-discrimination agency.

CORRECTIVE POLICIES AND PRACTICES

12. JPI will post, for the duration of this Decree, in a prominent place frequented by its employees at its facilities in Arizona, including its multi-family housing communities, the notice attached as Exhibit A in the same type, style, and size as Exhibit A.

13. Within thirty (30) days of the entry of this Decree, JPI will review, and revise its written policies concerning sex discrimination and retaliation to conform with the law and submit the policy for review to the Regional Attorney of the Phoenix District Office of the EEOC, at the address set forth above. Within thirty (30) days of receipt of comments by the EEOC on the revised policy, JPI shall make all reasonable changes proposed to conform with the law. Within sixty (60) days of receipt of the EEOC's comments, JPI shall disseminate the final revised policy. This written policy must include at a minimum:

- a. A strong and clear commitment to a workplace free of gender discrimination;
- b. A clear and strong encouragement of persons who believe they have been discriminated against to come forward;
- c. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;
- d. A promise of maximum feasible confidentiality for persons who believe that they have been discriminated against in violation of the policy;
- e. An assurance of non-retaliation for persons who believe they have been discriminated against and for witnesses;
- *3 f. An explanation that gender discrimination by all persons, including management officials, supervisors, and third party contractors, is prohibited and will not be tolerated;

TRAINING

14. Within three (3) months of the entry of this Decree, and on an annual basis for the duration of the Decree, JPI shall provide training on Title VII for all employees, managerial and non-managerial, located at each Arizona property, and their next two levels of supervisors within the region. Each annual training shall take place between 10 and 14 months after the completion of the prior year's training.

15. The annual training required by this Consent Decree shall be two hours in length, plus additional time for questions and answers. JPI agrees to include the following topics in the training sessions:

- a. An overview of Title VII generally and of JPI's obligations under Title VII with respect to both sex discrimination generally, and pregnancy;
- b. An overview of JPI's obligations under Title VII with respect to retaliation;
- c. JPI's policies and procedures regarding sex discrimination including pregnancy, and retaliation.

16. JPI shall provide a trainer(s) who is knowledgeable about all of the subjects of the training, to conduct the training. JPI shall submit the names(s), address(es), telephone number(s), and resume(s) of the trainer(s), together with training dates and a copy of the training materials, to the Regional Attorney of the EEOC's Phoenix District Office at the address above, within sixty (60) days of the entry of this Consent Decree. JPI may provide the trainer from its Human Resources Department. Proposed training materials will be subject to EEOC review. The training shall include some interactive component.

17. In order to give all specified employees the opportunity to take the training, each annual training may be held on multiple dates. All personnel who attend the training shall sign an attendance roster. The registry of attendance shall be retained by JPI for the duration of this Consent Decree.

18. JPI shall invite a Commission representative to attend all of the training sessions by providing thirty (30) days written notice to the EEOC Regional Attorney, Phoenix District Office, at the address above, of the location, date, and time of the training. The Commission's representative(s) may attend in the training.

REFERENCES

19. In response to all future employment inquiries regarding Tracy Valenzuela, JPI will provide a neutral written reference, consistent with those provided for all former employees, which states the dates of employment and title upon separation.

RECORD KEEPING AND REPORTING

20. JPI shall maintain all records concerning its implementation of this Decree for the entire term of the Decree. JPI also shall maintain, in a manner consistent with this Decree and EEOC regulations, and keep available for inspection and copying by the EEOC, all records relating to the involuntary termination of any employee terminated either while pregnant or within one year of returning to work following a leave due to pregnancy.

*4 21. JPI shall report to the Commission in writing, within six months from the entry of this Consent Decree and annually thereafter, regarding its compliance with the specific terms of the Decree, by sending the report to the Regional Attorney of the EEOC's Phoenix District office at the address above.

22. JPI shall bear its own costs in conjunction with the maintenance of records and preparation of reports required by this Consent Decree.

PROCEDURES AND REMEDIES FOR NON-COMPLIANCE

23. This Court shall retain jurisdiction over this action for the duration of this Decree, during which the Commission may petition the Court for compliance with the Decree.

24. In the event that the Commission believes that JPI has failed to comply with any provision(s) of this Consent Decree, it shall:

a. Notify JPI in writing of the non-compliance by fax and by overnight mail to the counsel and the corporate officer who sign this Decree on JPI's behalf, or to his or her successor, and

b. Afford JPI twenty (20) days after service of the notice to remedy the non-compliance.

25. If JPI has not remedied the alleged non-compliance in twenty (20) days after service of notice, the EEOC may petition this Court to enforce the terms of the Decree at any time during its duration.

26. In the event the Court finds that JPI has violated this Decree, as evidenced by a final judgment against JPI, the Court may order reasonable relief to remedy the non-compliance, including attorneys' fees, daily fines, appropriate injunctive relief, and extension of this Consent Decree for such period as may be necessary to remedy its non-compliance.

FORCE AND EFFECT

27. The parties agree to the entry of this Decree subject to final approval by the Court.

28. If any provision(s) of this Consent Decree are found to be unlawful, only the specific provision(s) in question shall be affected and the other provisions shall remain in full force and effect.

29. This Court shall retain jurisdiction of this action for a period of two (2) years after entry of the Consent Decree. Absent further extension by the Court, the Decree shall expire at the end of two (2) years without further action by the parties.

DATED this *10th* day of *January*, 2005.