

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

PROTIS EXECUTIVE
INNOVATIONS, INC.

Defendant.

PROTIS EXECUTIVE)
INNOVATIONS, INC.)
)
Defendant.)

This action was instituted by the Equal Employment Opportunity Commission (“Commission”) under the authority granted to it under Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the “ADEA”). The Commission’s action was brought to correct alleged unlawful employment practices on the basis of age. Specifically, the Commission alleged in its Complaint that since at least 1998, Protis Executive Innovations, Inc. (“Protis”), an employment agency, in continuing violation of the ADEA, engaged in a pattern or practice of failing to refer job applicants for jobs because of the applicants’ age.

The parties have advised the Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the

purpose and provisions of the ADEA will be promoted and effectuated by the entry of this Consent Decree; and (3) this Consent Decree resolves all the matters in controversy between the parties that were raised or could have been raised by the Complaint in this action as provided below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. The term of this Consent Decree shall be for three (3) years following the date of the entry of this Decree.

2. Protis agrees that the Commission may review compliance with this Consent Decree. As part of such review for compliance, the Commission may require written reports regarding compliance, inspect Protis' premises at reasonable times, interview employees, and examine and copy relevant documents.

3. Protis is permanently enjoined from engaging in any act, policy or practice that has the purpose or effect of discriminating against any individual on the basis of age in employment placement, including recruitment, job recommendation, applicant or candidate placement, and applicant or candidate reference. This injunction includes but is not limited to the use of any code for the purpose of identifying the respective ages of applicants or candidates for employment.

4. Protis will not discriminate or retaliate in any way against any person because of opposition to a practice made unlawful under the ADEA or because of the filing of a charge, the giving of testimony, assistance or participation in any manner in an investigation, proceeding or hearing under the ADEA.

5. Protis agrees that within one (1) year of the execution of this Consent Decree, and for every calendar year thereafter for the term of this Decree, Protis shall provide two (2) one-hour

sessions of training for all of its employees, managers, and officers regarding improving its employment placement process with respect to age. The topics covered in each of the training sessions will include: the requirements of the ADEA with regard to its prohibition against discrimination based on age, the terms of paragraphs 3 through 10 of this Consent Decree, how to report age discrimination, Protis' commitment to protect employees from retaliation based on reporting suspected age discrimination, and the duties and responsibilities of employees involved in the employment placement process with respect to age discrimination. The time, place, and manner of the training shall be at the discretion of Protis, however, Protis agrees to submit all materials, outlines, and talking points to the EEOC for review and comment thirty (30) days prior to the training. If, for any reason, the Commission recommends changes to the proposed training, that are within the topics listed above, Protis agrees to implement the changes within thirty (30) days of their issuance. Within thirty (30) days after each training, Protis agrees to submit to the Commission, in accordance with the instructions in ¶ 15, a copy of a sign-in sheet indicating the persons in attendance at the training.

6. Protis agrees that within three (3) months of the execution of this Consent Decree, Protis will update its PC Recruiter database in a way that will allow Protis to conduct word searches of the information in the database. Commencing one (1) month after Protis' PC Recruiter database is updated as described above, and once a month thereafter for the term of this Decree, Protis shall run a word search of its PC Recruiter database, and/or any other database that Protis may use for the storage and organization of employee candidate information, for the following terms and any derivation thereof:

“old,” “young,” “too experienced,” “over-qualified,” “too old,” “too much experience,” “senior,” “youthful,” “older,” “long in the tooth,” “too seasoned,” “athletic,” “up and coming,” “date of birth,” and “birth date.”

Protis further agrees to prohibit the use in its database of any birth dates, terms, or codes, including but not limited to any of the foregoing terms, for the purpose of identifying the respective ages of applicants or candidates. Appearance of such dates or terms in the database is not prohibited if (1) an applicant or candidate has voluntarily provided Protis any such information in a resume, cover letter or other communication; or (2) in the event that the applicant or candidate is a candidate for a position where age is a bona-fide occupational qualification. Graduation dates may not be used for the purpose of identifying the approximate age of employment candidates, but may only be used for non-discriminatory purposes, such as identifying gaps in education and/or employment.

7. Protis shall keep a record of the searches described in ¶ 6, and report such record to the Commission within one-hundred eighty (180) days of the date of execution of this Decree, and every six (6) months thereafter during the term of the Decree, in accordance with the instructions in ¶ 15. Protis shall preserve a hard copy of the record for the term of this Decree. Should Protis discover, in its review of its employee candidate database, any of the prohibited terms entered after the date of this Decree, Protis will immediately investigate the use of the term and issue a disciplinary counseling, when appropriate, to the employee who entered the prohibited term. Protis shall provide a written copy of any such disciplinary counseling record with the above-described reports.

8. Protis shall keep a record of all job candidate referrals made during the term of this decree, including the name and address of the client employer, the position title and all available compensation information regarding the position, the resume(s) and submitted application materials of the candidate(s) referred, the resumes and submitted application

materials of all candidates considered but not referred, and all notes, memoranda, correspondence, invoices and any other documents generated by Protis or received from the employer client regarding the position that are or have been maintained in the regular course of business, in electronic or paper form. Protis shall provide ready access to such records to the Commission within one-hundred eighty (180) days of the date of execution of this Decree, and shall maintain such access to the EEOC throughout the term of the decree. Protis shall maintain all such records regarding each referral for no less than twelve (12) months from the date each referral is made.

9. Protis shall keep a record of any request it receives from any client employer indicating that Protis should discriminate against, classify, or identify prospective job candidates based on age. Such record shall include the client employer's name, address, the name and position of the person making the request, the nature and substance of the request, and the job(s) implicated in the request. Protis shall preserve a hard copy of the record for the term of this Decree, and shall report any such request immediately to the Commission, in any case no later than five (5) days from the date of the request, in accordance with the instructions in ¶ 15.

10. If a client employer requests that Protis discriminate against, classify, or identify prospective job candidates based on age, Protis shall immediately, and in any case no later than five (5) days from the date of the request, inform the client employer in writing that a) both the client employer and Protis are prohibited under federal law from discriminating against job candidates on any protected basis, b) that Protis will not discriminate against job candidates on any protected basis, and c) that unless Protis receives a written commitment from the client employer that it will not use impermissible criteria in selection of candidates

for employment, Protis will no longer send candidate referrals to the client employer. Protis shall preserve a hard copy of the above-described correspondence to and from any such client employer for the term of this Decree, and shall provide copies of the correspondence immediately to the Commission in accordance with the instructions in ¶ 15, in any case no later than five (5) days from the date each piece of correspondence is sent or received.

11. Protis agrees to pay the class of affected persons determined by the Commission the total sum of \$150,000.00 (“Class Payment”), with an initial payment totaling \$100,000 due on July 22, 2005, and the remaining \$50,000 paid on or before December 30, 2007.

12. This Class Payment will be distributed to a class of affected persons determined by the Commission. Protis agrees to continue to provide to the EEOC access to its database for the purpose of class member determination and for the location of such individuals. Prior to attempting contact with any potential class members, the EEOC shall provide Protis a list of potential class members. Protis shall have ten (10) business days from receipt of the notification to identify any client employers, in writing, along with an explanation of why it considers that person a client employer. The EEOC shall not contact persons deemed to be client employers. Protis shall not contact any potential class members identified by the EEOC for any purpose other than communication related to the conduct of Protis’s regular business. Provided that the EEOC’s access to Protis’s database has been provided without interruption, by July 6, 2005, the Commission will notify Protis of the names and addresses of the class members to whom payments are to be made, and the amounts of each class members’ share of the Class Payment to be paid on each date set out in ¶ 11. The Commission agrees that as a condition of receiving any distribution of the Class Payment, the distributee class member shall separately execute the release, a copy of which is attached as “Attachment A” to this

Consent Decree. The Commission will notify counsel for Protis when it has received executed releases from the affected class and will forward copies of them to counsel. Protis's payments to each of the affected class shall be made by mailing on each of the dates set out above, checks, payable to the individuals, by certified mail to individuals who have executed releases. The payment share of any affected class member so determined by the Commission who does not execute a release by a due date to be determined by the Commission shall be reapportioned to the remaining class members in the discretion of the Commission. Protis shall mail a copy of the checks and proof of their delivery (signed certified mail receipts) to the Commission. After completion of the last payments to the affected class on or before December 30, 2007, and Protis's delivery of proof thereof to the Commission, the Commission will promptly deliver the original releases to Protis's counsel.

13. Protis will provide form 1099's to the individual class members, as required by law. Protis does not assume any responsibility for any tax liability that the individual members of the class may incur under local, state, or federal laws by reason of the Class Payment paid under this Consent Decree.

14. Protis agrees to sign and conspicuously post the Notice to Employees found as Attachment B to this Consent Decree. Protis will post copies of this Notice on all employee bulletin boards for the term of this Decree. Within thirty (30) days of the effective date of this Consent Decree, Protis shall report to the Commission that the Notice has been posted and shall provide the Commission with a photograph of the signed Notice in each of its locations, in accordance with the instructions in ¶ 15.

15. All reports, records, and correspondence that this Decree requires to be reported to the Commission shall be sent to the attention of Laurie Young, Regional Attorney, or her

successor, Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, IN 46204-4203.

16. This Consent Decree shall not constitute an admission of wrongdoing by Protis or an adjudication and/or finding on the merits of the Complaint. It shall not be used as evidence of liability, res judicata, or collateral estoppel in any other legal proceeding against Protis or any entity affiliated with it now, previously, or in the future. This Decree shall be admissible solely for the purpose of any action to ensure compliance with the terms of this Decree brought by either the Commission or Protis.

17. This Consent Decree constitutes the complete agreement between the parties with respect to the claims alleged in the Complaint. No waiver, modification, or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court. Only Protis and the Commission shall have the authority to seek judicial enforcement of any aspect, term or provision of this Decree and take appropriate measures to effectuate enforcement of this decree and any of its terms and provisions. Any suits brought to enforce this Decree shall be brought in the United States District Court for the Southern District of Indiana, Indianapolis Division. Any class members shall have no independent right to enforce any of the terms of this Decree. This paragraph in no way limits the ability of any individual members of the class to enforce obligations contained in the Release pursuant to the provisions of the Release.


18. In the event that the Commission alleges that a violation of this Consent Decree has occurred, prior to exercising any remedy provided by law, the Commission will give notice in writing thereof, specifically identifying the alleged violation to Protis. Protis will have thirty (30) days in which to investigate and respond to the allegation. Thereafter, the parties will

have a period of thirty (30) days, or such additional period as may be agreed upon by them, in which to negotiate and confer regarding such allegation, before the Commission exercises any remedy provided by law.

19. The Commission and Protis shall each bear their own costs and attorney fees.

20. RETENTION OF JURISDICTION BY COURT. The Court will retain jurisdiction of this cause throughout the duration of this Consent Decree for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

3/18/2005
Date



DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Johanna Philhower Maple, Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
101 W. Ohio Street, Suite 1900
Indianapolis, IN 46204
johanna.maple@eeoc.gov

Duane R. Denton
Andrew W. Gruber
BINGHAM McHALE LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204
rdenton@binghammchale.com

Attachment A

RELEASE

In consideration of the payment to me by Protis Executive Innovations, Inc. of a total gross amount of \$_____ to be paid in 2 installments, on July 22, 2005 and December 30, 2007, I, _____ hereby and forever release any and all actions and/or claims which were or could have been raised against Protis Executive Innovations, Inc., their successor and assigns, including their present and former directors, officers, employees and agents, based on age discrimination in violation of the Age Discrimination in Employment Act of 1967, as amended, that were or could have been raised in Civil Action No. 1:04-cv-1585-DFH-TAB.

I have been advised to consult with a private attorney or the EEOC regarding this Waiver and Release and have had sufficient time to review it. I understand that I have 21 days to consider this Waiver and Release. I further understand that I have 7 days after signing this agreement, to revoke it.

I sign this Waiver and Release voluntarily, with full understanding of its provisions, and without coercion or threat of reprisal.

IN WITNESS WHEREOF, this Release is signed and executed by me on this ____ day of _____, 2005.

State of _____)

)SS

County of _____)

Subscribed and sworn before me this ____ day of _____, _____.

NOTARY PUBLIC

RESIDENT OF _____ COUNTY, _____
My Commission Expires _____

EMPLOYEE NOTICE

Posted Pursuant to an Agreement Resolving a Charge of Employment Discrimination filed with the

U.S. EMPLOYMENT OPPORTUNITY COMMISSION Indianapolis District Office

NOTICE TO EMPLOYEES

This notice is being posted as part of the remedy agreed to pursuant to a Consent Decree between Protis Executive Innovations, Inc., and the Equal Employment Opportunity Commission (EEOC), resolving Civil Action No. 1:04-cv-1585-DFH-TAB in the United States District Court for the Southern District of Indiana.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the individual's race, color, religion, sex, national origin, disability or age (40 and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions, or privileges of employment. Protis Executive Innovations, Inc. supports and will comply with such federal law in all respects and will not take any action against employees because they have exercised their right under the law.

Specifically, Protis Executive Innovations, Inc. will not tolerate discrimination based on age in any phase of employment, employee placement, which includes recruitment, job recommendation, candidate placement, and candidate reference, and other terms, conditions, or privileges of employment. Protis Executive Innovations, Inc., agrees to provide its employees with a working environment free of discrimination based on age. Furthermore, Protis Executive Innovations, Inc. agrees not to retaliate against an employee for complaining about a discriminatory action.

Protis Executive Innovations, Inc. has adopted policies and procedures requiring equal employment opportunities and will ensure that all employees abide by the requirement of these policies and procedures and that Protis Executive Innovations, Inc. will not discriminate on the basis of age.

In addition, as part of the Consent Decree with the EEOC, Protis Executive Innovations, Inc. has implemented monitoring and training to ensure that it does not violate the ADEA in the employment placement process.

Individuals affected by Protis Executive Innovations, Inc.'s past conduct, which the EEOC found reason to believe was in violation of the ADEA, will be made whole for any losses they suffered as a result of the discrimination against them.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission, 101 W. Ohio St., Suite 1900, Indianapolis, Indiana 46204-4203. Telephone: (317) 226-7212, 1-800-669-4000, TDD: (317) 226-5162

Date

Signature