

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	Civil Action No. 1:07-cv-1541
AMY MENGAY and TIMOTHY ELLIS,)	
Plaintiff-Intervenors,)	
)	Judge Donald C. Nugent
v.)	
)	
THE VILLAGE OF WOODMERE, OHIO,)	Magistrate McHargh
Defendant.)	

CONSENT DECREE

In July and October, 2004, respectively, Amy Mengay ("Mengay") and Timothy Ellis ("Ellis") were discharged from their employment positions as police officers with the Village of Woodmere, Ohio, Police Department. On October 12 and October 26, 2004, respectively, Mengay and Ellis filed charges with the Equal Employment Opportunity Commission ("EEOC") against the Village of Woodmere ("Woodmere"), alleging *inter alia*, that they had been unlawfully discharged on the basis of race (white). The EEOC found probable cause on both charges and referred those matters to the U.S. Department of Justice.

The United States has filed suit alleging that Woodmere violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, as amended ("Title VII"), by discharging Mengay and Ellis because of their race. Mengay and Ellis joined the United States' suit as plaintiff-intervenors on August 24, 2007.

Woodmere disagrees with the EEOC's probable cause finding and denies each and every allegation of discrimination and/or retaliation made against it by the United States, Mengay and Ellis in this lawsuit. Woodmere asserts Mengay and Ellis were not discharged from employment because of their race, that Mengay was not maintained in a probationary status because of her

race, and Ellis was not retaliated against for testifying in support of Mengay during her appeal hearing before Woodmere Village Council..

Nevertheless, the United States and Woodmere (collectively referred to as the "Parties"), desiring that the United States' action be settled without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The Parties also hereby waive, for purposes of this Consent Decree ("Decree"), hearings and findings of fact and conclusions of law on all issues, and agree to the entry of this Decree as final and binding among them with regard to the issues raised in the United States' Complaint in this case. This Decree, being entered into with the consent of the Parties, shall in no way constitute an adjudication or finding on the merits of the case(s), nor be construed as an admission by Woodmere or a finding of any wrongdoing or violation by Woodmere of any applicable federal law or regulation with respect to the allegations in the Complaints.

In resolution of the United States' Complaint, the Parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:

I. PURPOSES OF THIS DECREE

1. The purposes of this Decree are to ensure that:
 - (a) Woodmere does not subject any employee to discrimination on the basis of race or retaliation in violation of Title VII (discrimination as used in this Decree includes harassment on the basis of race and/or retaliation in violation of Title VII);
 - (b) Woodmere maintains clear, meaningful and well-publicized policies and procedures prohibiting discrimination on the basis of race or retaliation in the workplace;

- (c) Woodmere provides adequate training to all employees, supervisors, Council Members and Mayors concerning Title VII's prohibitions against discrimination on the basis of race or retaliation, and about Woodmere's policies and procedures prohibiting discrimination on the basis of race or retaliation in the workplace;
- (d) Woodmere identifies and employs a qualified Equal Employment Opportunities Officer ("EEO Officer") to administer Woodmere's policies and procedures prohibiting discrimination on the basis of race or retaliation in the workplace, and to receive and investigate complaints of such discrimination; and
- (e) Woodmere provides Mengay and Ellis certain remedial relief.

II. SCOPE OF DECREE

2. This Decree resolves all legal and equitable claims arising out of the Complaint filed by the United States against Woodmere in this action. Mengay and Woodmere and Ellis and Woodmere have entered into separate written agreements that contain a full release of all of their potential claims against Woodmere, including their Title VII claims, as well as other matters not directly pertinent to the resolution of the United States' claims in this case.

III. GENERAL INJUNCTIVE RELIEF

3. Woodmere, its employees, supervisors, agents and all individuals in active concert or participation with it, are enjoined from:
- (a) engaging in any act or practice that unlawfully discriminates against any person on the basis of race in violation of Title VII; and
 - (b) retaliating against, or in any way adversely affecting the terms and conditions of employment of, any person because that person has engaged in practices protected

under 42 U.S.C. §2000e-3(a), including, but not limited to, cooperating with the United States' investigation or litigation of this case.

IV. AMENDMENT AND DISSEMINATION OF POLICIES AND PROCEDURES

4. Within ninety (90) calendar days from the date of entry of this Decree, to ensure compliance with Title VII, Woodmere shall review and, to the extent necessary, adopt or amend its written policies and procedures that prohibit employment discrimination to include the following provisions:

- (a) a description of the manner in which an employee of Woodmere may make a complaint of employment discrimination including the name and contact information for the EEO Officer;
- (b) a clear statement that a complaint of employment discrimination may be written or oral;
- (c) the identification, by job title and telephone contact information, of all individuals who are authorized to accept complaints of employment discrimination against Woodmere;
- (d) a statement that all complaints of employment discrimination will be promptly forwarded to the EEO Officer for review and investigated to the extent warranted; and
- (e) a statement that Woodmere will provide the results of an investigation into a complaint of employment discrimination to the complaining party in writing no later than thirty (30) calendar days from the date the complaint is received, or, for a complaint alleging harassment, as soon as possible to comply with its obligations under Title VII to investigate such complaints promptly (but in no

event later than 30 days), unless a written explanation is submitted to the complainant and the United States as to the reason(s) a response to the complaint could not be completed within the 30 day time frame. To the extent the Parties disagree as to whether good cause exists for the delay, either party may submit the issue to the Court for resolution as outlined in Paragraph 17 below.

5. Within thirty (30) calendar days from the date of entry of this Decree, Woodmere Village Council shall provide to the United States for its approval the name and qualifications of the person proposed to have responsibility for ensuring that the written policies and procedures set forth in Paragraph 4, above, are fully implemented and complied with (the "EEO Officer"). The United States shall indicate its approval of the proposed EEO Officer within seven (7) business days, or shall provide in writing reasons why the proposed individual is not acceptable and suggest or request an alternate designation. If the Parties cannot agree on a qualified EEO Officer, the matter shall be submitted to the Court for resolution.

6. The EEO Officer designated pursuant to Paragraph 4, above, must be available to receive complaints of employment discrimination and/or retaliation at various times of the day and by various methods of communication. The Parties acknowledge Ohio Public Records Law, R.C. §149.43. Nonetheless, the complaint process established by this Consent Decree is subject to the provisions of this Consent Decree and the confidentiality of any complaint made to the EEO Officer, and any report and/or recommendations by the EEO Officer, shall be maintained confidential to the maximum extent possible.

7. Within ten (10) calendar days from the date upon which Woodmere implements the written policies and procedures set forth in Paragraph 4, above, Woodmere shall distribute copies of such policies and procedures to all of its employees, supervisors and agents. Each individual

who receives a copy shall sign an acknowledgment that it has been received and read. The signed acknowledgment by each employee shall be placed in the employee's personnel file, and the signed acknowledgment by each supervisor also shall be maintained by the EEO Officer.

8. Within ten (10) calendar days from the date upon which Woodmere implements the written policies and procedures set forth in Paragraph 4, above, Woodmere shall publicize such policies and procedures by, *inter alia*, posting them in all buildings and facilities used for posting equal employment opportunity information, by hand-delivering them or by emailing them to all employees, and by posting them on any internet or intranet website used for posting notices or policy changes for or concerning Woodmere.

9. Woodmere shall ensure that each new employee or supervisor receives a copy of the written policies and procedures implemented pursuant to Paragraph 4, above, at the time of the new employee's hire or at the time of the supervisor's election or appointment. Each new Woodmere employee or supervisor shall sign an acknowledgment that she or he has read and understands such policies. The signed acknowledgment by a new employee shall be placed in the employee's personnel file, and the signed acknowledgment by a new supervisor also shall be maintained by the EEO Officer.

V. TRAINING

10. Within one hundred and eighty (180) calendar days from the date of entry of this Decree, Woodmere shall provide live mandatory training regarding Title VII's prohibitions against discrimination based on race and retaliation to all employees, supervisors, Village Council members and the Mayor. Such training shall be conducted by a qualified individual or company, and shall specifically include discussion of the written policies and procedures maintained by Woodmere pursuant to Paragraph 4, above.

11. Within sixty (60) calendar days prior to the commencement of such training (within 180 days of the entry of the Decree), Woodmere shall select, with the concurrence of the United States, a qualified individual or group of individuals to conduct the training required by Paragraph 10, above. The United States agrees and stipulates that an EEOC training seminar would satisfy the foregoing requirement provided such training seminar specifically includes discussion of the written policies and procedures maintained by Woodmere pursuant to Paragraph 4, above and any Woodmere employee or official who chooses to attend such program does not need to seek prior approval from the United States. For training other than that provided by the EEOC, if Woodmere and the United States cannot reach agreement as to the suitability of the individual or group of individuals selected by Woodmere to conduct the training, either party may move the Court for a resolution of the issue as provided for in Paragraph 17, below.

12. Unless Woodmere officials and employees identified in Paragraph 10 attend an EEOC training seminar as outlined in Paragraph 11, for any other training program attended, within thirty (30) calendar days following the completion of the training required by Paragraph 10, above, Woodmere shall make available to the United States copies of all training materials used. For training attended pursuant to this Decree, written attendance records shall be provided to the United States reflecting that the training has been completed, and that all individuals required by Paragraph 10, above, to attend such training in fact did so.

VI. INDIVIDUAL RELIEF FOR MENGAY and ELLIS

13. Without admitting the allegations as set forth in the Complaint, and in settlement of the claims of the United States, Woodmere shall:

- (a) within 14 days from the date of entry of this Decree by the Court, pay Mengay \$125,000.00, from any available source whether Woodmere funds or third party sources, to satisfy all of her claims for relief, monetary and non-monetary, legal and equitable, which includes her attorney's fees and costs. Specific matters pertaining to the receipt and distribution of the monetary relief will be resolved in a separate agreement between Mengay and Woodmere. Photocopies of check(s) evidencing the payment of the monetary award to Mengay, along with proof of delivery to Mengay, must be sent to the United States within 21 days of the date of entry of this Decree by the Court;
- (b) within 14 days from the date of entry of this Decree by the Court, pay Ellis a monetary sum, from any available source whether Woodmere funds or third party sources, to satisfy all his claims for relief, monetary and non-monetary, legal and equitable, which includes his attorney's fees and costs. Specific matters pertaining to the receipt and distribution of the monetary relief will be resolved in a separate agreement between Ellis and Woodmere. Photocopies of check(s) evidencing the payment of the monetary award to Ellis, along with proof of delivery to Ellis, must be sent to the United States within 21 days of the date of entry of this Decree by the Court;
- (c) re-employ Mengay as a full time regular police officer, with a pay rate commensurate with what she should be earning had she remained continuously employed by Woodmere, with continuing seniority as if she had not had a break in service. The specific terms and conditions of Mengay's reinstatement and continued employment with Woodmere, and any back contributions and credits to

her pension and other benefit plans, is resolved in a separate agreement between Mengay and Woodmere;

- (d) not offer Ellis reinstatement inasmuch as Ellis does not desire reinstatement to his employment as a police officer in Woodmere;
- (e) other than validly issued discipline that has not been disputed as allegedly discriminatory in this lawsuit, remove from Mengay's personnel file any negative disciplinary information including, but not limited to, verbal reprimands, written reprimands, suspensions, terminations, *etc.*, and in consideration of Ellis submitting a letter of resignation to Woodmere, remove any reference to the reason for Ellis' departure from Woodmere; and
- (f) provide a neutral job reference to any third parties regarding Mengay and Ellis.

The matter and nature of the job references will be resolved in separate agreements between Mengay and Woodmere and between Ellis and Woodmere.

VII. RECORD RETENTION AND COMPLIANCE MONITORING

14. Woodmere shall retain the following records during the term of this Decree or for the period of time required by the Ohio public records law or applicable federal record retention requirements, whichever is longer:

- (a) the provisions and effective date of all written policies and procedures implemented pursuant to Paragraph 4, above;
- (b) all posted notices and posters displayed in its work areas intended to convey information regarding the prohibition of employment discrimination in the workplace, as set forth in Paragraph 4, above, and the dates when such policies and procedures are posted on Woodmere's internet or intranet website;

- (c) all documents that come into its possession relating to written or oral complaints of employment discrimination against Woodmere on the basis of race or retaliation, from any individual, including documents relating to Woodmere's investigation and resolution of any such complaints; and
- (d) all documents referencing or referring to any individual employee or supervisor, in a location where it can be easily located and retrieved based on the employee's or supervisor's name.

15. The United States shall have the right to review compliance with this Decree at any time, and shall have the right to inspect and copy any documents it deems necessary to monitor Woodmere's compliance with this Decree, upon thirty (30) days written notice to Woodmere, without further order of this Court.

16. Woodmere shall report to the United States any complaint of discrimination on the basis of race or retaliation made by any individual pursuant to Woodmere's written policies and procedures referenced in Paragraph 4, above, within thirty (30) days of receiving notice of such complaint. This includes any complaint made or referred to the EEO Officer, the Mayor, the Village Council, the Equal Employment Opportunity Commission, the Ohio Civil Rights Commission or any other state or local agency charged with enforcement of anti-discrimination laws pertaining to employment.

VIII. DISPUTE RESOLUTION

17. The Parties shall attempt to resolve informally any dispute that may arise under this Decree. If the Parties are unable to resolve the dispute expeditiously, any party may move the Court for a resolution of the issue.

IX. GENERAL PROVISIONS

18. The Parties shall bear their own costs in this action, including attorneys' fees, incurred by them until the entry of this Decree by the Court. However, the Parties shall retain the right to seek costs for any matter that, in the future, may arise under this Decree and require resolution by the Court.

19. All documents required to be delivered under this Decree to the United States shall be sent by overnight mail to the attention of:

Chief, Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
601 D Street, N.W., PHB Room 4040
Washington, D.C. 20004
(202) 514-3831
(202) 514-1005 (fax)

20. All documents required to be delivered under this Decree to Mengay and/or Ellis shall be sent to the attention of:

Avery S. Friedman, Esq.
701 The City Club Building
850 Euclid Ave.
Cleveland, OH 44114-3358
(216) 621-9282
(216) 621-9283 (fax)

21. All documents required to be delivered under this Decree to Woodmere shall be sent to the attention of:

Janet R. Beck, Law Director
7650 Chippewa Rd, Suite 308
Brecksville, Ohio 44141
(440) 546-1404
(440) 546-1406 (fax)

X. JURISDICTION OF THE COURT

22. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the

Decree. At the end of three (3) years from the date of entry of this Decree, this Decree shall be dissolved and this action shall be dismissed without further order of the Court.

IT is so **ORDERED**, this 13th day of August, 2008.

UNITED STATES DISTRICT JUDGE


DONALD C. NUGENT