

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-against

SPS TEMPORARIES, INC.;
PROFESSIONAL PERSONNEL
MANAGEMENT CORPORATION;
JAMESTOWN CONTAINER LOCKPORT,
INC, doing business as JAMESTOWN
CONTAINER COMPANIES; JAMESTOWN
CONTAINER CORP. doing business as
JAMESTOWN CONTAINER COMPANIES;
and WHITING DOOR MANUFACTURING
CORP.,

Defendants.
-----X

04-CV-0052E(SC)

CONSENT DECREE

*Between Plaintiff Equal Employment Opportunity Commission and
Defendant Whiting Door Manufacturing Corp.*

FILED

05 NOV 22 AM 8:30

U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PART I GENERAL PROVISIONS

Section 101 Introduction

The Plaintiff Equal Employment Opportunity Commission ("EEOC" or "Commission") and Defendant Whiting Door Manufacturing Corp. ("Whiting Door") have agreed to resolve this action by the terms of this Consent Decree ("Decree") as set forth below.

On January 27, 2004, the Commission brought this action under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, the Americans with Disabilities Act and the Age Discrimination in Employment Act to correct unlawful discrimination on the basis of race, sex, pregnancy, national origin, disability and age and to make whole James Sciandra, Michelle Alberts, Tammi Iser and the class of individuals who were discriminatorily denied temporary employment by one or more Defendants as noted in the caption.

The EEOC's complaint alleges, *inter alia*, that Defendants SPS/PPMC failed to refer individuals for temporary employment based on their race, sex, pregnancy, national origin, disability and age. The complaint further alleges that SPS/PPMC complied with discriminatory requests made by its clients for temporary employees based on race and sex, including Defendants Jamestown and Whiting Door.

Through this action, the Commission seeks injunctive relief and monetary damages for all individuals affected by Defendants' discriminatory acts.

Section 102 Purpose of the Decree

- A. The parties, defined as the EEOC and Whiting Door, desire to settle this action, and

therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and its successors, assigns, subsidiaries, affiliates, and any other corporation or other entity into which Whiting Door may merge or with which it may consolidate. Whiting Door shall provide notice and a copy of this Consent Decree to any successors, assigns, subsidiaries, affiliates, and any other corporation or other entity into which any of Defendants may merge or with which it may consolidate.

B. This Consent Decree resolves all issues raised in EEOC Charge Number 165-A1-0615, which served as the jurisdictional prerequisite for naming Whiting Door as a Defendant in this case. The Decree does not resolve any charge of discrimination currently pending before the EEOC, or any charge that may be filed in the future, other than the charge listed above. EEOC reserves all rights to proceed regarding matters not covered in this Consent Decree.

C. The terms of this Agreement 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.

Section 103 Prohibited Conduct and Injunction to Not Discriminate

A. Whiting Door, its managers, officers, agents, successors, and assigns are hereby enjoined from refusing to hire temporary employees based on their sex and from making requests for temporary employees based on sex.

B. Whiting Door, its managers, officers, agents, successors, and assigns are hereby enjoined from retaliating against any individual because that individual is a beneficiary of this

Decree, has filed a complaint, or has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter.

C. Nothing in this Consent Decree shall be construed to limit or reduce Whiting Door's obligations to comply with the statutes enforced by the EEOC: Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*, Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, and Equal Pay Act, 29 U.S.C. §206(d).

Section 104 Consent to Jurisdiction

A. EEOC and Whiting Door agree that this Court has jurisdiction over the subject matter of this litigation and the parties for the duration of this Decree, that venue is proper, and all administrative prerequisites have been met. No party shall contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.

B. The Court shall retain jurisdiction over this Action for the duration of the Decree for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. In any action to enforce the terms of this Decree, the Court will have full authority to order any remedy the Court deems appropriate, including, but not limited to, specific performance and/or extension of the Decree beyond the three-year term.

Section 105 Implementation of the Decree

EEOC and Whiting Door agree to take all steps that may be necessary to fully effectuate the

terms of this Consent Decree.

Section 106 Amendments to the Decree

By mutual consent of the parties, this Consent Decree may be amended in the interest of justice and fairness and to facilitate execution of the Decree's provisions. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all Parties to this Decree, and approved or ordered by the Court, except that the Parties may mutually agree to modify the procedures in Sections 202 and 204 without approval of the Court.

Section 107 Duration of the Decree

A. The Consent Decree shall remain in effect for three (3) years from the effective date of the Decree. The effective date of the Decree shall be the date it is signed and executed by the Court. The Decree shall not expire against any signatory while any enforcement action is pending against that signatory.

B. If the EEOC has notified Whiting Door in writing not less than 15 days in advance of the termination of the Decree that Whiting Door is not in compliance with any sections of the Decree, Whiting Door's obligations under the Decree shall remain in effect until the EEOC determines that Whiting Door is in compliance.

Section 108 Severability

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 following shall apply to insure that the Decree continues to effectuate the intent of the Parties. 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, shall remain in full force and effect, and the Parties' responsibilities shall not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Decree would be undermined.

Section 109 Breach of Decree

The parties agree that they will cooperate to effectuate and implement all terms and conditions of this Decree, and exercise good faith efforts to accomplish the terms and conditions of this Decree. The Commission and Defendant agree to confer regarding any dispute arising from the implementation of this Decree. In the event the parties are unable to resolve this dispute, any action relating to this Decree shall be filed in the Court that approves this Decree. This Decree shall be construed under applicable federal law.

Section 110 Notices

Except as otherwise provided for in this Decree, all notifications, reports and communications to the Parties required under this Decree shall be made in writing and shall be sufficient as hand-delivered, faxed or sent by certified, registered or overnight mail to the following persons (or their designated successors):

For EEOC:

Robert D. Rose
U.S. EEOC

33 Whitehall Street
5th floor
New York, NY 10004
Fax: 212.336.3623

For Whiting Door: Adam W. Perry
Hodgson Russ
One M&T Plaza, Suite 2000
Buffalo, NY 14203-2391
Fax: 716.849.0349

Any party may change such addresses by written notice to the other parties that sets forth a new address for this purpose. Notwithstanding the provisions for notification contained in this paragraph, the Parties may, after agreement memorialized in writing, send each other such notifications, reports and communications by email.

PART II

SYSTEMIC RELIEF

Section 201 Posting and Distribution of Notices

A. Notice of Resolution

Within ten (10) days of the execution of this Decree, Whiting Door shall conspicuously post and maintain a "Notice of Resolution" regarding this lawsuit on EEOC letterhead (attached as Exhibit A), in all prominent places where employee notices are posted. This Notice shall remain posted for the three (3) year duration of the Decree.

B. EEO Posters

Whiting Door will post EEO posters in places visually accessible to applicants and

employees of Whiting Door as required by federal regulations.

Section 202 Non-Discrimination Policy and Complaint Procedures

A. Required Content of Policies and Procedures

Whiting Door shall maintain comprehensive policies prohibiting all forms of employment discrimination made unlawful under federal laws. Whiting Door also shall maintain effective complaint procedures for discrimination complaints which ensure that a thorough, fair and timely investigation of complaints are conducted by a qualified and trained person(s). The policies and procedures shall set forth Whiting Door's commitment to equal opportunity in all aspects of employment and, at a minimum, set forth the following:

1. A detailed explanation of prohibited conduct;
2. The assurance that Whiting Door will not retaliate against employees who make complaints of discrimination, who oppose practices they consider to be unlawfully discriminatory, and/or who participate in protected activity or who provide information related to complaints of discrimination;
3. A clearly described complaint process that provides accessible avenues of complaint with a number of choices of individuals to whom complaints can be made, including persons outside the employee's chain of command;
4. The assurance that Whiting Door will accept any and all complaints from employees who wish to file complaints internally. The policies shall state that the filing of anonymous complaints is permitted and include safeguards to preserve the anonymity when requested by a complainant to the extent possible and consistent with the law;

5. The assurance that Whiting Door will keep confidential to the extent possible and not publicize unnecessarily the subject matter of the complaints or the identity of the complainants;

6. A complaint process that provides a prompt, thorough, and effective investigation, including interviewing complainant and all witnesses and obtaining and reviewing all material documents identified by the complainant or respondent to the extent necessary to reach a reasonable conclusion concerning the allegations;

7. A requirement that such investigations be documented in written form;

8. Upon completion of an investigation into a discrimination complaint, promptly communicate to the complainant and the respondent a summary of the conclusions reached as a result of the investigation;

9. The assurance that Whiting Door will take prompt and appropriate corrective action when it determines that discrimination has occurred;

10. A strict requirement that any manager who observes or learns of possible discrimination report it immediately;

11. Whiting Door shall provide a complaint form with its Policies and Procedures.

B. EEOC Approval of Policies and Procedures

Whiting Door has adopted the attached Policy Against Harassment and Discrimination prior to the execution of this Decree (Exhibit B). Under no circumstances has the EEOC, by reviewing and approving Whiting Door's Policy Against Harassment and Discrimination, waived its right to investigate or litigate any alleged violation of federal law enforced by the EEOC, related to or resulting from the implementation of any such policy.

C. Issuance of Policies and Procedures

Whiting Door shall issue its Policy Against Harassment and Discrimination to all employees within thirty (30) days of the execution date of this Decree. The Policies and Procedures shall be issued with a letter from the President of Whiting Door affirming its commitment to maintaining a work environment free of discrimination. Whiting Door shall include its updated Policy Against Harassment and Discrimination in its Employee Handbook. Whiting Door shall provide all new employees with copies of the Policy Against Harassment and Discrimination within five (5) days of the commencement of their employment.

D. Modification of Policies and Procedures

If Whiting Door wishes to modify its Policy Against Harassment and Discrimination during the term of the Decree, it shall do so only after submitting the modified policy to the EEOC for review and recommendations, and receiving such recommendations, if any in writing. If EEOC does not submit recommendations within thirty (30) days of receiving the amended policy and/or procedures, Whiting Door may post or distribute the new Policy Against Harassment and Discrimination.

Section 203 [Intentionally Left Blank]

Section 204 Training

A. Initial Training

1. Scheduling of the Training

Within seventy-five (75) days of the effective date of the Decree, Whiting Door shall conduct

the agreed upon initial training programs for all (a) management employees, (b) supervisory employees, and (c) human resource employees (Training Outline attached as Exhibit C). The trainings shall be conducted by attorneys Anne S. Simet and Brendan B. Kelleher of Hodgson Russ, LLP. The failure of Whiting Door to conduct initial training programs for all management, supervisory and human resources employees within sixty (60) days of the effective date of the Decree shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

2. Content of the Training

The Initial training shall review the rights and responsibilities of employees under federal anti-discrimination laws and how such laws define unlawful discrimination. The training shall include examples of unlawful conduct. The training also will cover Whiting Door's anti-discrimination policies and procedures with particular emphasis on the internal complaint, investigation and remediation process and an employee's right to file with EEOC and state or local agencies. The training shall be four (4) hours in duration.

3. Scheduling and Confirmation of Training

Within ten (10) days of any training session, Whiting Door shall provide the EEOC with an attendance sheet that includes the date, the names of those in attendance and the signatures of those in attendance. The failure of Whiting Door to provide attendance sheets within ten (10) days of any training session, shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

B. Training and Information Resources for Non-supervisory Employees

Within thirty (30) days of the effective date of the Decree, Whiting Door shall distribute a memo to all employees regarding the availability of video tape and printed materials on Equal

Employment Opportunity, anti-discrimination laws, and Whiting Door's policies and procedures (attached as Exhibit D). The materials shall be provided to any employee upon demand along with the memo attached as Exhibit E. Whiting Door shall maintain sufficient quantities of the tapes and materials to immediately meet employee demand for such materials. Non-supervisory employees shall not be compensated for time spent reviewing the materials. The failure of Whiting Door to provide the video tape and printed materials to non-supervisory employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

1. Annual Training for Management and Supervisory Employees

On an annual basis, Whiting Door will provide supervisory and management employees with at least four (4) hours of EEO training. The failure of Whiting Door to provide four (4) hours of annual training to supervisory and management employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach. Whiting Door will provide at least three (3) annual trainings during the three (3) year duration of the Decree.

2. Annual Training for Human Resources Employees

On an annual basis, Whiting Door will provide all human resource employees with at least eight (8) hours of EEO training. The failure of Whiting Door to provide eight (8) hours of annual training to human resources employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

3. Required Subjects of Annual Training

The EEO annual training programs shall include:

- a. For supervisory, management, and human resources employees, instruction on the requirements of all applicable equal employment opportunity laws including, but not limited to, Title

VII of the Civil Rights Act of 1964, as amended, the Pregnancy Discrimination Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Equal Pay Act, and a review of Whiting Door's non-discrimination policies and procedures with particular emphasis on the complaint procedure.

b. For supervisory, management and human resources employees, instruction on any policies and requirements related to this Consent Decree and instruction on the specific requirements of this Consent Decree and the proper procedures for responding to complaints of discrimination or harassment. Counsel for Whiting Door shall provide the training on policies and requirements related to this Decree.

C. Reporting Requirements for Training

All employees attending any training session described in the above paragraphs shall print and sign their full names on an attendance sheet. Within ten (10) days of the completion any trainings described in the preceding paragraph, Whiting Door shall provide the Legal Unit of the EEOC, New York District Office, 33 Whitehall Street, 5th floor, New York, New York 10004 (attention: Robert D. Rose), with copies of all attendance sheets. For the duration of this Decree, on a semi-annual basis beginning six months after the effective date of the Decree, Whiting Door shall provide the Legal Unit of the EEOC, New York District Office, with attendance sheets pertaining to trainings given to new employees.

D. Pre-Training Notification Requirement

At least thirty (30) days prior to any scheduled training under this Section, Whiting Door will provide the EEOC notice of the date, time and location of the scheduled training. The EEOC, at its discretion, may attend and observe one or more of the training sessions and may provide

recommendations to be implemented by the trainer to the extent consistent with the Decree and anti-discrimination laws.

Section 205 Monitoring and Reporting

A. Monitoring by the EEOC

The EEOC may monitor Whiting Door's compliance with the Consent Decree for a period of three (3) years from the effective date of the Decree through the inspection of Whiting Door's premises, records and interviews with employees at reasonable times and upon reasonable notice. Whiting Door shall make available for inspection and copying any records reasonably related to any of these areas, upon reasonable notice by the EEOC.

B. Reporting Requirements for Discrimination Complaints

For the duration of this Decree, every quarter starting sixty (60) days after the effective date of the Decree, Whiting Door shall provide a written report to the Legal Unit of the EEOC, New York District Office (attention: Robert D. Rose), with information regarding any verbal or written complaints of discrimination from employees or applicants which were received during the preceding quarter. The report shall include the name of the complainant, the name of the alleged harasser or discriminator, a list of each step taken by Whiting Door during the investigation, a summary of the complaint, the location, the results of any investigation of the complaint, and any remedial action taken by Whiting Door.

C. Report on Temporary Employees

For the duration of the Decree, Whiting Door shall provide a quarterly written report to EEOC containing the following information: a breakdown by gender of all temporary employees

used by Whiting Door during the quarter, the names of temporary employment agencies used by Whiting Door, and a breakdown by gender for all permanently hired employees during the quarter.

Section 206 Compliance with Record-keeping Requirements

A. Record Retention

For the duration of the Decree, Whiting Door agrees to maintain such records as are necessary to demonstrate its compliance with the Decree and 29 C.F.R. §1602 *et seq.* and to verify that the reports submitted pursuant to the Decree are accurate.

Section 207 [Intentionally Left Blank]

Section 208 Miscellaneous

A. Management Evaluation and Accountability Policy

Within three (3) months of the effective date of the Decree, Whiting Door shall modify existing procedures for performance regarding managers and supervisors to include a factor encompassing performance in contributing to compliance with this Decree, compliance with Whiting Door's discrimination policies and procedures, and with federal anti-discrimination laws.

B. Any advertising by EEOC in search of victims of the alleged discrimination by any of the defendants in this case shall not mention Whiting Door by name.

C. This Consent Decree does not constitute an admission by Whiting Door to any violations of Title VII of the 1964 Civil Rights Act. Whiting Door specifically disclaims and denies any violation of the law.

PART III

MONETARY RELIEF FOR CLASS MEMBERS

Section 301 Claims Fund

A. Whiting Door Payment to the Fund

Within twenty-one (21) days of the execution date of the Decree, in resolution of EEOC's hiring claims based on sex, Whiting Door shall pay the gross sum of \$60,000 into the Claims Fund, as described below, if one exists, in a manner specified by the EEOC. If a Claims Fund does not exist at that time, or the EEOC has not specified the manner of payment, Whiting Door shall await instructions from the EEOC and shall pay the \$60,000 to such person or entity at such time and in such manner as the EEOC shall instruct in writing, within twenty-one (21) days after receiving such instructions.

B. Establishment and Control of the Fund

A Claims Fund ("Fund") shall be established to compensate class members. If SPS/PPMC contributes to the Fund, all terms regarding the Fund, including the notification, identification and distribution of damages to class members, shall be governed by the terms of the Consent Decree between EEOC and SPS/PPMC. If SPS/PPMC and EEOC do not enter into a Consent Decree, EEOC shall implement alternative procedures for the Fund, including notification, identification and distribution of damages to the class members at its sole discretion, on notice to Whiting Door. The Consent Decrees between EEOC and SPS/PPMC and EEOC and Jamestown shall impose no obligations of any kind on Whiting Door.

PART IV

SIGNATURES

Each signatory to this Decree represents that each is fully authorized to execute this Decree and to bind the parties on whose behalf each signs.

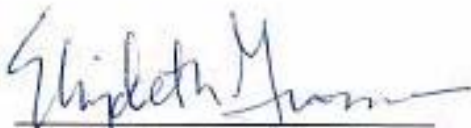
Dated: _____, 2005

Dated: September 1, _____, 2005

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

WHITING DOOR
MANUFACTURING CORP.

By:



Elizabeth Grossman
Acting Regional Attorney



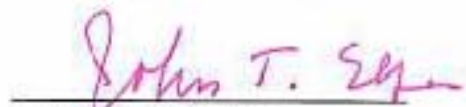
Name: Donald J. Whiting, Jr.
Title: President

Lisa E. Sirkin
Supervisory Trial Attorney

Robert D. Rose
Senior Trial Attorney

New York District Office
33 Whitehall Street, 5th Floor
New York, New York, 10004
(212) 336-3708

Date: *November 21*, 2005
Buffalo, N.Y.



Hon. John T. Elfvin
United States Judge